

PROCEEDINGS RESUME ON 3 APRIL 2002:

CHAIRPERSON: Good morning, ladies and gentlemen, can we continue with the Commission.

HENDRIK COETZEE (s.u.o.)

5 EXAMINATION BY MR BROOKS (cont.): Arising from your request yesterday, Mr Coetzee, a meeting was held with the Sasol representatives this morning. Sasol have prepared a further short document which sets out the transaction. We will deal with that and they have also prepared what we will call a slide presentation which is pages 150, 151 and we will ask Mr Coetzee to deal with his statement as read with the slide presentation.

10 CHAIRPERSON: We need to just paginate the .. (intervenes)

MR BROOKS: We can possibly paginate that page 152 and further on.

CHAIRPERSON: Let us do that now. Is it 152 to 154?

MR BROOKS: That is correct. Mr Chairperson, to the extent that any parties do not have a copy, a hard copy of the slide presentation and the additional statement they are available. I
15 do not know who has them or does not have.

CHAIRPERSON: Yes. Alright, Mr Coetzee, you might continue then. --- Good morning, Mr Chairman, and Commissioners. Sasol's understanding of the workings of the asset swap mechanism proposed by .. (intervenes)

You are now at page 152 of your statement, that is the new, let us call it the
20 supplementary statement prepared this morning? --- Yes.

Yes? --- The observations set out hereunder relate to the amount of Euro 340 million in paragraph (e) on page 16 of Sasol's statement to the Commission. In the simplest form the asset swap mechanism consist of two legs. The purchase in South Africa by Deutsche of 39 million Sasol shares and a sale of 39 million --- Sasol shares off shore by
25 Deutsche to long term investors. In so far as it concerns the purchase leg the following observations are pertinent. It could have taken place by means of a once off transaction on the JSE or even by means of .. (indistinct) market transactions or because of the extensive quantity, i.e. 39 million Sasol shares, it would have been highly unlikely that such acquisitions could have occurred quickly or at realistic prices. Thus the local purchasers of the Sasol
30 shares could have been supplemented by borrowing of Sasol shares since those shares are fundables. In terms of such borrowing ownership passes but there is an obligation to

returned the borrowed shares at the agreed time with fundable shares. In addition it must be remarked that the borrowings could have been made by Deutsche from any large holder of Sasol shares, be it Sasol or any other large holder of Sasol shares. Borrowings of this nature between South African entities are normal market practice.

5 Could you just stop there, just to make it very clear. If a share is borrowed, it is not necessary to return back the particular share? --- As long as a Sasol share is returned.

 With the same value etcetera? --- That is correct. In the event a recognisance of the foregoing the purchase made of the asset swap which required the local acquisition of the approximately 39 million Sasol shares, is permitted as follows: Deutsche purchased
10 approximately 1,3 million Sasol shares on the market and Deutsche borrowed from Sasol approximately 38 million Sasol shares. These shares were treasury shares which Sasol had previously acquired in terms of a share buy back unrelated to the asset swap. The shares borrowed by Deutsche as aforesaid were returned to Sasol by Deutsche in accordance with the agreed provisions in two tranches as set out in Annexure AC3, paragraph 3 of Sasol's
15 statement.

 Mr Coetzee, I think you will find that at page 64, if I am not mistaken. Page 64, paragraph 3. --- Yes, that is correct.

 Yes? --- In so far as it concerns the sale leg of the asset swap the following observations are pertinent. The 39 million Sasol shares which were to be acquired in the
20 local market were to be on sold off shore to long term investors so as to ensure reserve neutrality. Because such sale would take time and this would have undermined the objective of providing Sasol with cash in one tranche, the initial sale was to DBL or Deutsche Bank London which was to hold the shares for a minimum period of 12 months during which the shares would be on-sold to long term investors. Mr Brooks, in addition to that I prepared two
25 slides to clarify this statement.

 I think just take us through the slides just to illustrate that which you have just told us.
--- The first slide essentially deals with the asset swap where we have indicated yesterday Sasol paid to the ... (indistinct) in South Africa an amount of R2,5 billion and at the same time Deutche London paid to Sasol, into its off shore account for settlement of the Condea
30 transaction or partial settlement of the Condea transaction an amount of Euro 340 million. We would like to indicate there that this is a normal asset swap. Sasol did not sell any

shares and Sasol did not place or issue any shares. Deutsche in turn placed 39,7 million shares with Deutsche in London and Deutsche in London would have sold those Sasol shares on the off share market to international investors.

5 Sorry, could you just stop there. Those Sasol shares Deutsche could have acquired from any third party that could have been holding it? --- Yes. So Deutsche could buy those in the market or they could borrow it from anywhere else.

And the fact that Sasol made those shares available to Deutsche in terms of the script lending agreement was merely to facilitate the transaction? --- That is correct.

10 And when in terms of the script lending agreement Deutsche has to return the shares, it is not necessarily that shares, it is shares of similar value? --- That is correct, in terms of AC3 .. (inaudible, drops voice)

MS QUNTA: But are they Sasol shares? --- That is correct, Sasol shares.

MR BROOKS: Of the same quantum? --- The same quantum. Now dealing with the securities loan agreement of Sasol shares, Deutsche in South Africa bought Sasol shares from the market and have also borrowed shares either from the market or from SIH. They have placed 39,7 million Sasol shares with Deutsche in London which is then on-sold to the off share market.

20 Sorry, could you just stop there and again deal with this confusing concept of sale placing. In your diagram you show that Deutsche placed 39,7 million Sasol shares with London. What exactly do you mean by that? --- Placed, well sold. What is pertinent here is to understand that this is normal market practice, securities lending in South Africa is normal market practice. This transaction between Sasol International Holdings and Deutsche was a market related securities loan agreement. The loan agreement was between two South African companies, i.e. SIH and Deutsche and no direct bearing on the asset swap transaction other than cost and duration. In other words, Deutsche could borrow those shares from anyone in the market.

25 What happens thereafter, how Deutsche implements the transaction thereafter, does Sasol have anything to do with that implementation? --- No, no, Sasol does not.

So that is your input into the transaction? --- That is correct.

30 CHAIRPERSON: Are you giving evidence about the structure, not the implementation?

MR BROOKS: Deutsche Bank will give evidence in regard to the implementation.

CHAIRPERSON: I realise this, I am asking Mr Coetzee, this is the way it should have worked. --- Yes, we are giving our input as to the structures as far as relevant to Sasol.

MS QUNTA: But is Sasol aware of the implementation of the transaction? --- The implementation only in so far as it is relevant to Sasol.

5 Yes, that is what I am asking. --- Yes, we are aware of that because we borrowed script and we had those shares returned to us.

So you can in fact give evidence about the implementation to the extent that you have knowledge of it? --- No. No, we have no knowledge of the implementation of the transaction.

10 So when the scripts were returned to you, were you not aware of that? --- No, we were aware of the return of the script because that is part of the transaction as far as it relates to Sasol.

MR BROOKS: In so far as there is possibly a misunderstanding, a question was put to you in so far as that script was returned to you, to Sasol, do you know whether it is that script or
15 other Sasol script. In other words, is it the same share certificates, let us keep it as simple as possible? --- It was not necessarily the same share certificates, we received Sasol shares in the same quantity.

The same 38 million that Deutsche was obliged to return to you in terms of the said lending agreement? --- That is correct.

20 MR QUNTA: I do not understand, Mr Brooks, and you have confused me even more now. If you enter into a transaction surely it would be in the interests of Sasol as a company to ensure that that transaction or certainly to be aware that the transaction has actually been implemented. Are you saying, perhaps I do not understand you, are you saying that after the implementation of the transaction you were not aware of how it was implemented and
25 whether it was implemented in accordance with your understanding?

MR BROOKS: May I suggest the following, I think we are missing each other. May I suggest for purposes of answering your question that Mr Coetzee again refers to the diagram and Mr Coetzee could you please, I think there is some confusion as to what the implementation of the deal means and if you could please illustrate to the Commissioners what role Sasol plays
30 in the implementation as opposed to what role Deutsche plays in the implementation?

MS QUNTA: No, my Brooks, I am not asking that question and that is why I want Sasol to

give us the answer, if they do not understand the question that I am asking they should say so and then the legal representation, I appreciate, Mr Brooks .. (inaudible) and I will ask Mr Coetzee to answer my question. My question is a generic question, it is not related to the transaction, I am saying if you enter into a transaction, even if you do that through a third party, is it your evidence now and your comment earlier on that you have not checked at the end of that transaction whether the transaction had been implemented in accordance with your understanding and your instructions? And you know, it is a very simple question. I am not relating to this loan agreement, I may have follow up questions, I do not understand and I cannot understand the interruption but for the moment this is all I am trying to find out and Mr Brooks cannot help me, I think you can help me. --- Well certainly we understand what this specific securities loan agreement was about and we would certainly make sure that that specific transaction was implemented.

Thank you. So you are then able to give evidence in so far as you are aware of the implementation of the transaction? --- Of the securities loan agreement, yes.

MR BROOKS: Mr Coetzee, if there are no further questions in regard to the implementation of the transaction, the further issue which was raised and which is always raised by the Reserve Bank when granting approvals is what they call flow back and we have dealt with the flow back issue. Please turn to page 54 of your statement. Would you please just deal with the flow backs because that is an important issue. --- The issue of flow back of the securities that were placed by Deutsche Bank has recently arisen. Sasol wishes to emphasise that it was never Sasol's responsibility to attend to the placing of the securities or to ensure that there would not be any flow back. Sasol has been informed that in recent correspondence between SARB and Deutsche Bank, Deutsche Securities relating to the asset swap transaction it appeared that Deutsche Bank and Deutsche Securities and SARB had, without Sasol have been informed of such communication, been corresponding directly relating to the implementation of corporate asset swaps. In a letter dated 15 January 2001, which should be dated 2002, Deutsche Securities advised SARB that a flow back in respect of the asset swaps to South Africa had occurred. Deutsche Securities estimated a figure of 6% of the original 39,6 million shares placed, i.e. 3 500 000 shares had flowed back. Deutsche Securities also estimated that the flow back by institutional placing in excess of 100 000 shares over the previous 10 months were as follows .. (intervenes)

You can skip that next part. Mr Commissioner, that letter you will find pages 134 and 135, which is AC28. Would you then go on to 423 please? --- In a reply letter dated 22 January 2002 and addressed to Deutsche Bank SARB informed Deutsche Bank that Sasol should be requested to re-finance from abroad the amounts transferred from South Africa in respect of the flow back shares in order to recoup the loss of foreign currency. A copy of that letter is attached hereto marked Annexure AC29.

Is that page 136 and 137. --- SARB in its letter referred to in paragraph 423 above also informed Deutsche Bank that the securities loan agreement between Deutsche Securities and SIH was not disclosed in the original application No. 8 dated 2001.01.25. It must be noted that it was not Sasol's obligation to furnish SARB with a copy of the agreement. It should be noted further that in its response to SARB referred to in paragraph 351.14(f) above, Deutsche Bank stated that Deutsche Securities was not aware of any subsequent sale of Sasol shares ... (indistinct). In a meeting held on 4 February 2002 between representatives of Sasol and Deutsche Securities copy of the abovementioned correspondent was submitted to Sasol during which meeting Sasol requested *inter alia* that a clear definition and understanding of flow back be obtained from SARB in order to determine whether in fact any flow back had occurred and if so to what extent. Sasol requested Deutsche Securities in writing on 14 February 2002 to provide the following documentation and information respect to share transactions executed as part of asset swap to Sasol. Counter parties with who shares were placed, date and volumes of initial share sales, of shares, and subsequent sales of shares by relevant counter parties. A copy of this request is attached hereto as Annexure AC30.

This is page 139. --- On 15 February 2002 Sasol made certain information available to the investigators acting on behalf of the Commission.

Mr Coetzee, you can skip that paragraph. Just deal with the last paragraph 5. --- Foreign exchange transactions. In compliance with the request made by the representatives of the Commission to furnish information about other, i.e. non Condea, foreign exchange transactions, Sasol points out, as stated in paragraph 3.3 above that Sasol Financing acts as an in-house bank and centralised treasury for the Sasol Group of Companies. Sasol's foreign exchange transactions and use of Dollars and Euro's for the period 1 September 2001 to 31 December 2001 are summarised in Annexure AC31 attached hereto.

Just stop there please. That is page 140 up to 143. You can skip the substance of 5.1 and go to 5.2. --- The 180 day rule on customer foreign currency accounts were fully complied with by Sasol and its subsidiaries. Attached herewith, Annexure AC32, is a schedule reflecting foreign currency transactions concluded for the Sasol Group in respect of
5 the 2001 calendar year.

That is pages 144, 145. Please continue? --- In the ordinary course Sasol's transactions generate vast savings of imports. Its benefits to South Africa exceeded any currency outflow from South Africa arising from the implementation of the Condea transaction. Details of the export earnings and import savings are set out in Annexure AC53
10 attached hereto.

This is at pages 146 up to 148. Please continue? --- Conclusion: As appears from the foregoing Sasol has always acted within the terms of the provisions of the Exchange Control Regulations and continues to comply therewith. Sasol's has never sought to manipulate any authority for any purpose. It is a conscientious patriotic corporate citizen of
15 this country and asks the Commission to recognise it as such. It is further respectfully submitted that all of the submissions set out in paragraph 1.5 above have been substantiated in this memorandum.

Mr Coetzee, could I just ask you one last question please. In so far as Deutsche had to return shares in terms of the script lending agreement, are you with me? --- Yes.

20 Do you have any knowledge, not you I mean Sasol, of the purchases made by Deutsche for purposes of complying with that obligation? --- No.

I have no further questions, thank you, Mr Chairman.

CHAIRPERSON: Mr Coetzee, I wonder if you can just take us through these annexures that you have just referred to. We start at page 140, Annexure AC31. You do not need to take
25 us through the details but perhaps just explain very briefly what each schedule sets out. --- The nett effect of US Dollars, total imports, in other words Rands netted in South Africa, in September was 37 million approximately and exports 27 million. And therefore a nett outflow of 10 000. Included in that number was an outflow for .. (inaudible) of 20 000. And therefore if one were to exclude that from imports, the nett figure would have been a positive 10 million
30 and not a negative 10 million as indicated.

This is in Rands? --- That is in Dollars.

That is in US Dollars? --- That is in Dollars.

That is day by day? --- Yes. The same principle applies to all the pages under Annexure AC31.

5 The Dollars takes us up to page 141, Mr Coetzee and possibly you could just read off the record the summary of the transactions on page 141. --- The Sasol Group monthly foreign exchange transactions for 2001 in US Dollars. Total imports was 609 million and exports ... (intervenes)

10 We are not on the same page, Mr Coetzee. Page 141. It is a summary of the US Dollar figures for 2001. --- For the month of November, US Dollars 44,9 million outflow and 64,2 million inflow. A nett inflow of 19,3 million. For the month of December a nett outflow of 177 million Dollars and a nett inflow of 22,7 million Dollars, therefore a nett outflow of 154,7 million Dollars and included in the outflow there are two big numbers, one for the motor beacon pipeline project at 48 Million Dollars and one for the Nigerian GTL project of 74 million Dollars. I went up to December in US Dollars. Should I continue with the Euro?

15 Please continue with the Euro's page 142.

MS QUNTA: Can I just ask a question, the 48 million .. (inaudible) that flowed out on those days, those particular days? --- That is correct.

And the same with the 74 million? --- That is correct. That is with specific SARB .. (inaudible) for those two copies.

20 CHAIRPERSON: Page 142 and 143 please? --- Euro's imports 29,5 million outflow and exports 3,3 million. A nett of 26 million Euros. That was September. October, 27,4 million outflow and 1,4 million inflow, therefore a nett outflow of 26 million. Once again an amount of 15,4 million was specifically for the motor beacon pipeline project. Euros in November, an outflow of 58,7 million and inflow of 3,4 million. A nett outflow of 56,4 million and during 25 December imports of 21 million, exports of 4 million, a nett outflow of 17 million, once again an amount of 12 million included in imports were for the motor beacon pipeline project.

30 If you can take us to AC 32 at page 144? --- This document provides a summary of foreign exchange per ... (indistinct) for the Sasol Group. In US Dollars, the total imports 609 million and exports 589 million. There was a nett outflow of some 19 million dollars and two specific big projects that need to be noted in terms of imports, pipeline project 125 million dollars and the Nigerian GTL project 74 million Dollars. When we look at Euros for the year

2001, total imports from January through to December approximately 118 million Euros and exports 80 million Euros, therefore a nett outflow of 100 million Euros. Two amounts need to be clarified again, pipeline 27 million Euros for the year and Condea, that was the equity contribution of 56 million Euros in April 2001.

5 Page 145? --- This is a summary of GBP or pounds for the year 2001. Total imports 38,7 million, total exports 2,6 million, a nett of 36,2 million.

AC33 on page 147, can you give that? --- Document AC33 deals with foreign exchange savings by the Sasol Group. During the year - shall I deal with all .. (intervenes)

I think you can just summarise it and get to 2001. --- For the year 2000/2001 the
10 foreign exchange savings by the Sasol Group amounted to 26,3 billion made up as follows:
From coal exports 845,9 million. Sasol sim fields(?) or SSF for the production of sim fields,
11,6 billion. Oil 1,5 billion. Chemicals 11,6 billion and other 1,1 billion.

I have no further questions.

MS QUNTA: I have a few preliminary questions and as I indicated to you yesterday
15 afternoon, it is a bit difficult to look at your statement in isolation because obviously it links
with the evidence of the Reserve Bank and I will probably want to ask more questions that I
have asked the Reserve Bank when giving evidence. But for the moment I just want to ask a
very general question. When you entered these transactions did you obtain legal advice and
accounting, financial advice in regard to the structures the legality and so on? --- Absolutely.

20 For the moment that is all I have. I will come back with more questions.

CHAIRPERSON: When?

MS QUNTA: I presume when the Reserve Bank and Deutsche Bank has given evidence. I
have not been in a position, I have gone through the Sasol statement, I have not been in a
position to go through the banks' affidavits and probably after that, when I have a better
25 understanding of the structure.

MR GANTSHO: Mr Coetzee, would you confirm that Sasol carried the risk of re-financing
the flow back off shore? Was it a risk that Sasol carried and not Deutsche Bank? --- Yes,
that is a risk that Sasol carried.

What mechanisms did you put in place to monitor and manage that risk? Did you
30 rely, in other words, on Deutsche to monitor the flow backs or did you take actions yourself to
monitor the risk? --- Firstly the obligation was placed by us on Deutsche to monitor flow

back and to advise us of any flow back. In addition, we certainly look at our own registers because we follow the off shore shareholding in our shares and therefore those are the two mechanisms in place to monitor flow backs.

5 Did Deutsche bring to your attention any flow backs that you could not monitor yourselves in your monitoring of the share register? --- They have the information with respect to specific transactions that they told us about on 4 February, specific flow backs, but that in our register could be difficult to pick up because shares are held in nominee companies.

10 Are you able to tell the Commission if you could monitor the activities of Deutsche Bank in as far as replenishing the shares that they borrowed from you which they returned in June, I understand. Do you know how they replenished those shares, in other words how they sourced the scripts so that they could be able to place that scripts overseas? --- No.

So you are not able to say whether they got those shares from the market or they continued to borrow from other sources or from yourselves? --- No, I cannot.

15 But certainly they did not borrow them from you after they returned .. (intervenes) --- No, we did not enter into any new agreements other than the one pointed out this morning.

Thank you.

CHAIRPERSON: I think perhaps you should just elaborate on your answer in regard to your ability to monitor the flow back. When you look at your share register are you able to 20 establish the source of the shares? --- No, it is not possible to establish the source because shares are held in nominee companies, it is therefore impossible for us to tell who exactly hold those shares.

So is the only effective way you can monitor is to ask Deutsche Bank to account for it, for the flow back? --- That is correct, they have to monitor the shares because the 25 transactions are between themselves and their clients.

And did Sasol do so? --- Yes.

Did you call on them to account? --- Yes, we have had discussions with Deutsche.

MS QUNTA: When did you have discussions with them? --- The last discussion that we had with them is reflected in I think it is AC30 where we specifically requested that a clear 30 definition had to be obtained from Reserve Bank with respect to flow back.

CHAIRPERSON: Any further questions?

CROSS-EXAMINATION BY MS KATHREE: Mr Coetzee, might I please take you back to paragraph 3.2.3 of your presentation which reads as follows: "In the first instance high level discussions were held with Treasury to discuss Sasol's global involvement and a possible listing for Sasol off shore. General approval was expressed about Sasol's global involvement". Mr Coetzee, is it correct that at no point did National Treasury grant general approval to Sasol in regard to its global involvement? --- It should actually read general interest was expressed about Sasol's global involvement.

Thank you, Mr Coetzee. Mr Coetzee, could you also confirm that at no point did National Treasury express approval in regard to the Sasol Condea transaction? --- Yes, except to the Reserve Bank.

Thank you.

CROSS-EXAMINATION BY MR ?: The question has been posed to you or you have been asked to compare the structure with the way in which the transaction ought to have been implemented. It is not being suggested by you that there was a difference between the way in which the transaction had been implemented and how you understood the transaction should have been implemented? --- No.

MR BROOKS: Mr Chair, I would just like to ask one question in regard to the return of the shares by Deutsche?

CHAIRPERSON: Yes.

MR BROOKS: Is it possible or was it possible for Sasol to determine whether those shares which had been lent to Deutsche, whether the same shares were returned to Sasol? --- No, the quantity of shares that were borrowed were returned to Sasol but it is impossible to specifically match share A for share A.

So that is not possible, is that what you say? --- Yes.

MS QUNTA: I think I asked that question before and you had given the answer before. --- Yes.

Can I confirm what I said earlier on, that I probably will have a number of questions to ask once I have a more global picture of the transaction vis-a-vis the evidence of Deutsche Bank and the Reserve Bank and I would just ask if he could then come back and make himself available. --- Yes, of course, we will always be available to assist the Commission.

Thank you.

MR COOPER: Mr Chairman, may I just close off from Sasol's side?

COURT: Yes.

RE-EXAMINATION BY MR COOPER: Mr Coetzee, if you would just go back to Annexure AC4 at page 68 of the papers, there you have the proposals and indeed the agreement as to
5 what the content of the asset swap facility should be and as to the roles which the respective parties are to play. Is that right? --- That is correct.

Now if one goes through this document one finds that in certain respects Sasol is to participate in aspects of the transaction and in certain respects the transaction goes beyond any involvement of Sasol. Is that right? --- That is correct.

10 In regard to the script lending facility which is dealt with in paragraph 2, there obviously Sasol if called upon would be involved and the lady commissioner asked you in that regard whether Sasol had in fact followed and monitored the transaction and whether Sasol in fact was satisfied that it had been implemented in accordance with the arrangements. Now what is your answer to that? --- My answer is yes.

15 In regard to aspects which are covered in AC4 but which did not involve Sasol, I want to repeat an expression that you used in the course of giving evidence, I want you to elaborate on the expression. You talked about Deutsche's proprietary product. You remember that? --- Yes.

20 What does that mean in the context of understanding what part was Sasol's and what part was not? --- Deutsche's proprietary product, as soon as this transaction becomes part of the Deutsche Group in terms of any hedging or whatever other aspects, that is Deutsche's proprietary product which we at Sasol have no knowledge of.

25 Now Deutsche, we have used that word loosely and you have explained that there were a number of Deutsche entities involved. Was one of the Deutsche entities an authorised agent of the Reserve Bank for the purpose of fulfilling the role of assisting in the understanding and the transmission of information to Reserve Bank concerning transactions and then the response to the client as to whether and on what terms approval would be given? --- Yes, Deutsche Bank is an authorised dealer.

30 Was Deutsche Bank then, to ask you an obvious question, intimately knowledgeable of every aspect of the Sasol transaction? --- I have to assume that they were.

Did Sasol at any time choose to withhold from Deutsche any knowledge of aspects

of the transaction? --- No.

So far as Reserve Bank is concerned, did Sasol at any time choose to withhold any information from Reserve Bank? --- No.

5 So far as Sasol understood its position, had the approvals been properly sought for and properly granted? --- Yes.

So far as Sasol understood the position, did Sasol remain within the terms of the approvals granted? --- Yes.

Thank you, I have no further questions.

CHAIRPERSON: Thank you, Mr Coetzee, you can stand down. You may be recalled later.

10 --- Thank you.

NO FURTHER QUESTIONS

MR BROOKS: Mr Chairman, the next witness to give evidence will be Nampak. We may have to do some reshuffling of chairs and papers. Could we take just a five minute adjournment.

15 CHAIRPERSON: The proceedings are adjourned for five minutes.

PROCEEDINGS ADJOURNS: PROCEEDINGS RESUMES:

JOHN WILLIAM SAYERS d.s.s.

EXAMINATION BY MR BROOKS: Mr Sayers, you are the financial director of Nampak Ltd, is that correct? --- That is correct.

20 And you have for purposes of this enquiry prepared a statement on behalf of Nampak which you have made available to the Commission? --- That is correct.

 And that statement is contained in what we call the Nampak bundle. Would you please turn to your statement. You were present when the other witnesses gave evidence, I am not going to report in which manner we handle the evidence. I would ask you to read
25 your evidence and if you wish to elaborate or add please do so. If I interject I will indicate to you and we will deal with that. --- Thank you. May I start with the introduction?

 Please do. --- I am financial director of Nampak Ltd, having been appointed to this position with effect from 1 May 1996. I am also a director of Nampak Products Ltd, a wholly owned subsidiary of Nampak. Nampak has approximately 32 subsidiaries registered in
30 South Africa. I mention Nampak Products specifically because it features in the events giving rise to a corporate asset swap which forms part of this Commission's enquiry.

Accompanying this statement is a bundle of documents to which I will refer. Nampak and its South African subsidiaries operate primarily in the packaging field and offer a wide range of packaging products manufactured from plastic, cardboard, aluminium etcetera. The Nampak Group is one of the largest industrial enterprises in South Africa. The Nampak Group also has off shore interests in the United Kingdom, Europe and Africa. Since this enquiry relates particularly to Nampak's United Kingdom companies, I have included it as Annexure A to the statement, a colour organogram(?) setting out Nampak's corporate interests including those outside South Africa. One of the United Kingdom companies in which Nampak has an interest is a company called Nampak plc which was formerly known as Plysu plc. If I may add there it was a listed company in the United Kingdom that we purchased in December 1999. Nampak International Ltd is a company domiciled in the United Kingdom and is also a wholly owned subsidiary of Nampak. Nampak International serves as the Nampak Group's off shore financing managing cash resources and investments. Wherever I refer to a wholly owned subsidiary in the statement, I mean a company which directly or indirectly is a 100% owned Nampak ... (drops voice, inaudible).

Just stop there please, I do not think your voice is being picked up by that microphone. --- Is it this one?

Yes. --- Okay.

Will you just move closer to the microphone. --- Close enough?

I think so. --- Corporate asset swap. I am assuming that the Commission will be enlightened by other witnesses as to what constitutes a corporate asset swap and the various forms which such an asset swap may take. For this reason I will only deal with the asset swap mechanism finally implemented by Nampak. Application to the Reserve Bank for corporate swap authorisation. In all its off shore dealings Nampak has been scrupulous in obtaining authority from the South African Reserve Bank Exchange Control Department and in complying with any conditions imposed. During 2000 Nampak identified a need to make additional finance available to its United Kingdom subsidiaries. It accordingly engaged in discussions with Deutsche Bank Securities (Pty) Ltd in Johannesburg with a view to considering the advisability of utilising an asset swap, investigating the course and formulating an application for permission to the Reserve Bank. I was more involved than any other Nampak executive in relation to this exercise. My discussions with Deutsche Securities

were with Michael Lansdown, the vice president of the Structured Products Group. The first document which I can find recording our discussions is a letter from Mr Lansdown to me dated 17 October 2000, bundle page 2. In terms of this letter dated 17 October 2000 Mr Lansdown made certain initial proposals as to how the asset swap should be approached, the salient points of the proposal being as follows. Nampak itself would buy its own shares on the South African market using Rands to settle the purchase price. These shares would then be sold to long term foreign investors thereby raising foreign currency. The purchase and the sale of the shares were to be executed simultaneously. Obviously Reserve Bank approval will have to be obtained and the timing of the transaction will be determining by favourable exchange rates then prevailing. By favourable exchange rates he presumably intended to indicate that the stronger the Rand at the time of the transaction the less Rand would have to be paid for the same Sterling amount. As stated previously Reserve Bank approval would have to be obtained for the asset swap, it being anticipated that approval would have to be obtained for the proceeds of the assets to be put to particular use off shore.

Deutsche Securities cost were also referred to. Mr Lansdown commented inter alia that the approval for the use of the proceeds (which) may be more problematic. Although Mr Lansdown can speak for himself on what he intended, I suspect that all he was saying was that the Reserve Bank understandably required details of the manner in which the proceeds were being used off shore. This detail was made available by me to Mr Lansdown in my letter of 21 November 2000, bundle page 5. In that letter I listed plant investments planned at that time by Plysu plc, now Nampak plc involving some .50 million worth of investments. During this period I discussed the possible asset swap with other members of the Nampak executive. These proposals were also being discussed informally at board level. The reason for the asset swap was to utilise the proceeds the finance Nampak's United Kingdom expansion to an equity injection. It was wholly owned UK subsidiary, Nampak Holding UK plc. It was further anticipated that the proceeds will be used partly from the capital expenses programme planned for Nampak plc, formerly Plysu plc, which was and still is a subsidiary of Nampak Holdings UK. The capital expenditure requirements for Nampak plc were estimated during November 2000 to be .50 million Sterling. As will emerge subsequently Deutsche Securities obtained on Nampak's behalf Reserve Bank approval for an asset swap involving 25 million of which 20 million was in fact implemented in tranches of 15 million and 5 million

on 3 July 2001 and 7 August 2001 respectively.

For the record, the millions you referred to there are pounds?

-- Pounds.

Thank you. -- In terms of foreign exchange transactions involving large
5 conglomerates such as Nampak, this was not a particularly large amount. To put this in
context, the effective purchase consideration for Plysu plc was .150 million in December
1999. Further, in regard to my letter of 21 November 2000, Mr Lansdown, bundle page 5, I
comment further in regard to ... plant contracts generally. ... plant contracts were by Nampak
suppliers and installs a large plant on the customer's premises to service exclusively that
10 customer's needs.

Just stop there please. I do not think the rest of that paragraph on that page is
relevant for purposes of this investigation, so you can skip that.

MS QUNTA: Mr Brooks, can I just find out in relation to the evidence, if you say it is not read
into the record, I presume that you will ask them to confirm the statement so that we are
15 entitled to use it.

MR BROOKS: Yes, madam. Please continue on page 7, paragraph 12. -- Accordingly on
28 November 2000 Deutsche Securities acting on behalf of Nampak filed an application to
the general manager of the Reserve Bank, bundles pages 7 to 9. Further information was
furnished on 11 December 2000, bundle pages 10 to 11. The application was initially
20 refused by the Reserve Bank in terms of a confirmatory letter dated 11 December, bundle
page 12. The reason for the refusal was that the application was stated to fall "outside the
ambit of the current exchange control policy", bundle page 12. On 12 December 2000
Deutsche Securities furnished further information to the Reserve Bank, that will be bundle
pages 13 and 14.

25 Will you just stop there please. Would you go to pages 13 and 14 and page 13 is
the covering letter. Page 14, would you just read that into the record please because this is
the application? --

"The following additional information is provided in respect of our original application
00/095 and further application 00/100. The sole proceeds from the sale of any
30 Nampak Limited (Nampak) shares held by a subsidiary of Nampak .. (indistinct) will
be settled directly in foreign currency as ie. there will be no currency conversion and

the foreign currency proceeds will be paid for the account of Nampak and not for the account of the Nampak subsidiary."

I think the Reserve Bank's problem at that stage in terms of the prior application, it appeared to be a double conversion? --- I would not be aware of the Reserve Bank concern
5 at that point, I only saw the documentation after the Reserve Bank approval.

Very well. Continue? --- Paragraph 15, on the same date, i.e. on 12 December 2000 the Reserve Bank gave written approval for the asset swap (bundle, pages 15 and 16).

Can we go to both pages please and could we deal with those pages. --- Right, this is a reply dated 12 December 2000, page 1 and 2, application number 103. Would you like
10 me to read it?

Yes. ---

"I thank you for the additional information furnished and advise that we are agreeable to the placement of Nampak shares to the Rand value of 25 million on the JSE for the specific purpose stated. This authority is subject to the conditions
15 outlined on page 2 of your application. We note that the relative shares will be taken up by long term foreign investors and that no South African parties will participate in the share placement exercise. We also note that the relative shares will be placed at market value. Kindly keep us posted on a six monthly basis as to the success or otherwise of the placement which should include reporting to us of any flow backs
20 that might occur or have occurred in this regard. It should be pointed out to your customers that in the event of substantial flow backs occurring, we reserve ourselves the right to call upon them to refinance the amounts transferred from South Africa abroad in order to recoup the loss in foreign currency. It is noted that the full proceeds to be received off shore would be capitalised in the books of Nampak
25 Holdings (UK) plc which capital injection would be utilised to fund a capital expenditure programme of Plysu plc."

I would just like to break the statement to say that that capital expenditure programme was very specifically designated as being varying in price.

"Any expansion plans must of course be placed on record with ourselves. Should
30 this expansion be in a different line of business our prior approval will be required.

Finally, any liability that the applicants must settle with their local subsidiaries in

respect of the shares being placed must be done so locally in Rand. It follows that foreign subsidiaries may not take up the applicant's shares as part of a share buy back arrangement. The shares obtained by them in this matter may not be included in this authority and must be reported to us."

5 Would you then go back to your statement, from paragraph 15. --- Based on the additional information. In essence this permitted the placement of Nampak shares to the Rand value of .25 million Sterling on the Johannesburg Stock Exchange. Reserve Bank approval was however subject to the following conditions.

10 You do not have to repeat those, you have dealt with them. --- Reserve Bank approval was also stated to be subject to page 2 of the application. Page 2 of the application refers to the application by Deutsche Securities dated 28 November 2000, bundle page 8. In this application Deutsche Securities have given the Reserve Bank the assurance that the relevant shares would be taken up only by long term foreign investors and that the placement would be undertaken by Deutsche Securities. Nampak never anticipated having any control
15 over the actual placement of the shares and in fact were never so involved at any time. The full proceeds of the swaps were to be received off shore and capitalised in the books of Nampak Holdings UK and such capital injection would be utilised to fund the capital expenditure programme with Plysu plc, now Nampak plc. Should the capital expansion be in a different line of business Reserve Bank's prior approval was required. The proceeds are in
20 fact being used to fund the capital expenditure programme of Nampak plc in the very business, the core business of Nampak's United King operation. Accordingly, such expenditure has been strictly in accordance with the Reserve Bank's prior approval. In order to protect the South African foreign reserves, the Reserve Bank normally, as far as I am aware, reserves the right (as it did in this case) to require the applicants to make good any
25 loss of foreign currency suffered in the event of a flow back of the shares into South Africa. The flow back occurs if the foreign investors sell their shares on the JSE, the South African entity, so that any monies expended by such South African purchasers in paying for these shares eventually lands up in the hands of the long term foreign investor outside of South Africa. In fact, the Reserve Bank did reserve the right to call upon them to re-finance the
30 amounts transferred from South Africa abroad in order to recoup the loss of foreign currency. See the Reserve Bank letter dated 12 December 2000 at bundle pages 15 and 16. In

certain terms this meant there was always a possibility that in the event of share flow backs to South Africa, Nampak, by having to re-finance the amounts transferred from South Africa would have had to raise foreign loan in foreign currency, would have had to use the proceeds of that foreign loan to repatriate currency back into South Africa. It is to be stressed that

5 Nampak's understanding was that the transaction as envisaged would have had a currency neutral effect. In other words, would have been neutral in so far as the country's reserves were concerned. No Rands were to leave South Africa and as far as we were concerned no Rands in fact left South Africa. The only change was that whereas previously a South African entity, i.e. Nampak Products, owned the relevant Nampak shares, now the shares

10 would be owned by foreign investors.

Please stop there. Mr Commissioner, I see it is 11:15, this would be a convenient time.

CHAIRPERSON: We will adjourn for 15 minutes.

PROCEEDINGS ADJOURN:

15

ON RESUMPTIONJOHN SAYERS (s.u.o.)

EXAMINATION BY MR BROOKS CONTINUES: Sir if you may continue with your evidence please. Paragraphs 19, 20 and 21 of the statement are not very relevant, I understand to ask
 5 that we skip those paragraphs but they remain as stated in your statement. Could you then continue with paragraph 22 please. --- Mr Brooks before I begin, I have been advised by my counsel in one or two places Deutsche Securities (inaudible) with Deutsche Bank. We will provide you with a list to correct the record (inaudible).

And what we could also do Mr Sayers as we go along with your statement where we
 10 refer to annexures and we pick up that it is the wrong Deutsche that was referred to we could correct it there and then. Thank you. Would you continue with 22. --- On 16 February 2001 Mr Lansdown of Deutsche Securities wrote to Mr J Gibbard of the Reserve Bank confirming Deutsche Securities' understanding of the settlement, bundle page 29.

Could you just go to page 29 please Mr Sayers. This appears to be
 15 correspondence as between Deutsche Securities and the Reserve Bank. Could you just explain to the commissioners how it came about that you have this letter in your possession? --- Mr Brooks when we enter into transactions like this we take full and professional advise from our internal and external advisers and we always ask for all copies of correspondence in order to satisfy ourselves that we do understand that Reserve Bank approval has been given
 20 for the (inaudible) of the transaction.

Mr Sayers this letter is important because it sets out the implementation of the assets swap, would you please just read this? ---

"Dear Johan. (inaudible) transactions. Further to"

I presume that is our telephonic conversation

25 "yesterday regarding corporate assets swaps (involving the placement of the (inaudible) shares with foreign investors) I would like to confirm our understanding of the settlement thereof.

1. Deutsche Securities would purchase shares in the company and on sell
 (inaudible) with one term foreign investors. The company would pay
 30 Deutsche Securities a rand value of the shares places in South Africa. The company would receive foreign currency (proceeds from the sale of the

shares) directly into the off-shore account for the account or entity approved by the Reserve Bank and no conversion from rand to foreign currency will take place (inaudible). It would be appreciated if you could notify the undersigned in the event that you are not agreeable to the abovementioned settlement (inaudible)."

5

Is that also your understanding of how these transactions work? --- Yes.

Thank you. Would you then go back to your statement, page 11, paragraph 22. ---
Mr Gibbard of the Reserve Bank replied on 21 February 2001, bundle page 30.

Just go to page 30 please and just read the body into the record. ---

10

"Dear Sir. (Inaudible) corporate assets (inaudible) transactions. I acknowledge receipt of your facsimile of 16 February 2001 in the above connection and confirm that in respect of share placement exercises sanctioned by yourselves we are agreeable to Deutsche Securities (Pty) Limited (inaudible) company's specific shares in the secondary market and on selling these to long term foreign investors for payment off shore. All cost towards purchasing the shares by your institution must be settled locally in rands by the company involved to ensure reserves in neutral positions at all times."

15

Back to page 11. --- Confirming Mr Lansdown's understanding, it being the Reserve Bank's obvious intention to ensure that the South African reserves maintained a neutral position at all times. It was my understanding that this was the case throughout the transaction. Although the Reserve Bank's approval had been obtained, the company itself had not yet finally authorised implementation of the scheme. At this stage the asset swap was still under consideration and formed the subject of discussions from time to time at Nampak.

25

Would you please stop there Mr Sayers, paragraphs 23 up to 24.2 are not relevant, will you then continue with 25 but Mr Commissioner it is the same comments in regard to those paragraphs. --- On 15 May 2001 I received a letter from Deutsche Securities, bundle page 37. The letter speaks for itself. In the letter Mr Lansdown sets out the details of the Deutsche Securities proposed asset swap facility. The contents of the letter were consistent with previous negotiations and merely made more detailed proposals in the light of existing

30

known facts, relating to the implementation of the assets swap, if and when Nampak decided to implement it.

Would you please go to page 37 and if you could just highlight the overview paragraph. --- Para 1, overview.

5 "The asset swap involved the following (inaudible). 1 The payment by
(inaudible) of rands to Deutsche Securities and
2 the payment of foreign currency (US dollars, Euro's or pounds) by
Deutsche (inaudible). The foreign currency will be generated by Deutsche
Securities purchasing Nampak shares and on selling these to long term
10 foreign investors (i.e the assets (inaudible). Any shares placed Deutsche
Bank will not be sold within a period of 12 months, other than to other long
term foreign investors. The assets swap may be put to the single of a series
of transactions."

Number 3 the facility paragraph? --- Facility

15 "Deutsche Securities will provide a (inaudible) facility for Nampak to utilise
up to R200 million. Deutsche Securities will also provide an additional
facility to utilise (inaudible) approved over the next 12 months depending on
market conditions reigning at the time. These facilities are made available
to Nampak subject to the conditions set out in paragraph 5 (inaudible)."

20 The SARB approval we do not have to read that, they just say they have approved it,
forget the commissions and expenses, that is not important, then conditions to the assets
swop facilities, I think we have seen those conditions previously and in the Sasol evidence,
we do not have to repeat that.

MS QUNTA: Where is this, what paragraph is that?

25 MR BROOKS: Paragraph 5. --- Page 38.

It is repetitious of what we have already seen on the prior approvals.

MS QUNTA: Is their understanding exactly the same as the Sasol understanding?

MR BROOKS: Mr Sayers in regard to the conditions of the assets swop facilities? --- Mr
Brooks I am not fully *au fait* with the detail of the Sasol minutes, I have not read the
30 deposition in detail, but certainly I am not aware of any major deviations from these terms in
the context of any Reserve Bank approval (inaudible). Certainly my understanding has

always been the issue is (inaudible) and reserve (inaudible).

Thank you. Paragraph 25. --- The following, bundle page 37. The letter speaks for itself. In the letter Mr Lansdown sets out the details of the Deutsche Securities proposed assets swap facility. The contents of the letter were consistent with previous negotiations
5 and merely made more detailed proposals, in the light of existing known facts, relating to the implementation of the assets swap, if and when Nampak decided to implement it.

Please stop there. So they said to you the facility is available if and when you required it. --- Yes.

Then at a later date Nampak made a decision to utilise the facility is that correct? ---
10 Mr Brooks they made a decision to utilise the asset swap. In terms of the facility I presume Deutsche had to have a facility in place to fund the purchase of the shares before we repaid the (inaudible) cash resources.

Mr Sayers will you then turn to page 16, paragraph 31 and we here go into the implementation of what we call the first (inaudible) of the asset swap. If I could just
15 summarise. The asset swap consisted of two tranches. The first tranche of 15 million . --- Correct.

And the rand value of that is R170 million in round figures, the second tranche was 5 million, I think the rand equivalent was about R60 million. --- Correct.

Right, could you then continue with paragraph 31? --- The first tranche of the asset
20 swap, 15 million. On 12 June 2001, bundle page 91, pursuant to the general authority given on 25 January 2001, the board of directors at Nampak passed a resolution specifically requesting Nampak Products to purchase shares in accordance with the proposals contained in my memorandum attached to Mr Duffey's memo of 25 May 2001. The memo is at page 87, and my document is to be found at pages 32 - 35 of the bundle).

25 On 21 June 2001, bundle pages 100 to 101, I wrote to Deutsche Securities confirming the final arrangements in regard to the asset swap.

Would you please stop there, could we go to page 100 and if you could just read the body of this letter please, it is a letter by Nampak Limited to Deutsche Securities dated 21 June 2001. ---

30 "Re: Assets swap facility.

1. I confirm that the South Africa Reserve Bank has approved of the

implementation by Nampak of an asset swap transaction up to an amount of .25 million.

2. Deutsche has agreed to facilitate an asset swap transaction by Nampak for an additional amount of .20 million. Deutsche Bank has agreed also to facilitate an asset swap transaction for the remainder of the approved amount within 12 months if it is (inaudible).

3. The subsidiary of Nampak, Nampak Products Limited will purchase shares in Nampak from the open market for an amount of .20 million with Deutsche Bank acting as brokers. Payment will be made by Nampak Products Limited to Deutsche Bank in the South African rand equivalent of .20 million on the usual settlement date after conclusion (inaudible).

4. Deutsche Bank in London will purchase Nampak shares from Nampak Products Limited for an amount of .20 million on the same date that the shares are purchased by Nampak Products Limited. Payment will be made in sterling or another approved foreign currency to Nampak International Limited in the Isle of Man on behalf of Nampak Products Limited by transfer into a bank account nominated by Nampak International Limited. Payment will be due on the same date that payment is made to Deutsche Bank in terms of paragraph (inaudible).

5. During the first 12 months from the date of acquisition of Nampak shares Deutsche Bank will only then sell the shares to foreign investors who are considered to be long term ones."

Please skip the next paragraph, paragraph 7. ---

"7. In the event that the Reserve Bank withdraws its approval for the asset swap as structured by Deutsche Securities or that the asset swap funds need to be repatriated for whatever reason Deutsche Securities would use its best endeavours to assist Nampak in renegotiating the position with the Reserve Bank. In the event that such negotiations are not successful Deutsche Securities will be required to comply with the Reserve Bank's request and would not be in any way be liable to any consequences arising (inaudible)."

I think you can stop reading there. That is really the gut of the transaction is that correct? --- Yes Mr Brooks.

Thank you, then please return to page 16. --- Para 32 I think, the second sentence. -
-- The letter effectively finalised the negotiations between Nampak and Deutsche Securities
5 whereby Deutsche Securities was to effect the asset swap on behalf of the Nampak group.
Also on 21 June 2001 Mr Lansdown of Deutsche Securities of Deutsche Securities wrote to
me advising that Nampak Products (the chosen subsidiary) had been "loaded" as a client of
Deutsche Securities and requested me to let him know when Deutsche Securities should
proceed with the asset swap. That is bundle page 101. Although I cannot be sure exactly
10 when I gave such authority, it must have been virtually immediately because on the 27th
June 2001 Nampak Products sold to Deutsche Bank AG 13 815 416 shares at R12.3286 per
share for 14 999 976.89 (See bundle page 104), which is a written notification from Deutsche
Bank AG in this regard. This constituted the first tranche for the asset swap and is further
confirmed by letter dated 29 June 2001 bundle page 106, sent by Deutsche Securities to me
15 on that date. The sale of these shares, I submit, was strictly in accordance with the Reserve
Bank authority previously obtained.

Thank you. --- A copy of the Deutsche Bank AG notification is at bundle page 104 of
the Deutsche Securities Advice Note in respect of the shares, which is to be found at bundle
page 103. I must point out that Deutsche Bank AG is recorded as having acted as the
20 principal in this transaction, acting through a South African associate Deutsche Securities.
On 28 June 2001 I wrote to Mr Lansdown attaching what I describe as the account details for
payment of the Asset Swap proceeds, bundle page 105. On 29 June 2001 I was advised by
Mr Don Rishworth of the terms of the settlement instruction from Deutsche Securities in
regard to the 15 million.

25 Can you just tell the commissioners who Mr Don Richworth is? --- Yes, my
apologies, Mr Don Richworth is the group treasure of Nampak.

Locally? --- We only have one central treasury locally yes.

Thank you. --- This confirmed that Nampak would pay Deutsche Securities R170
750 549,66 into its Standard Bank account on due date being 3 July 2001. The equivalent
30 amount was to be paid in pounds, i.e 15 million sterling into the Nampak International
account on the same day. On 2 July 2001 I received a fax from Mr Diepeveen, bundle page

109 to 111.

Just tell the commissioners who that gentleman is? --- Sorry Mr Diepeveen is the director of Nampak International and is responsible for the cash management or pound sterling and other funds that come from our African investments in the context of ensuring both integrity and placement and management of the cash flows between the various subsidiaries.

Continue. --- This fax sets out his understanding of the Internal Nampak funds flow/entries and possible loan assignments that could be entered into between the various Nampak companies domiciled in the United Kingdom. Attached to Mr Diepeveen's letter of 2 July 2001 was a diagram showing the effects of the anticipated flows, bundle page 111. I will also deal later in the statement with exact cash flow and capitalisation issues in this regard, see para 46 below. On 3 July 2001 a cheque drawn by Nampak for R170 750 549,66, was deposited into the Standard Bank (Stock Exchange Branch) account of Deutsche Securities (Pty) Limited as is evidenced by a copy of the deposit slip of that date, see bundle page 112. Strictly speaking this payment should have been made by Nampak Products and not by Nampak. Journal entries have been passed in the books of Nampak and Nampak Products. Pages 113 to 114 of the bundle are simply printouts of the bank statements of Nampak International at two separate branches at which it operated bank accounts, namely the Barclays Bank plc, Milton Keynes branch which is where the, Mr Brooks where the main commercial account is kept for Nampak Europe.

Right. --- And the Barclays Bank plc, Isle of Man International Banking Centre showing the .15 million sterling having been paid into the Milton Keynes account and thereafter transferred out on the same day. The .15 million appears to have been transferred from the Milton Keynes account to the Isle of Man branch.

Mr Sayers I think you can stop there. The bottom line is the .15 million has now been received by Nampak overseas. --- Yes in 100% (inaudible) subsidiary.

So the first part has been implemented. --- Yes.

And there was nothing more for Nampak to do they did what they had to do in terms of the SARB approval? --- As far as Nampak was concerned the asset swap had been implemented and the amount had been paid in rands and sterling had been received in Europe into 100% (inaudible) subsidiary. But in the context Mr Brooks I would just say that

in the context of the Reserve Bank permission of course we still had to ensure that those funds were used for the (inaudible) as tabled with the Reserve Bank.

Would you confirm that that in fact happened? --- That is the case. You will see later in my notes that to date 19 million expenditure has been incurred, there is a further 17 million to come in capital and a further 3 million in terms of on costs for duplicate running for mother plants that will have to capitalised.

Right would you then turn to paragraph 46 on page 21. Commissioners I am skipping a few paragraphs because they are not relevant, but they are on record. Would you then turn to page 21 paragraph 46 and read that please. --- The following constitutes a summary of steps making up the first tranche of the 15 million transaction. On or about 27 June 2001 Nampak Products bought, through the agency Deutsche Securities ... (intervenes).

Mr Sayers sorry you can round off the shares and you can round off the amounts. --- Thank you Mr Brooks. Broadly 14 million shares in Nampak for a total consideration of R171 million ... (intervenes).

MS QUNTA: Sorry which paragraph are you reading? --- 46.1

MR BROOKS: 46.1. --- Using Nampak Products' own cash resources. On or about 3 July 2001 Nampak paid an amount of R171 million to Deutsche Securities in settlement of the purchase price for the 14 million Nampak shares. A subsequent book entry was passed by Nampak and Nampak Products as is referred to in para 37 above. On or about 3 July 2001 Nampak Products sold its 14 million Nampak shares to Deutsche Bank AG for a purchase price of 15 million. On or about 3 July 2001 Deutsche Bank AG paid an amount of 15 million to Nampak International on behalf of Nampak Products in settlement of the purchase price of 15 million payable to Nampak Products for 14 million Nampak shares.

Could you just stop there, once again this is a summary of the first tranche, from here on you deal with internal book entries passed in Nampak's books, correct? --- Yes Mr Brooks that is correct.

Which are not really relevant, if I can then ask you to go page 24. --- Sorry Mr Brooks if I could just mention that one condition of the Reserve Bank approval was these funds would have to be placed as equity in Nampak Europe whilst it is detailed it does indicate how we did place those funds as equity in Nampak Europe.

If you go to page 24, paragraph 47. --- Second tranche of the asset swap (5 million).

On 3 August 2001, the second tranche (5 million) of the 25 million authorised asset swap was effected. This is evidenced by an e-mail from Mr Lansdown of Deutsche Securities to myself dated 3 August 2001 bundle page 135. Further documentation received from Deutsche Bank AG evidencing this transaction can be found at bundle page 137 to 138. This involved the purchase and sale of 4.5 million shares in Nampak. The documentation indicates that Deutsche Bank AG acted as the principal in this transaction. The 5 million tranche follows the same lines as the first tranche of 5 million.

Sorry possibly just go to page 26, paragraph 53 and just read the summary up to paragraph 53.4. --- The following constitutes a summary of steps making up the second tranche of 5 million transactions. On or about 3 August 2001 Nampak Products acquired, through the agency Deutsche Securities, 4.5 million in Nampak for a total consideration of 59 million using Nampak Products' own cash resources.

R59 million. --- R59 million. On or about 7 August 2001 Nampak Products paid an amount of R59 million in settlement of the purchase price for 4.5 million Nampak shares. On or about 7 August 2001 Nampak Products sold its 4.5 million Nampak shares to Deutsche Bank AG for a purchase price of 5 million. On or about 7 August 2001 Deutsche Bank AG paid an amount of 5 million to Nampak International on behalf of Nampak Products in settlement of the purchase price of 5 million payable to Nampak Products for 4.5 million Nampak shares.

That is the implementation of the second tranche. --- Correct.

Would you then please turn to page 28 paragraph 54. --- On 23 August 2001 Deutsche Securities wrote to me confirming that the asset swap had been fully settled and I replied on 24 August 2001 thanking Deutsche Securities for their assistance. A copy of Deutsche Securities first report to the Reserve Bank dated 22 February 2002 appears at bundle pages 185 to 187 which records that there is no evidence of any flow back since the transaction took place.

Then the last the conclusion paragraph? --- Conclusion. On 12 December 2000 Nampak received Reserve Bank approval for a 25 million asset swap. As at that date the exchange rate was R11.21 to the pound. On 3 July 2001 Nampak proceeded with the first tranche of the asset swap (15 million) at a time when the exchange rate was R11.30 to the

pound. On 7 August 2001 Nampak proceeded with the second tranche of the asset swap (5 million) at the time when the exchange rate was R11.74 to the pound. Nampak proceeded with the transactions as soon as the exact funding requirements of the South African and off-shore operations of the Nampak group had been ascertained. The Reserve Bank had given approval for a .25 million asset swap on 12 December. However, at the conclusion of the two asset swaps, the amount involved was only .20 million and the remaining .5 million has never been taken up, that is, it has been allowed to lapse. Our understanding Mr Brooks is that the authority lapsed at close of business on 11 December 2001. The Nampak group is based in Johannesburg South Africa and has made investments off-shore for the ultimate benefit of the South African economy. All such investments have been in accordance with the Reserve Bank requirements. I would at this point like to comment generally on how the collapse of the rand negatively affects Nampak. Whilst the collapse of the rand does have an upward effect on off-shore earnings and assets, only the earnings effect is a profit gain. In Nampak's case this is not particularly material as off-shore Profit Before Interest and Tax is only 10% of the total group PBIT. Mr Brooks I would stress that that is at this point in time. Clearly the exchange rate depreciation will enhance that 10% but it is broadly 10% at this point in time. The major negative effects are both very material, namely as the rand devalues, the rand value of any off-shore loans increases rapidly and has a very adverse affect on gearing covenants denominated in rands. If the gearing ratio as referred to such covenants are exceeded, the cost of borrowings increase and access to further capital is restricted. A major portion of our input costs are priced on an import parity basis and consequently when the rand devalues both costs of production and working capital values rise thereby reducing margins and profitability and absorbing extra cash.

So do you confirm the contents of this statement? --- Yes.

As presented? --- Yes.

I have no further questions.

CHAIRPERSON: Any questions? Madam commissioner?

MS QUNTA: I will say the same to you that I said to Sasol yesterday and this morning that in view of the lateness of the statement meaning that the fact that the commissioners were only provided with the statement yesterday afternoon, I have gone through the statement but I have not been able to study it in the details which will enable me to ask you the sort of

questions that I think may arise, that is the first problem. The second problem is that as you will appreciate there are three parties involved and this is Nampak, Deutsche Bank and perhaps other parties, the Reserve Bank and until all that evidence is before me and I can cross reference I am not able to ask the sort of informed questions but I would appreciate it if you can come back when we have had the Reserve Bank evidence. I just have one question, preliminary question. In devising this or engaging in this transaction did you receive legal and accounting services advise? --- Yes in answer to that commissioner in the body of our statement you will find that for example we address specifically the issues of foreign exchange protocol and we also extensively addressed issues such as section 38 of the Companies Act in the context of accounting requirements and we took independent advise on that and in fact that is why in our case we specifically purchased the shares through Nampak Products Limited because we had a general authority from the AGM and it obviated a possible 38 problem where we could have been perceived to be facilitating Deutsche Securities to purchase our shares.

And in paragraph 44 you have indicated would that accounting services advise have come from Deloitte and Touche because you mentioned that on paragraph 44 on 21. --- Yes I think you will find that whilst it is not specifically mentioned in our deposition Deloitte and Touche are our worldwide auditors. Any accounting advise will come from Deloitte and Touche. In the event of any doubt of course we will always go to a third party.

MS QUNTA: Thank you for the moment I do not have any further questions.

MR GANTSHO: Can you please take us through and walk us through the diagram that you have included on page 101 or 111. Just explain the diagram for me please. --- What - fundamentally if I may reply direct to this question, with the purchase, I have go to back to the beginning, with the purchase of (inaudible) plc at that time we were only allowed to transfer R50 million of cash from the country, the balance according to the Reserve Bank commission had to be raised by way of loans. As a consequence the funding structure for our off-shore entity was structured around loan finance. It had to be that way because we could not convert the loan into capital. This diagram indicates how we had to expunge our loan structures from the off (inaudible) unit into Nampak TLC through to the holding company and convert it into equity as requested by the Reserve Bank, so these are the steps that you will find in the body of my deposition are in fact covered in terms of the administrative areas of

the transaction and you will be able to follow the capitalisation of the various class of shares through to convert the debt that was held in Nampak plc equity.

So this is just explaining the accounting transactions that took place? --- Yes.

To satisfy the requirements of the Reserve Bank. What was the requirement of the
5 Reserve Bank was it to finance equity acquisition or was it to finance the expansion in your
subsidiaries overseas? --- This application was specifically to finance in (inaudible) implants
in dairies. The original application was for .50 million because at that time that was
(inaudible) would have cost and in fact the Reserve Bank approval was to finance 50% of
(inaudible). The Reserve Bank approval by my recollection indicated that the amount had to
10 be converted to equity in (inaudible) entity and had to be used for those investments.

Thank you. Last question from me, are you aware of how Deutsche Securities
raised the pounds, the .50 million that is used to settle Nampak? --- No we had no access to
how Deutsche managed this position either in terms of their exposure in shares or currency.
For us it was a very clean payment in sterling, take ownership of the shares into Nampak
15 Products as evidenced by the broker's note, the sale of those shares to Deutsche off-shore
and Deutsche funding that in sterling as required by the Reserve Bank approval. So for us
we had no see through to how they managed that position.

But to the best of your knowledge they sold shares of Nampak overseas? --- The
position indicates clearly what our understanding was Mr Commissioner, the shares were
20 purchased on the South African market, we bought them into our subsidiary Nampak
Products Limited and we sold them through to Deutsche Bank AG and that is evidenced by
the two brokers (inaudible).

Thank you.

MR POTGIETER: I have no further questions.

25 CHAIRPERSON: Mr Brooks?

MR___: Mr Commissioner it is not a question, but I would just like to place on record that in
fact our account statement delivered to the investigators on 7 March this year, so all I am
saying is we were attempting to act as speedily as possible. I do not know why it was not
shown to you earlier.

30 MS QUNTA: Can I just follow up that question then Mr Chair. You provided the statement
to the commissioner's investigators?

MR___: Yes.

MS QUNTA: On 7 March?

MR___: Yes.

MS QUNTA: Did you change your statement, did you have to change it or is this the
5 statement that we have, is that the original statement submitted by Nampak?

MR___: Yes, it is.

CHAIRPERSON: Sir you may stand down, if we require you further we will give you notice.

NO FURTHER QUESTIONS

MR BROOKS: Mr Chairman we now deal with the evidence of M-Cell and once again could
10 we stand down for five minutes just to re-arrange the seating and the pages.

CHAIRPERSON: We will stand down for five minutes.

MR BROOKS: Yes the people do not leave, etcetera.

COMMISSION ADJOURNS

ON RESUMPTION

CHAIRPERSON: You may continue.

15 ROBERT DUNCAN NESBIT (d.s.s.)

CHAIRPERSON: Mr Rodger (inaudible) you are representing Mr Nesbit, you are from the
Webber Wentzel Bowens.

MR RODGER: That is correct.

EXAMINATION BY MR BROOKS: Mr Nesbit could you just tell the commissioners what is
20 your capacity at M-Cell? --- I am the financial director of M-Cell Limited.

Mr Nesbit you have provided the investigating team with a statement which we find
in what we call the M-Cell bundle, correct? --- That is correct.

And would you please confirm the statement which we find in that bundle? --- I
confirm that.

25 That was prepared and signed by you? --- That is correct.

Mr Nesbit you have seen how we dealt with the evidence of the other witnesses, I
am going to ask you to read your statement into the record, where necessary, if you wish to
elaborate or clarify certain statements made please feel free to do that. Where we get to
issues which may not be relevant I will stop you and we will skip certain paragraphs to speed
30 up the process. --- That is right.

Right, would you please continue and read your statement? --- I am the financial

director of M-Cell Limited. M-Cell is a South African company, all of the ordinary shares which are listed on the JSE Security Exchange, South African JSE. The purpose of this statement is to explain transactions within the M-Cell companies relating to the investment by M-Cell into MTN Nigeria Communications Limited, MTN Nigeria. They relate to currency issues and finally the asset swap agreement was entered into by Deutsche Securities SA (Pty) Limited, (inaudible). It will be shown that in my opinion neither the investment in MTN Nigeria nor asset swap transactions entered into relating to the funding of that investment in any way contributed to the rapid depreciation of the exchange rate of the rand.

Read paragraph 2 please. --- The expansion of the M-Cell group of companies into Nigeria, M-Cell is by its wholly owned South African subsidiary Mobile Telephone Networks (Pty) Ltd MTN, the holder of one of three mobile telephone licenses in South Africa. M-Cell has over the years look to expand its business into Africa and currently has investments in Uganda, Rwanda, Cameroon, Swaziland and Nigeria. During 2000 the Government of Nigeria resolved to issue 4 GSM (inaudible) licenses by means of an auction. One of the conditions of the auction was that prospective bidders had to pay a deposit of \$20 million in order to participate in the auction. M-Cell elected to participate in the auction and was thus required to pay US\$20 million deposit as a participant. The US\$20 million deposit was raised by way of a loan from Standard Finance Isle of Man an off-shore entity. The deposit loan as security for this loan Mobile Telephone Network Holdings (Pty) Limited, MTN Holdings issued a guarantee in favour of Standard Finance Isle of Man in the amount of US\$20 million as deposit guarantee. The US\$20 million was paid to the Nigerian government on 20 December 2000.

Mr Nesbit if I could please stop you there. Paragraphs 3 up to 6.6 give certain background information which is not really relevant to this investigation. Could I ask you in your own words to briefly summarise what is set out in those paragraphs. --- Mr Chair, Mr Brooks obviously MTN was successful in obtaining the license in Nigeria and therefore we estimated that the (inaudible) that investment both funding as well as equity would require in the region of \$1 billion between \$900 million and \$1 billion. Of that billion dollars or \$900 million, \$500 million was going to be by way of equity with the balance being by way of (inaudible). From the South African Exchange point of view at that point in time obviously that full amount could not be taken out from South Africa and the Reserve Bank was

approached to effectively take a portion of that out in terms of the Reserve Bank rules and regulations at that point in time which equated to the \$750 million plus 10% and that was taken out last year. Subsequent to that or prior to that we also got permission from the Reserve Bank to obviously fund our equity portion of that investment by a loan, that was
5 raised from off-shore banks and that was guaranteed by the South African (inaudible). The Reserve Bank approval was also obtained for that in terms of the normal approval, which means that the loan has to be for a period of two years and plus within that two year period the funds cannot be repatriated from South Africa and obviously if there is a call on that guarantee then we need to first look at liquidating the off-shore assets. The culmination of
10 that was that we ended up with some \$200 million of exposure off-shore MTN International which is a Malaysian based company which is a holding company for all our African investments. And then Mr Brooks if I could then go to 6.7?

Yes please do, that will take us directly to paragraph 6.7, thank you for that overview.
-- So as a result of the above transaction the MTN group still have an off-shore US dollar
15 debt of approximately \$205 million related to an investment in Nigeria. The asset swap transaction. MTN does (inaudible) proposals to six financial institutions requesting them to provide MTN with detailed proposals as how its strong South African balance sheet and free cash flows could be used to retire the off-shore US dollar debt within the strict confines of SARB regulations. Attached hereto and marked I at pages 21 to 23 is a letter from MTN to
20 (inaudible) dated 23 August 2001 requesting it to submit a proposal in this regard, the (inaudible). (Inaudible) was specifically alerted to the fact that compliance with SARB regulations was a requirement for any proposal submitted by them in terms of the RAP. In this regard I refer to the second paragraph under the heading background and the third bullet point under the heading three criteria for (inaudible) valuation in the RAP.
25 7.2 Finally the financial institutions in question made proposals to us in regard to this issue and D-Sec(?) was selected as a preferred bidder in this regard. We have accordingly informed all the other institutions in writing that their proposals had been unsuccessful and did not implement any of their structures. The next (inaudible) marked J pages 24 to 26 is a copy of a letter from D-Sec to M-Cell dated 30 August 2001 detailing a proposal in response
30 to the RAP, D-Sec proposal.

Could you just stop there and could you please turn to pages 24 and 26, could you

just read into the record the overview paragraph? ---

5 "1. Overview. Deutsche Securities was able to raise foreign currency by means of an asset swap mechanism. Deutsche Securities assets swap involved involved the following legs. Payment by M-Cell of rands to Deutsche Securities and payment to foreign currency US dollars or Euro's by Deutsche Bank London to M-Cell. Foreign currency will be generated, the placing of M-Cell shares with long term foreign investors. Such shares being purchased by Deutsche Securities in the market, i.e. the asset swap. The two features and benefits of the Deutsche Securities asset swap are complete flexibility on implementation. M-Cell is able to time transactions to suit its cash flow position and take advantage of favourable exchange rates and is not limited by foreign demand for its shares. Deutsche Bank London will effectively underwrite the placement of shares off-shore."

10

15 Could you please just stop there. What do you understand by Deutsche Bank London will effectively underwrite the placement of shares off-shore? --- Through the chair, obviously because they said that there was flexibility involved. It means Deutsche Bank London per se may acquire those shares themselves directly and in subsequently on sell them to off-shore long term investors.

20 What do you understand by effectively underwriting the placement? --- Well if there were not buyers, foreign buyers and long term investors at that point in time, they would acquire those shares, hold them until foreign investors, long term investors became available.

Thank you. Continue reading on page 24, the last sentence.

25 "Will effectively underwrite the placement of shares off-shore. In addition any shares placed with Deutsche Bank London will not be sold within a period of 12 months, other than to other long term foreign investors and M-Cell is not exposed to market risks on the share price as the buy and sell legs outlined above are transacted at the same price. Transaction side. Two securities will commit to the full price indicated by M-Cell i.e up to US\$250 million, approximately ZAR2.1 billion. However given the size of the potential transaction in relation to the current market capitalisation of M-

30

Cell approximately 9% it is recommended that the asset swap be implemented as a number of smaller transactions over a period of time rather than as a single transaction. Commitment to this transaction will be made to M-Cell subject to receipt of SARB approval for the asset swap, as
5 detailed in paragraph 5 below."

Stop there, and then you can go to paragraph 5. --- SARB approval.

"SARB approval will be required for M-Cell to implement asset swap transactions. All Deutsche Securities asset swap applications to date have received SARB approval. SARB do however typically require that the
10 settlement of any liabilities that must be settled with the local subsidiary as a result of asset swap be done so locally in rands. A specific application may be made for any inter company loan accounts to be designated in foreign currency."

You can stop there. You can then continue with your statement, back to page 6
15 please. You were on paragraph 7.2, for purposes of. ---

"For purposes of confidentiality the amount of the commission payable to do (inaudible) in terms of the D-Sec proposal has been deleted in the annexure. The D-Sec proposal entailed an off-shore placement of M-Cell shares with long term foreign investors. I wish to highlight the following in
20 the D-Sec proposal. 7.2.1 The fifth paragraph on the first page which states that M-Cell shares will be placed off-shore with long term foreign investors. 7.2.2 The last sentence of the third bullet point on the first page which reads 'in addition any shares placed with Deutsche Bank London will not be sold within a period of 12 months other than to other long term
25 foreign investors'. 7.3 In my view a potential long term foreign investor obviously exclude investors who are known to be continually in and out of the market to make a quick return, such as hedge funds. One would also expect long term investors to have a (inaudible) on an ongoing basis a portion of their total funds would be invested for example in some emerging
30 markets. They may although this is definitely not mandatory follow an index such as the MSCI emerging market index to ensure that they have a

balanced portfolio. M-Cell accepted the D-Sec proposal in a letter to D-Sec dated 1 October 2001, a copy of which is attached hereto marked K, page 27. D-Sec was accepted as preferred bidder after evaluation of the various proposals. Their fee structure for comparable transactions was lower plus they had an international selling arm off-shore which obviously enhances the capabilities of finding off-shore long term investors with which to place the shares. Other key criteria include the compliance of all rules and regulations of SARB. In this regard D-Sec proposals stated that the asset structures had been approved by SARB for a number of transactions. 7.6 The key features of the D-Sec proposal was apparent by M-Cell to D-Sec on rands for the acquisition of M-Cell shares in South Africa and the payment of US dollars by Deutsche Bank London DBL to enter international for the shares. 8. SARB applications in respect of the asset swap transaction. On 25 October 2001 Deutsche Bank AG Johannesburg DBJ made application to SARB for approval to implement the D-Sec proposal for an amount of US\$75 million. A copy of this application is attached hereto marked L at pages 28 to 30."

Would you please just stop there, would you go to L pages 28 to 30. Can I just ask you this Mr Nesbit, this application which we see there, did you have any input into the preparation of this document? --- Through the Chair we did review the document prior to submission to SARB.

So it was submitted to you in draft form for your approval? --- Absolutely correct.

I think could you just read to us paragraph 3 on page 29. --- Terms of the proposed asset swap, nature of the South African assets to be swapped. M-Cell shares which are listed on the JSE will be used for the swap. The M-Cell shares will be purchased in the secondary market by Deutsche Securities but the purchase price to be settled in rands by M-Cell or one of its wholly owned South African subsidiaries. The M-Cell shares so purchased will be placed with long term, non-resident investors. The asset swap will be implemented in a number of transfers over the next six months as and when market conditions are suitable.

Turn to page 30 the second paragraph, settlement of the asset swaps. --- Settlement of the asset swaps. Foreign currency proceeds from the asset swaps will be paid directly to

MTN International, i.e. MTN International will not receive rands for conversion into foreign currency.

Then paragraph 4 further down on that page, use of the proceeds? --- Use of the proceeds ex the asset swaps. The proceeds from the asset swap will be used to refinance a portion of the current US\$450 million off-shore facility raised by MTN for MTN International. These borrowings have been approved by the South African Reserve Bank on 11 January 2001 (inaudible) application number 233 submitted by Standard Bank of South Africa. And to date it has been utilised to finance the acquisition of the license fee and the infra structure roll out costs of MTN Nigeria.

Mr Nesbit that application which we see there, that is what you have knowledge of and what M-Cell had approved? --- That is correct.

Thank you, please return to your statement, page 7. --- Under 8.1 a specific term of this application is that M-Cell shares will be placed with long term non-resident institutional clients of Deutsche Securities as can be seen from page 2 of the application. 8.2 At the request of SARB, DBJ addressed the letter to SARB on 15 November 2001 a copy of which is attached hereto marked M at pages 31 to 33 containing further information regarding the D-Sec proposal.

Could you just turn to page 31 and 32 and in particular page 32 and just read paragraph numbered 1. ---

"Cash flows from the asset swap transaction will flow as follows. The rand value in respect of M-Cell shares purchased in the open market will be paid to Deutsche Securities by Mobile Telephone Networks (Pty) Limited, MTN South Africa which is a wholly owned subsidiary of M-Cell by Mobile Telephone Networks Holdings (Pty) Limited, MTN and the foreign currency proceeds from the sale of the M-Cell shares to foreign investors will be paid directly to Mobile Telephone Networks International Limited (inaudible) Mauritius MTN International a wholly owned subsidiary of MTN by Mobile Telephone Networks Africa (Pty) Limited, MTN Africa. In effect the funds have been raised by MTN to restructure the debt of its off-shore subsidiaries."

And that accords with your understanding of the transaction? --- That is correct.

And your only understanding of the transaction? --- Yes.

Please continue and go back to page 7, page 8 at the top of page 8. --- On 23 November 2001 SARB approved the application made by DBJ referred to in paragraph 8.1 subject to the condition to DBJ that the price of M-Cell shares to be placed off-shore would
5 not be fixed prior to the purchase, but that sufficient shares would be placed to realise the acquired US dollar amount. SARB further required DBJ to ensure that suitable steps be implemented in order to minimise any flow back into South Africa and reserved the right to call on M-Cell to refinance any flow back to South Africa (inaudible). A copy of this approval is attached hereto marked N at pages 34. On 8 January 2002 M-Cell instructed D-Sec to
10 proceed with their approved transaction up to the value of the rand equivalent US\$20 million.

8.5 The first client of the D-Sec proposal which involved the placement of 15.7 million M-Cell shares with foreign investors was then settled on 25 January 2002 as follows. 8.5.1 An amount of 231.8 million was paid by MTN Holdings to D-Sec on 25 January 2002 in payment of M-Cell shares purchased from South African residents. The amount was held on deposit
15 with MTN group prior to payment to D-Sec.

Can you just stop there, sorry, just stop there. What you said in 8.5.1 that was your understanding of what the 231 million would be utilised for, for the purchase of the shares?
--- That is correct yes.

Were you ever advised that those funds were possibly used for purposes of a
20 securities loan arrangement with a third party? --- No I was not at that point in time.

If I told you that such an arrangement was entered into would that surprise you? ---
Through the Chair the answer is script (?) lending is a factor within the South African market and I think in world markets. So from that point of view obviously they required shares to be sold off-shore so if they bought those shares in the local market or did borrow script to supply
25 those shares into the external market the nett effect would be the same, because obviously dollars would be realised for the sale of those shares off-shore. When you say was I surprised ... (intervenes).

No I said would you be? --- Would I be surprised, I suppose with hindsight okay maybe not when you look at the quantum of shares that was transacted because obviously
30 when you look at the average number of shares that are transacted on a daily basis within M-Cell okay maybe the answer is I would not be surprised. But what I am saying is at that

point in time I was not aware of it and that did not enter my head either.

You were not specifically made aware of such a script (inaudible). --- No I am sorry.

Please continue. --- 8.5 The first (inaudible) which involved the placement of 15.7 million M-Cell shares with foreign investors was then settled on 25 January 2002. An amount of 231.8 million was paid by MTN Holdings to D-Sec on 25 January 2001 and payment of M-Cell shares purchased from South African residents. The amount was held on deposit within MTN group prior to payment to D-Sec. 8.5.2 On the same date (inaudible) paid an amount of US\$20 million to MTN International in return for the M-Cell shares to be placed with long term off-shore investors. 8.6 Attached hereto marked O, pages 35 and 36 is a letter from D-Sec to M-Cell dated 22 January 2002 detailing the above settlements. Note that the date 25 January 2001 in the first paragraph of this letter is a typographical error and should have read 25 January 2002. Attached hereto marked P at page 37 is a copy of an instruction from MTN Holdings to Standard Bank dated 24 January 2001 instructing them to transfer the sum of 231.8 million to D-Sec.

Mr Nesbit if you can just stop there. Mr Commission in so far as those two documents O and P refer to account numbers which have not been deleted if I could kindly ask you just to delete the references to account numbers. Thank you. Please continue. --- 8.7 MTN, M-Cell is no a broker therefore we do not have access to foreign purchases of our stock. That being the case we do not have the ability to ensure that our stock is placed with long term investors. In (inaudible) we do not even know the identity of those shareholders at the time that the shares are placed with them, that is why we specifically requested D-Sec in the placing of these shares to ensure that they are placed with long term investors. 8.8. M-Cell is also not an authorised dealer and can thus not deal direct with SARB. It is obliged to deal with SARB through one of its authorised dealers. M-Cell places great (inaudible) on the good reputation of authorised dealer in choosing one. 8.9. We have been informed by D-Sec that as at 12 February 2002, 5.797 million of the M-Cell shares purchased by DBL have been placed with long term off-shore investors. Details of which have been made available to the commission. 9. Conclusion. On the above it is clear that we instructed D-Sec to enter into the first portion of the asset swap transaction in January 2002, that is after the rapid depreciation of the exchange rate and the rand, in the fourth quarter of 2001. And that the total value of these transactions amounted to R231.8 million (being US\$20 million). 9.2 In

terms of the SARB approval flow back needs to be monitored and this will continue to be done on a quarterly basis based upon information supplied by D-Sec on relevant transactions during the respective periods, combined with analysis of the M-Cell share register. Any discrepancies thereon would be notified to SARB on a quarter basis as per
5 (inaudible).

Just bear with me please. (Pause). I have no further questions thank you.

MS QUNTA: Do you have a question Albert, you seem to ...

MR: (Inaudible).

MS QUNTA: No I do not have questions at this stage but I may have it at a later stage. I
10 think you were here when I talked to Sasol and Nampak so I will probably have questions later on. --- Fine we will obviously make ourselves available to the commission.

MR BROOKS: No questions.

CHAIRPERSON: Thank you you are excused for the moment.

NO FURTHER QUESTIONS

15 CHAIRPERSON: We then adjourn for the day, we continue tomorrow morning.

MR BROOKS: Mr Commissioner Databank are ready to continue at 14:00. We set aside one day for them, we are ready to start at 14:00 subject to ...

MR WASSERMAN: May I interrupt Mr Commissioner (inaudible) grant us the opportunity we have heard a lot and you have also heard a lot. I think it is appropriate that everybody
20 gets an opportunity to consume what we have heard and we would be in a better position to do it in one blow, take the whole day and finish it properly.

CHAIRPERSON: So Mr Wasserman you would prefer to do it tomorrow?

MR WASSERMAN: Thank you.

MR BROOKS: Mr Commissioner I do not have a problem, the only problem which we may
25 have which is something we should consider is if they should take more than one day we may upset our programme on that basis.

CHAIRPERSON: We will see how it goes tomorrow, we may have a long day tomorrow.

MR: Mr Chairman may I just say that the Reserve Bank (inaudible).

CHAIRPERSON: Thank you very much, then we will adjourn until 10:00 tomorrow morning.

30 COMMISSION ADJOURNS