

COMMISSION ASSEMBLES ON 2002-04-05

CHAIRPERSON: Thank you ladies and gentlemen let us proceed. Mr Smith?

NIALL SMITH (s.u.o.)

MR BROOKS: Sorry Commissioner before we proceed. I have been asked to place
5 something on record. In this morning's Business Day Report there is a ... (intervenes).

CHAIRPERSON: What you are looking at is not from the Business Day.

MR BROOKS: Business Report.

CHAIRPERSON: Business Report yes.

MR BROOKS: The heading to the article relating to this commission is Deutsche Bank
10 investigated clash over omission of key data. Now the reporter is present here today. He
has advised us that that is not his heading, the heading is incorrect. I do not recall such a
clash in any case commissioners. The heading is being rectified. It was put in without his
knowledge. Just to place that on record.

CHAIRPERSON: Thank you Mr Brooks for doing that. Mr Smith you are still under oath. ---
15 Yes.

And we were on page 5 and we dealt with all the transactions and let us proceed.

EXAMINATION BY MR BROOKS CONTINUES: Mr Smith please continue. --- Thank you.
Exchange control regulations relating to asset swaps and other transactions. The exchange
control regulations 1961 issued pursuant to the currency in the exchanges act 1933 provide
20 *inter alia* that except with approval of the South African Reserve Bank no person may buy,
sell, lend or borrow foreign currency, regulation 2A or make any payments to a non-resident
regulation 3(1)(c) or transfer any securities out of South Africa regulation 3(1)(a) and (b) or
enter into any transaction whereby capital or any rights to capital is directly or indirectly
exported from the republic, regulation 10(1)(c), or acquire or dispose of in any way any
25 securities in which a non-resident had an interest, regulation 14(1)(a). So really what we are
saying here just to paraphrase, the regulations are - tell what you cannot do rather than what
you can do. 7.2 Generally exchange control is enforced through a system of officially
authorised foreign exchange dealers. Authorised dealers include the major South African
Banks and certain South African branches of international banks. Subject to certain
30 exceptions only authorised dealers may undertake the activities referred to in paragraph 7.1
above, and then only to the extent approved by the Reserve Bank. The Reserve Bank gives

authorised dealers written directives as to the type of activity that may be undertaken by them for their own account and for the account of others. These directives which are not made public reflect the Reserve Bank policy of the day. The body of directives is referred to as the exchange control rulings. Again if I can just digress slightly there are a set of general approvals and we discussed yesterday for instance import and export one is able to do this activity without specific approval. There are of course guidelines to follow. The same applies to the financial market where we have the repo market, the market for trading instruments listed on exchanges and the securities lending market. Now these are all markets whereby these activities occur. If an authorised dealer wishes to execute a transaction whether for its own account or for the account of a third party, and a transaction is not permitted under the rulings the authorised dealer may make application to the Reserve Bank for specific approval. The rulings provide that applications submitted to the exchange control department of the Reserve Bank which do not contain sufficient information will be returned to the applicant banker and accordingly to avoid unnecessary work and delay authorised dealers must ensure that full and precise particulars of the underlying transactions are given in the first instance. The Reserve Bank has urged authorised dealers to adhere to the spirit of the ruling, see the introduction to the ruling.

Could I just ask you that quote that you ensure that full and precise particulars of the underlying transactions are given in the first instance. --- Yes.

Where do you draw the line? --- Mr Brooks I will cover this later in my statement if I may wait until then.

Thank you. --- Just referring back to 7.3 it is important to note that the rulings are not a complete reflection of the SARB policy. There are in fact conflicts within the ruling and authorised dealers make judgment calls in good faith in terms of these rulings. Going over the page 7.4 In accordance with general principles of South African Law exchange control regulations have effect only within the territory of South Africa and generally speaking does not apply or restrict the activities undertaken outside South Africa by non-South African residents. More over the Reserve Bank has repeatedly stated that non-South African residents are not subject to exchange control regulations. Exchange control approval of asset swaps and other transactions. Transactions entered into for purposes of the Sasol, Nampak and M-Cell asset swap are as follows, the acquisition by a South African company

of the relevant shares in the South African market. In the case of Sasol and M-Cell asset swap shares were acquired by Deutsche Securities. Part of the shares were acquired in terms of a purchase transaction and the remaining part were required in terms of securities loan. In the case of Nampak asset swap the shares were acquired by Nampak Products a

5 South African subsidiary of Nampak. Deutsche Securities assisted in sourcing those shares for Nampak Products. The sale of the shares by the relevant South African company to DBL and a payment by DBL of the purchase price into an off-shore bank account of the relevant corporate or their off-shore subsidiaries. The payment by the relevant corporate being Sasol, Nampak or M-Cell of an amount of rand into Deutsche Securities South African bank

10 account. In each case the payment to Deutsche Securities was the rand equivalent of foreign currency paid into the corporate off-shore bank account. In the case of the Sasol and Nampak Transactions all or part of the payment by the corporate to Deutsche Securities were used by Deutsche Securities to secure the acquisition by means of borrowing of the relevant shares. The only transaction entered into for purposes of each asset swap that is

15 subject to the exchange control regulations is the transfer of the shares to DBL. The transfer does not fall within the general Reserve Bank approval relating to transfers of JSE listed securities by South African residents to non-resident because payment was not made into a South African resident bank account. By proving asset swaps the Reserve Bank approved the transfers and payments into an off-shore bank account. Approval of the hedging

20 transaction. The following hedging transactions were entered into. Market Risk. Deutsche Bank London hedges market risk in respect of the shares by. In the case of the Sasol shares and part of the Nampak shares entered into a forward sale transaction with Deutsche Securities. If I may digress there because this was a point raised by Mr Brooks yesterday in terms of the typing error in the Nampak forward and I can just address that point as follows.

25 Following yesterday's comment we have reviewed the situation internally. Deutsche Bank London and Deutsche Securities have decided not to enforce the contract and that means that there are internal consequences but no other consequences. Up to now the contract responds to a payment of R9 032 145,00. We will reapply for approval to the South African Reserve Bank. If that approval is not forthcoming and we do not see why it should not be but

30 if it is not forthcoming any payments will be reversed. In the case of M-Cell shares and part of the Nampak purchasing Safex contracts. Sorry just to say I am now talking about the

hedge on M-Cell and Nampak. Currency risk. Deutsche Bank London hedges currency risk in respect of the shares by exchanging rand for foreign currency. Hedging transactions including forward sale transactions, Safex contracts and currency hedges are concluded frequently and on an ongoing basis by banks and other financial institutions and are

5 generally regarded as prudent and necessary practise in the banking and finance industry. Such hedges are commonly bought by non-residents to hedge their exposure in respect of South African investments and exposures. The hedging transactions were either specifically approved by the Reserve Bank or fell within general Reserve Bank approval. In particular forward sales transactions between DBL and Deutsche Securities in respect of DBL's market

10 exposure on the Sasol shares DBJ applied to the Reserve Bank by letter dated 9 February 2001 for approval on the transaction. The Reserve Bank approved the transaction by letter dated 9 February 2001 addressed to DBJ. Forward sales transactions entered into by DBL and Deutsche Securities in respect of DBL's market exposure on part of the Nampak shares

15 DBJ applied to the Reserve Bank by letter dated 18 October 2000 for approval of the transaction and please note the comments made in that regard. The Reserve Bank approved the transaction by letter dated 18 October 2000 to DBJ. The purchase and sale of Safex contracts fall within the general Reserve Bank approval that permit non-residents to trade in securities and financial instruments listed on the South African exchanges. Any non-residents including DBL is free to undertake transactions in rand without Reserve Bank

20 approval and this occurs on a regular basis. Accordingly DBL as a non-resident did not require the Reserve Bank approval to transact the currency hedges. Any authorised dealer with which DBL may have concluded the currency hedges would also have been entitled in terms of the ruling to do so. Authorised dealers are specifically permitted in terms of the ruling see section G of the ruling, to enter into currency hedging transactions with non-South

25 African residents. Approval of the funding and related transactions. The following funding and related transactions were entered into between DBL, DBJ and Deutsche Securities. DBL and DBJ entered into a repurchase transaction in terms of which DBL sold to DBJ South African government bonds with the value equal to the amount paid out by DBL in respect of the Sasol and Nampak asset swaps and DBJ paid DBL the purchase price of the bonds.

30 DBL thereby used some of the South African investments to obtain funding from DBJ. DBL and DBJ entered into securities loan transactions in terms of which DBL loaned Deutsche

Securities the Sasol and Nampak shares which DBL had purchased but not yet placed with other non-residents. As security for the loan South African government bonds with the value equal of the share value were transferred to DBL. All the unplaced Sasol shares and part of the Nampak shares were returned to the persons from which the shares were originally
5 borrowed.

Mr Smith could I just stop you. --- Yes.

If you go back to that paragraph DBL and DBJ entered into securities loan transactions in terms of which DBL loaned Deutsche Securities that Sasol and Nampak shares. --- Yes.

10 Is that statement correct? I am not sure that that agrees with your evidence that you gave yesterday? --- Correct Mr Brooks, I think the statement is intending to convey the amount of Sasol shares was the same.

So if I understand your evidence which you gave yesterday the word the should not be there, it should just be Sasol and Nampak shares? --- You are correct could we please
15 change that.

Yes.

MR GANTSHO: Sorry but on what basis are you saying that, it can only be the same shares. --- Commissioner the shares that were returned in fact were purchased from the market so if anything we could probably say they were not the same shares because the origins of the
20 shares were different places. The one in terms of the return of the shares to DB London, the origin of those shares were the Johannesburg Stock Exchange the market and we know that the shares that were, that had been placed with Deutsche Bank London those shares had - there had not been flow back or we believe there had not been flow back until that point, we had not seen any sales. So in fact it is probably - it could be the same shares but in terms of
25 what we said yesterday we do not believe that the shares have a specific identity.

I accept that Mr Smith that the shares are tangible but given the amount involved of the shares and the amount that was returned it can only be the same shares. --- The amounts are exactly the same yes. The shares we have no way of knowing if they are the same shares at all. In fact as I have said they probably were not the same shares.

30 MS QUNTA: I think Mr Smith can we leave the question if identity of shares to the commissioner to decide when we have had all this evidence because frankly it does not take

us anywhere. It really for me is not an issue at this present moment. I want the facts of this transaction and you know we have been going through this for the last three days. I do not know what the point is of the question of identity. A number of 38 million shares and you trade in that 38 million shares. It is really at this point not relevant. --- Thank you.

5 If you want to make submissions later you can but it does not assist the process. For me certainly it does not. --- Fine thank you. As security for the loan South African bonds with the value equal to the shares were transferred to DBL. All the unplaced Sasol shares and part of the Nampak shares were returned to the persons from which the shares were originally borrowed. No repurchase or securities loan transactions by DBL were concluded
10 in relation to the M-Cell shares. Repurchased transactions are often entered into between South African residents and non-residents for funding purposes. International banks with South African branches commonly use repurchased transactions as a way of rebalancing the funding positions of the South African branches and transferring excess money into the central treasury where it can be more effectively employed. Such repurchased transactions
15 are typically booked between a South African and off-shore branch of an international bank on an ongoing basis and renewed or rolled on a weekly basis. Repurchased transactions between residents and non-residents fall within the general Reserve Bank approval set out in section E5(e)(1) of the ruling. Repurchased transactions between DBL and DBJ are arranged, transacted and reported to the Reserve Bank on an ongoing basis. The persons
20 within Deutsche Bank responsible for transacting repurchased transactions, the person employed by the global markets division in London, identify the funding imbalance caused by the asset swap transactions and thereupon as their responsibilities require rectify the position by booking the repurchase agreement. Securities loan transactions in respect of securities listed on the South African exchanges are frequently entered into between residents and
25 non-residents. Dealers in securities often sell securities which they do not own and when they are required to deliver securities to the buyers prefer to borrow the securities rather than to purchase them. A dealer will typically prefer to borrow securities if the dealer expects them to fall in value. In that event the dealer will be able to buy the same securities at a lower price where the lower securities must be returned. Investors in securities often lend their
30 securities. By lending securities an investor retains investment exposure to the securities and make an additional return in the form of lending fees. Securities loaned by non-

residents to residents are common. Such loans fall within the general Reserve Bank approvals set out in section E5(e)(2) of the ruling. The approval permits the borrowing of securities listed on the JSE securities exchange by authorised dealers from non-residents on condition that the loans are secured by the pledge certain types of assets approved collateral. At the time that securities loan was entered into approved collateral comprised US dollars and securities listed or quoted on any South African exchange. Late last year as part of the Reserve Bank's imposition of half share exchange controls in the wake of 11 September disaster, the Reserve Bank determined that the approved collateral would be limited to rand securities, this stood or quoted on any South African exchange. The security provided by DBJ comprising approved assets, the loans fell within the approval despite the fact that the DBJ borrowed the shares as agents for Deutsche Securities. Subsequent to the transactions being entered into the repurchase in securities loan transactions were reported to the Reserve Bank by DBJ. This was done in the normal course of DBJ's business in accordance with normal practise.

Sorry Mr Smith I have got to ask you to please go back to that paragraph small B on the previous page. I am yet to understand what your evidence is relating to the shares which were resold. Could you please give the commissioners what your final version is. Is it the same shares or were there new shares purchased by London which were resold to securities? If you use the word the, it still does not make sense, so could you please just give us the final version of your understanding.

MR WASSERMAN: Mr Commissioner if I may suggest I think the evidence was quite clear, it is not possible to determine whether these were the same shares, there was no evidence that new shares were acquired. I think really the evidence which we could contribute in that regard has been led. (Inaudible) Mr Commissioner, that is all we want to know.

MS QUNTA: Well I think you should not press the witness and if his counsel, his legal adviser Mr Brooks makes a certain point I think we should leave, for us as the commissioners if we are not clear we can then ask for permission. Because after all the purpose of these hearings is for the commissioners to be able to come to a conclusion on the basis of facts placed before them. If the commissioners are not clear both me and commissioner Gantsho have asked questions relating to this, I am satisfied that I understand what is happening here, I think if you are seeking to clarify on behalf of the commissioners

you do not need to do that because I understand it and the other commissioners also indicates. Counsel has given a view, I do not feel that you should press the witness.

MR GANTSHO: Maybe it should be put on record that your understanding might not be the same understanding that I have.

5 MS QUNTA: No that is fine Mr Gantsho but what I am saying I am not sure why Mr Brooks is trying to press the witness, when the witness has made a statement. When we look at the record the commissioners will be able to make their own assessment on the basis of facts placed before this witness and by other witnesses and as far as that is concerned I am satisfied with the answers given. Now Mr Brooks may have an entirely different reason but if
10 it is to clarify for the sake of the commissioners because this is what the hearing is about, that the commissioners understand what is happening. Counsel has said his witness has given the advise that he wants. Now if you can insist to proceed you can proceed but it is not for the benefit of myself as a commissioner.

MR BROOKS: Madam might I be afforded the opportunity to reply ... (intervenes).

15 CHAIRPERSON: No I think what we will do is we will adjourn the commission for a few minutes please. Mr Brooks the commission is adjourned I would like to talk to my commissioners, thank you.

COMMISSION ADJOURNS

ON RESUMPTION

NIALL SMITH (s.u.o.)

20 CHAIRPERSON: Mr Brooks we are of the view that the witness has answered the question and you must move on. Please proceed. --- 8.4 Reserve Bank questions. The Reserve Bank has asked questions about asset swaps as part of its investigation into the matter. The questions are set out in three letters dated 26 March 2002 from Werksmans Incorporated attorneys acting for the Reserve Bank to DBJ. The letters copies of which are attached to
25 part 1 of the statement as annexures B, C and D deal with the Sasol, Nampak and M-Cell asset swaps respectively. The questions are as follows. DBJ is asked to explain why it did not in its applications for approval for the asset swap disclose to the Reserve Bank all related or subsequent transactions which were implemented or were to be implemented pursuant to the granting of the relevant approvals. This was on 26 March the letter. DBJ's response to
30 this question is as follows. Deutsche Securities designed the structure of each asset swap and certain of the hedging transactions. The other transactions were

designed in conjunction with DBL. Deutsche Securities then provided information to DBJ for purposes of making application to the Reserve Bank for approval of each asset swap. The applications did not include details of the hedging and funding transactions but clearly fell within pre-existing general Reserve Bank approvals which were not subject to the exchange control regulations. I will refer to such transactions as the unrestricted transactions. The unrestricted transactions are in the case of Sasol shares the currency hedge not subject to exchange control regulations see paragraph 8.2.3(d) above. The repurchased transaction falls within general approval see paragraph 8.3.2 above. The securities loan fall within general approval see paragraph 8.3.3 above. In the case of the Nampak shares the currency hedge not subject to exchange control regulations see paragraph 8.2.3(d) above. The Safex contracts fall within general approval, see paragraph 8.2.3(c) above. The repurchase transaction falls within general approval, paragraph 8.3.2. above and securities loan fall within general approval, paragraph 8.3.3. above. In the case of the M-Cell shares the currency hedge not subject to exchange control regulations, see paragraph 8.2.3(d) above. All transactions that were not unrestricted transactions were disclosed to the Reserve Bank and to the questions about non-disclosure relates only to the unrestricted transactions. DBJ's understanding is that it is required to comply with the exchange control regulations, the orders and rules made pursuant thereto and the rulings. The rulings provide the following disclosure in respect of the applications in respect of Reserve Bank approval under the exchange control regulations. Applications submitted to the exchange control department of the Reserve Bank which do not contain sufficient information will be returned to the applicant's banker and accordingly to avoid unnecessary work and delay authorised dealers must ensure that full and precise particulars of the underlying transactions are given in the first instance. And we have always understood that this is what is meant by the regulations. The unrestricted transactions do not directly relate to the asset swaps but were concluded because Deutsche Bank group elected to hedge the exposures and balance the inter branch funding and balances arising from having implemented the asset swap related transactions. This is evident from the fact that the asset swaps could have been concluded without also concluding the unrestricted transactions. And we can see that for instance in the M-Cell transaction where some of those transactions were not in fact concluded. The unrestricted transactions cannot therefore be regarded as underlying the asset swap related

transactions. DBJ is not aware of any written requirements by the Reserve Bank to the effect that when application is made for the approval of a transaction or series of transactions the applicant or the applicable authorised dealer must also disclose transactions entered into for hedging and cash management purposes in the normal course of business and in accordance with the exchange control regulations. Therefore in view of the fact that the transactions were not underlying transactions to the asset swap and given the fact that the unrestricted transactions either fell within existing Reserve Bank approvals or entirely outside the exchange control regulations. DBJ did not include details of the unrestricted transactions and applications. Just to give an indication of the numbers of transactions we are talking about we had a look at the number of hedging transactions at Deutsche Securities and Deutsche London executed in respect of South African equity warrant and OTC's transactions. There were between 35,000 and 40,000 of these hedging transactions during the year and those were hedging transactions which related to for instance warrants which are - we apply for specific approval for listing of warrants and there is hedging as a result of that and OTC's transactions where there is this specific application for the OTC and then there is hedging. So we are talking about - just to know I am excluding now Safex hedges, I am excluding foreign exchange deals where there were about just under 100,000 transactions in 2001. So we need to just bear in mind the numbers we are talking about. I would now like to move onto reserves neutrality but before I do there is just a short statement that I would just like to read into the record before I go there.

"Reserves neutrality. There is great uncertainty about the alleged requirements regarding the concept of reserves neutrality. There is no agreement or consensus as to the meaning of reserves neutrality, there are various possible meanings. For instance one definition is gold and foreign currency reserves - sorry gold and foreign currency held by the Reserve Bank another is net foreign currency balances of South African residents and a third definition is gross foreign currency balances of the monetary sector in South Africa. There is no general requirement that asset swaps must be reserves neutral. It is not clear whether the Reserve Bank gave their approval for the asset swaps on the condition that all the transactions must be reserves neutral. The asset swap transactions were clearly

reserves neutral. What is not clear is whether all the transactions should have been reserves neutral. If so why was this not clearly stated. Even assuming that all the transactions had to be reserves neutral it appears that in aggregate the transactions were in fact reserves positive. Of the rands sold by Deutsche Bank London under the currency hedge five sevenths were sold to South African residents. Only this part is relevant to the questions of reserves neutrality as in the definition given above. This sale is more than off set by the purchase of rand by Deutsche Bank London to acquire the bonds delivered by Deutsche Bank London to DBJ under the repurchase transaction. Just again to give you some ideas of figures, Deutsche Bank transacts about R15 billion to R20 billion worth of bonds a day and over the period of 1 January 2001 to 12 March 2001 9.8 billion worth of South African debt was purchased by Deutsche Bank London. That is sorry from residents, excluding purchases from non-residents. So that is a R9.8 billion payment into South Africa by Deutsche Bank London. Although it is not possible to clearly ascertain that Deutsche Bank London purchased rand for acquiring the exact same bonds delivered under the repurchase agreement all the surrounding circumstances indicate rand was purchased in relation to such bonds. Deutsche Bank is a major dealer and investor in South African government instruments and as I have said before Deutsche Bank's turnover in bonds is about R15 billion to R20 billion a day. A significant part of the bonds purchased and held by Deutsche Bank are acquired from South African residents. These purchases in a major part are funded from DBL. Every day Deutsche Bank Johannesburg positions are transferred to and founded out of DBL. Deutsche Bank would not buy or hold such South African government debt if it was not invested in South Africa and engaged in South African business. DBL buys and hold bonds so that it can do business in South Africa including the type of transactions which I have described in this statement, therefore the fact is that Deutsche Bank London did buy South African government debt for the purposes of the transactions described in the statement. Most of these bonds having been

bought from South African residents. Therefore the transactions are reserves neutral to positive."

Thank you. I will now continue ... (intervenes).

Have you got a copy of that statement? --- Yes certainly.

5 Would you hand it in to the commission and we will add it to your statement in a convenient place. --- Fine. 8.4.2 Reserves neutrality. DBJ is asked to explain why the asset swaps were not implemented in a manner which would maintain and/or ensure reserves neutrality. The term reserves means the gold and foreign currency held by a central bank. The term is not generally used in any other context. The Reserve Bank
10 however seems to ascribe a wider meaning to the term. The Reserve Bank has not published its understanding of the term. There is also no general consensus among experts on what the Reserve Bank means by the term. A number of different meanings have been suggested by economists and experts. The following means appear the most likely. It is possible that the Reserve Bank understands the term to mean the net foreign currency pools
15 of South African residents, i.e. the aggregate of all foreign currency held by South African residents. It is also possible that the Reserve Bank means the gross foreign reserves of the South African monetary sector. On whatever definition the Reserve Bank might use the assets swap related transactions and the other transactions were in aggregate reserves neutral i.e. the transactions did not result in the net outflow of rands from South Africa. This
20 is apparent when regard is had to the fact that the Sasol and Nampak assets swap related transactions resulted in the reduction of foreign currency liabilities or an increase in South African assets and that in the case of the Sasol and Nampak funding transactions DBL introduced non-resident owned bonds into South Africa. Foreign currency having been introduced into South Africa to acquire the bonds in the first instance. I am not aware of any
25 provision in the exchange control regulations, the order and rules made pursuant thereto or the rulings that require asset swaps or share placements to be reserves neutral. I understand that the Reserve Bank may when giving approval for an asset swap or share placement make its approval subject to the condition that all or certain of the transactions be reserves neutral. For instance in reply to the Sasol transaction on page 41 the Reserve
30 Bank reply.

"I acknowledge receipt of your facsimile of 16.2.2001 in the above

connection and confirm that in respect of the share placement exercises sanctioned by ourselves we are agreeable to Deutsche Securities (Pty) Limited acquiring in the company specific shares in the secondary market and on selling these to long term foreign investors for payment off-shore. All costs towards the purchasing of the shares by your institution must be settled locally in rand by the company involved to ensure reserves neutral position at all times."

Deutsche Bank's group understanding of the aforementioned reference to reserves neutral is that payment by Sasol to Deutsche Securities should be settled in rand and not in foreign currency, the payment was settled in rand. There is no condition in any of the asset swaps to preclude Deutsche Bank AG London branch or any other foreign investor in the shares from hedging its currency exposure in respect of the shares by exchanging rand for foreign currency. I would just like to change the heading in this statement, it should now read "post transaction reporting of information" rather than simply "reporting of information". Post transaction reporting of information. DBJ is asked why full details of all related and subsequent transactions entered into in relation to the M-Cell and Sasol asset swaps were not immediately disclosed to the Reserve Bank. Representatives of the Reserve Bank communicated with Deutsche Securities regarding disclosure of the unrestricted transactions executed by DBL. Some of these communications were general in nature. In a letter from the Reserve Bank dated 24 October 2001 however Deutsche Securities were requested to provide a systematic overview of the Sasol share placement exercise with specific reference to possible currency leakage or currency hedging. The response provided by Deutsche Securities in a letter dated, sorry that should be 7 December rather than the 27th, 7 December 2001 did not deal with unrestricted transactions that related to the Sasol assets swaps. This was because Deutsche Securities considered the unrestricted transactions to fall outside of the ambit of the Sasol asset swap that required specific Reserve Bank approval. As regards DBL's hedging activities the appropriate course of action should have been for Deutsche Securities to refer the Reserve Bank to DBL, this was not done. Because Deutsche Securities was not authorised to give information regarding unrestricted transactions undertaken by DBL the writer of the letter avoided a direct answer by saying that DBL could well have hedged. The Deutsche Bank group acknowledges with regret that the

Deutsche Securities letter to the Reserve Bank dated, again that should be 7 December 2001 was not a complete response to the questions asks and may therefore have delayed the Reserve Bank's process of understanding fully the unrestricted transactions that relate to the Sasol asset swaps. This was rectified after the matter came to the attention of DBJ.

5 Furthermore the communications referred to above should have occurred between the DBJ authorised dealer representative and Reserve Bank. When the Reserve Bank asked DBJ for the information the information was promptly provided. All communications between Deutsche Bank group and the Reserve Bank concerning exchange control matters are now conducted exclusively through DBJ the authorised dealer. In conclusion, corporate asset

10 swaps are complicated transactions given the practical difficulties of regulating and administering exchange control. The regulatory framework cannot be and is not always clearly defined. I would like to therefore summarise certain key points. All three assets swops were arranged in order to promote the commercial objectives of Deutsche Bank clients for example the Sasol asset swap was designed to assist Sasol in relation to its

15 acquisition of Condea. All three transactions will bring long term benefits for South Africa. I have demonstrated that none of the transactions entered into by the Deutsche Bank group gave rise or contributed in any way to the rapid depreciation of the rand in the fourth quarter of 2001. The transactions by which DBL hedged currency risk on the Sasol swap were carried out on 15 and 20 February 2001. On both days the rand increased in value. During

20 the month of February 2001 the rand improved marginally in value. DBL's currency hedging activities in relation to the Nampak swap on 26 June and 24 July 2001 were insignificant in relation to the daily volumes traded. The rand firmed in relation to the British pound on both days. It should also be noted that the hedging activities relating to the M-Cell asset swap occurred in 2002 after the rapid depreciation of the rand in 2001. Of greater relevance is the

25 fact that that the three transactions occurred far outside the window of rapid rand depreciation. The timing of the transactions was such that they clearly could not have had anything at all to do with the fall of the rand in November and December 2001. The three asset swaps were arranged by Deutsche Securities were approved in advance by the Reserve Bank. The other transactions entered into as a consequence of exposure and

30 funding positions arising out of the asset swap transactions were either specifically approved by the Reserve Bank or fell within the general Reserve Bank approvals. Deutsche Bank is

one of the largest financial organisations in the world. It is fully committed to conducting its business in compliance with applicable laws and regulations in every country in which it operates. This is the fundamental principle of Deutsche Bank business philosophy, the commitment to which Deutsche Bank has and will continue to adhere in relation to its South African activities. As I outlined earlier Deutsche Bank's broadly based business and social investment in South Africa including the Euro denominated credit it sends to domestic clients illustrates its resolve to contribute to the success of the country. I wish to thank the commissioners for this opportunity to explain the corporate asset swaps.

MR BROOKS: Just in regard to 9.4 the statement made there, can we just get clarity that is subject to what you said just now in regard to the one transactions. --- Correct.

I have no further questions.

CHAIRPERSON: Mr Smith in regard to that clarification which you gave us when you started your evidence, you amend the relevant statement in that regard too if possible today before waiting for the record to be typed we can see the way that you dealt with that issue. --- Yes certainly.

Yes any questions?

CROSS-EXAMINATION BY MR GINSBURG: Yes thank you Mr Chairman, just a few questions in regard to the reserves and reserves neutrality Mr Smith. If I could take you back briefly to your statement page 6D under the heading of reserve neutrality. In the additional statement that you made this morning you talked about Deutsche Bank Johannesburg which is the authorised dealer in the context of which we are talking. --- Yes.

Having great uncertainty not understanding the various meanings of reserves neutrality and there being no consensus or general agreement in that regard now is that your statement in an exchange control context? --- No not at all, and could I maybe I need to clarify ... (intervenes).

If it is not in regard to the exchange control context how do you understand reserves neutrality in the exchange control context? --- The definition we gave in the exchange control context is on page 6L or 6M sorry,

"The gold and foreign exchange reserves of the central bank."

In terms of ... (intervenes).

Well let me take you up on that, if that is what you understand reserves neutrality to

mean then how do you explain that under the exchange control regulations ... (intervenes).

MR BEZUIDENHOUT: Could you just ask that the witness finish his answer please.

CHAIRPERSON: Just finish Mr Smith.

MR GINSBURG: Yes I am sorry. --- Sorry which question would you like me to answer?

5 Well in the exchange control context how do you understand the meaning of reserves neutrality in particularly in view of the letter that you read at page 41 of your statement from the Reserve Bank where they said that these transactions have to be reserves neutral at all times.

MR WASSERMAN: Yes but Mr Commissioner that is not a full relation of what was stated in
10 that letter of the Reserve Bank. It is clearly stated that rand has to be paid in South Africa for the shares in order to ensure the reserves neutrality. That was the only condition and how that would be in conflict to this understanding of reserves as indicated in 6M my learned friend has to indicate it.

MR GINSBURG: Mr Chairman if Mr Smith could first answer the question I might be able to
15 be satisfied with his answer rather than the answer given by his counsel. So Mr Smith if I could repeat, how do you as an authorised dealer understand the term reserves neutrality in the exchange control context? --- Okay if I could just try and answer the various questions.

Well there is only one. --- Sorry I thought there were a few more but first of all I am not an authorised dealer.

20 You are speaking on behalf of an authorised dealer. --- I am speaking correctly, I am speaking in terms of Deutsche Bank itself but I just would like to state I myself am not but let us get to the point, the point is that in terms of reserves neutrality we are not saying that we do not understand the term, what we are saying is that there are three different definitions and we understand those different definitions so the first definition for instance gold and
25 foreign currency held by the Reserve Bank we understand what that means, we are not saying we do not understand, so we do understand what that definition means as we do understand the other two definitions. So Deutsche does understand the definitions. If we look at the different definitions in terms of the statement that I read we believe if you look at each of those definitions independently that they are that the transactions were reserves
30 neutral for each of those definitions. So that in terms of making a decision or trying to - or coming to a conclusion in making a decision looking at each definition we understand that the

transactions were reserves neutral.

So taken together all the definitions you mention on page 6H(B)(i)(ii) do I understand that to be reserves neutrality in an exchange control context do you? That is as I understand your answer now.

5 MR WASSERMAN: No, no that is not what he said, he said Mr Chairman that it could be either of these, that is the Reserve Bank's understanding possibly (i) possibly (ii) but whatever the definition is there was compliance. Maybe it is opportune for my learned friend to indicate what the Reserve Bank's understanding is in this regard.

MR GINSBURG: Well let me perhaps put a question to your client Mr Wasserman and that
10 may clear it up. If there is any uncertainty Mr Smith by an authorised dealer as to what the meaning of exchange(?) neutral might be in an exchange control context, on whom do you think the obligations is to clear up that uncertainty, the authorised dealer or the Reserve Bank? Particularly in the context of asset swap transactions. --- What Deutsche Bank has recently asked the Reserve Bank for their definition of reserves neutrality and one of those is
15 one of these definitions and in terms of our - we need to look at the - how the events proceed. We became aware, I think the letter was in late March, I do not have the exact date but the letter was in late - 26 March 2002 where we became aware that this was a question. Prior to that we were not particularly aware it was a question so we answered that in our own minds. However the Reserve Bank seems to continue to ask these questions as you are
20 doing now and as my senior counsel has asked we are asking again for your definition for reserves neutrality.

No I am not going to give you a definition, I want to take you back to the transactions before the Sasol transaction and ask you personally to tell me how Deutsche Bank understood the term reserves neutrality in the exchange control context before the Sasol
25 transactions.

MR WASSERMAN: I just want to get my client a letter stating the conditions of the Reserve Bank in that regard, we will be one moment.

CHAIRPERSON: Yes of course.

MR WASSERMAN: Thank you. There is a quote in the statement, we can just go to the
30 quote. Can you look at 6(i), you have read it. --- Okay in terms of the letter I will just read the last sentence on 6(i)

"All costs towards the purchasing of shares by your institution must be settled locally in rand by the company involved to ensure reserves neutral position at all times."

And in F

5 "The Deutsche Bank's understanding of the aforementioned reference to reserves neutral is that the payment by Sasol to Deutsche Securities should be settled in rand and not in foreign currency. The payment was settled in rand."

MR GINSBURG: Yes so that is your answer to the question that I posed? --- Yes.

10 Now therefore it is not entirely correct is it for you to have suggested as you did at the top of page 6H that the applicable definition in an exchange control context to reserves or reserves neutrality is merely the gold and foreign currency held by the central bank. That seems to be quite ridiculous in the context does it not of exchange control? --- Okay the paragraph you refer to if I could read it again

15 "The term reserves means the gold and foreign currency held by a central bank. So that is what we have said is one of the definitions. The term is not generally used in any other context. The Reserve Bank however seems to ascribe a wider meaning to the term. The Reserve Bank has not published its understanding of the term. There is also no general
20 consensus among experts on what Reserve Bank means by this term. A number of different meanings have been suggested by economists and experts."

That has been read already.

MR GINSBURG: Yes. I leave it there Mr Chairman thank you.

25 CHAIRPERSON: The question was Mr Smith do you still say that is Reserve Bank's definition of reserves in the first sentence of paragraph B, limited to that limited definition, your understanding for exchange control purposes? --- Mr Commissioner my understanding of the question is reserves is used in connection with exchange control and not in connection with exchange control. I think the general term reserves means the gold and foreign
30 currency held by a central bank, that is one of the definitions of what reserves mean. I think we can look more specifically as we have tried, or as I have tried to do in terms of a specific

application or a reply to the specific application from the Reserve Bank and there we took a more specific meaning and the answer to that was F on page 61 that Deutsche Bank group's understanding of the aforementioned reference to reserves neutral in that specific reply is that the payment by Sasol to Deutsche Securities should be settled in rand and not in foreign
5 currency and that that payment was settled in rand. So I think there is both a specific meaning in connection with exchange control when they talk about reserves neutral and I think we have tried to handle that and then there is the general meaning that if you ask an economist what is reserves mean that they will give you an answer.

It seems to me this is an ongoing debate between Deutsche Bank and the Reserve
10 Bank isn't it? --- We would be very happy to continue the debate.

MR GINSBURG: Yes we will indeed from our side as well Mr Chairman thank you. We are sure that debate will continue.

CHAIRPERSON: Yes I get that impression. Any other questions before I turn to the commissioners? Yes sorry Mr Katz?

15 CROSS-EXAMINATION BY MR KATZ: Mr Chairperson just a - commissioner just one small clarification, in your conclusion Mr Smith in paragraph 9(i) you say

"All three asset swaps were arranged in order to promote the commercial objectives of Deutsche Bank's clients. For example the Sasol asset swap was designed to assist Sasol in relation to its acquisition of Condea."

20 Mr Andre Coetzee on behalf of Sasol, his evidence to the commission was that by the time Deutsche proposed the asset swap in question the Condea transaction had been approved and the finance was in place, this was simply a suggestion, a proposal by Deutsche to refinance a portion, the portion that the chairman had called the contentious portion, do you agree with that? It is just a clarification.

25 CHAIRPERSON: The objection is really just to your wording which says in relation to the acquisition of Condea.

MR KATZ: The acquisition had been approved and concluded. --- Yes, Mr Katz if I can just point out that is correct although I would just like to add that discussions had started with Sasol some time in 2000 otherwise it is correct yes.

30 Thank you Mr Chairman.

MR_____: Thank you Mr Chairman, if there are no further questions I would like to ask ...

(intervenes).

CHAIRPERSON: I think let us take the tea adjournment.

COMMISSION ADJOURNS

PROCEEDINGS RESUME

NIALL SMITH: s.u.o.

CHAIRPERSON: Ladies and gentlemen, let us continue. I am assuming there are no further questions at large and then from the commissioners?

5 MS QUANTA: I have a sort of a general question, Mr Smith. When you put together these transactions and I presume you either take the proposals to your client or your client approaches you, and I am not talking about specific transactions here because I am sure these three asset swaps are not the only one you have done. Can you just describe to me a typical way of engaging your client and the sort of agreement. I am specifically interested in
10 the sort of agreement that you do between your client, the implementation and then the feedback. Can you just explain that? --- Yes, commissioner. In terms of these transactions they usually start with ideas, if I can explain it that way which are not fully formed. So there are typically meetings with the client. In fact it is quite hard to proceed without a meeting with the client where we say, you know, these are possible ideas for implementation and the client
15 indicates to us what their requires are and then we go away usually come back and look at what can be done. We bring on board the internal legal and compliance side of the bank to look at the structures as we did with these three and get their final in terms of the transactions and then we seek, you know, the other appropriate authority that might be required such as the Reserve Bank approval etcetera but that is the general overview of how we proceed.

20 And do you go back to the client when the transaction has been concluded and inform the client about the conclusion of the transaction and any other matter? For instance well after that if there is a flow back or if there is a likelihood of a flow back? What is your post implementation interaction with the client? --- Right in terms of the specific transaction that we are conducting, there are usually frequent telephone calls after the conclusion of the
25 deal. For instance in any of the assets swaps we communicate to the client to say the money had been paid or we return the shares etcetera. So there are those sort of contacts with the client and then in terms of we do not see Deutsche Bank does not see South African corporates which we are talking about here as, we are not in South Africa to do one transaction with these corporates. We take the relationship very seriously with our client and
30 in fact there is a specific division, a number of people in the Deutsche South Africa who specifically talk to corporate clients and that is a division called corporate broking where they

have contact on a fairly constant basis with clients, in fact all our target clients. So we try and keep that information flow high through telephone calls, meetings, letters etcetera.

And if any problems occur, you would also communicate that to your client, say false implementation. --- Yes. Sorry, I did not answer your question on the flow back. In terms of
5 the flow back or I do not want to belabour the point, but the sales which might be flow back, we communicated with Sasol through telephone calls, a letter and a meeting.

Yesterday, Mr Smith I had asked you for the cost of the hedging transactions. ---
Yes.

And you indicated that you were not able to provide them yesterday. Are you able to
10 provide them today or can you perhaps give it to Mr Brooks later on? Would you be able to do that? --- I can do it. I have not done the work yet. I was preparing for the commission today.

Okay. --- But if I can just explain some of the things that go into there. The Deutsche Bank the Group and if we look at Deutsche Bank London, those transactions
15 which are not always, it is not always absolutely clear what the costs of the transactions are. So let me just take one example to give you an indication. If we put ourselves in a position whereby we, and I am talking about the Deutsche Bank Group now, if the Deutsche Group puts itself in a position where it needs to borrow shares for delivery for whatever reason as an example, the market price of Securities borrowing and lending depending on the day of
20 the week, anywhere between 1% and 1□% per annum. Now to the extent that those shares the lenders of those shares are in short supply which happens on occasion, that price can go up from 1 to 1□%. It can go up to 5 or 10 or even 14, 15%. Now in terms of entering into a transaction which has a long duration, these movements in prices may happen during the currency of the transaction and if Deutsche is in a position to borrow shares and they are
25 14% as opposed to 1%, that changes the input price for the cost if you like the transaction. So what we can do is we can work out the cost of a transaction once it is complete. Beforehand what we do is we estimate, we think the cost is going to be this and we are often wrong, but, you know, it is our business to make an accurate assessment. So the number that you are asking for is first of all is not an exact number but I can try and give an estimate.

30 An estimate would be fine. If you could do that at a later stage and give it to Mr Brooks. --- Fine.

Then I want to take you to paragraph 8.3 on page 6D and you say Securities loan transactions are frequently entered into between residents and non-residents and then you explain that they often sell securities which they do not own and I think we have accepted that as standard practice. Then you say:

5 "A dealer will typically prefer to borrow securities if the dealer expects them to fall in value. In that event the dealer will be able to buy the same securities at a lower price when the loan securities must be returned."

What does that mean? What did you mean what would make the value of the securities fall?

--- Commissioner, that first of all I must just put that in perspective. That is a general
10 comment. It was not .. (intervenes)

No, I understand that. --- Yes.

I understand. --- So what is being referred to really is a short sale and this is an example where any security and for instance Sasol if Sasol is trading in R100,00 and you think the price may fall, you could sell shares to me for example, borrow those shares for
15 delivery, give them to me and if the share price did fall to let us say R90,00, you could then acquire those shares at R90,00 in the market, use those shares that you have acquired to pay back your lender and what you have done is you effectively sold shares for R100,00 and repurchased them at R90,00 you have made R10,00 on that.

And does the exchange rate have an impact on the value of the securities? I know I
20 asked the question but I do not think I understood your answer yesterday. Does the exchange rate .. yesterday you said the exchange rate does play a role. --- Yes, the exchange rate does play a role in .. that is a complex question. The exchange rate does play a role in shares where there are assets both inside and outside of the country. So to the extent that a corporate has assets outside the country and for instance the rand price falls,
25 then the rand price of that company might increase in rand terms. But will probably decrease in dollar terms and if we are looking at a non-resident investor of course I think I said yesterday that a non-resident investor is not really interested in the rand price. They are interested in the dollar price because they buy a share and they look at that the dollar value and wherever the rand price goes, they are still looking at the dollar value. Then they would
30 make or lose money on the dollar. It depends on the dollar value rather than the rand value.

And the last question relates to your understanding, and I do not think I should ask

this question in view of Mr Ginsberg. I expect Mr Ginsberg will make sure that his client come and elucidate us on exactly what the Reserve Bank means by reserve neutral.

MR GINSBERG: Yes, we will.

MS QUANTA: I do not want to start a debate but I just want to find out in the letter that you
5 quoted from the Reserve Bank, it says one of the conditions that the transactions must be funded in rand in South Africa. What was your understanding for the rationale behind that particular statement and just generally in fact the rationale behind exchange control in this country, the fact that we still have exchange control? --- What is the rationale for exchange control?

10 Yes, because in the context of general exchange control and that statement by the Reserve Bank that it must be paid in rand. In other words it must reserve neutral to use that term. --- Yes, I think, you know, I was referring to the specific words. I cannot find my place, but in terms of that it referred specifically in terms of the payment to corporate. So it refers specifically by the payment from the corporate. So it says here it must be settled locally in
15 rand by the company involved. So what that means is that the company itself must be settled in rand. The settlement must be in rand.

The impression would be that it cannot be settled in foreign currency. --- Yes.

In other words that the foreign currency should not leave the country. You would not imply behind that statement. --- This again is, okay let us turn this on its head and say well
20 let us say that the institution must be settled in Euros by the company, just .. and let us look at what that does to the meaning. That means presumably that there is an asset swap. Deutsche London in this case paid Euros to some offshore account of the company and the company settled that costs in Euros. Now that happened. I mean that would be an interesting situation and I suppose you could infer from that that we are talking about a round
25 tripping or a situation where the dual currency for instance in the days when there was a finrand/comrand. If a company takes money out at R1 rate and then brings money in at another R1 rate, it could make a profit. That is a possible meaning of that. So in other words when you have two markets, you have two different, one kind but two different rates and export happens by one rate and import by another rate. Then I can see that is round tripping
30 and that presumably refers to your currency. I am not saying that that .. you know, what I have done is I have turned it on its head to try and answer your question.

Okay, that is fine. I have no further questions.

CHAIRPERSON: Another question?

MR. GANTSHO: Mr Smith, would you please try and help me understand the reserves neutrality or otherwise of this transactions and I would like to refer to the Nampak asset swap
5 transaction and reference is made to slide J of your presentation or to paragraph 2.3 on page 144 of the bundle. Deutsche Securities hold the majority number of those shares, 80%, and only paid a fifth for that particular leg of the transaction. --- Just give the page?

Page 144. --- Paragraph?

2.3. On the slide it is slide J. So there was no outlay of cash by Deutsche Securities
10 for that borrowing repo transaction but Nampak paid cash when it got those same shares from Deutsche Securities. So Deutsche Securities has reserves in rands increasing because of that leg of the transaction. Am I correct? --- Deutsche Securities when they borrowed shares, they usually, it is market practice to post 105% of the value of the shares in terms of collateral.

15 I fully understand that that is mere collateral in this particular case. --- Yes.

And that still forms part of the cash reserves of Deutsche Securities. --- Yes.

Nampak paid cash for that same number of shares. --- Right.

And then Nampak sold those shares to DBL and DBL settled in pounds. That is correct so far? --- Right.

20 And then for DBL to find that pounds or settlement amount, it entered into a repo transaction of bonds. --- Yes.

Is that correct? --- That is correct.

And that led to the conversion of rands therefore into pounds. --- Correct.

So if you were to cut out all these other entries, the rands that Nampak paid to
25 Deutsche Securities found its way to be converted into Euros and therefore settled the pounds. Is that correct? --- Mr Commissioner, Deutsche Bank Johannesburg purchased in 3.1 on slide J purchased bonds from Deutsche Bank London. So that was a purchase and they paid for those bonds in full and that was an exchange if you like of value. So there is a value for value exchange in the purchase of bonds by Deutsche Bank Johannesburg from
30 Deutsche Bank London. So that is the value is an exchange and that is what I referred to yesterday as the duration switch.

I understand. Thank you for that clarification. But the purpose of that sale of those bonds by DBL to DBJ is to raise pounds. Is that correct? --- The purpose of Deutsche London repo book which is, and Deutsche Johannesburg repo book to do these transactions is as I have explained that the repo books business is to manage the cash and the cash flow situation of Deutsche London and Deutsche Johannesburg because Deutsche Johannesburg receives many deposits from corporates in South Africa because Deutsche Johannesburg is a double A rated bank. So there is a lot of money coming in to Deutsche Bank Johannesburg. It is a common in fact a daily, not a common, it is a daily occurrence that repo transactions occur between Deutsche Johannesburg and Deutsche London where Deutsche London sells bonds that it owns for payment to Deutsche Johannesburg. So what is happening here is it is a, I suppose we can call it a treasury management function where rand is moved to London in exchange for bonds and those are equal values.

The substance is that they needed pounds and they used rands to raise those pounds. Now let me conclude my question by asking you: would the same structure be upheld if there was no borrowing of shares by Deutsche Securities instead if Nampak had gone to the market and borrowed the shares itself. --- Yes.

In order for it to deliver to DBL for the consideration that it received from DBL in pounds, would this have been the same structure if the borrowing of the script was done by NIH, I think it was, instead of the borrowing being done by Deutsche Securities. --- What I need to stress is that the transactions which we referred to as the, I think we referred to them as the repo etcetera transaction, those happened daily whatever happens. In terms of borrowing shares that if Nampak Product had borrowed shares and sold them to Deutsche London, then Deutsche Securities, my understand, and I have to think about this, but in terms of the approval Deutsche Securities would still have to receive a payment of money in terms of settlement from the corporate for the asset swap and I have to think about exactly how that is going to work because in terms of the asset swap, there needs to be a payment by the corporate to Deutsche Securities in rand. So .. (intervenes)

Because they have gone to the market and borrowed the shares itself and delivered. So there would not have been a payment to Deutsche Securities. The only payment that would have been made, would have been for the shares that were brought from the market by Deutsche Securities which are the minority percentage of what we are talking about. ---

Yes, you are correct but I would need to examine that what you have said which is correct in light of the Reserve Bank approval and see if that ties up because I would need to examine that that still needs conditions of the approval.

Thank you.

5 CHAIRPERSON: Any further questions? You may stand down, Mr Smith.

MR WASSERMAN: Could I .. (intervenes)

CHAIRPERSON: Sorry.

MR WASSERMAN: Mr Smith, each of these transactions Sasol, Nampak and M-Cell had been concluded for sound commercial purposes. Correct? --- That is correct.

10 None of them had an impact on the rand or designed to have an impact on the rand. Is that correct? --- That is correct.

And these transactions were designed and executed in accordance with your understanding of exchange control rulings and regulations. Is that correct? --- That is correct.

15 They were ethical and legal. Is that correct? --- That is correct.

And Deutsche Bank at all times acted in good faith. Is that correct? --- That is correct.

Thank you, Mr Chairman.

MR BROOKS: Mr Chairman, I have no further questions but just before Deutsche Bank
20 stands down, could I please place something on record?

CHAIRPERSON: Yes.

MR BROOKS: On 7 March an article appeared in the Finance Week and I have placed a copy of the article before you headed "What led to the (indistinct) down and how the randgate product worked" and this has been, I think commonly referred to as the randgate article.

25 Immediately after the article appeared on the Thursday, we saw the author, when I say we, I mean the investigating team, met with Mr Barry Sergeant on Friday. We discussed the article with Mr Sergeant for purposes of obtaining further information and documentation from him.

CHAIRPERSON: Was your intention to see if there was something more to investigate?

30 MR BROOKS: Yes. Mr Sergeant was unable to provide us with any further hard facts or documents to substantiate the article. We have now also heard the evidence of the three

corporates and we have heard the evidence of Deutsche Bank. Now Deutsche Bank in particular and Sasol's names are referred to in the article. I would just like to place on record that the structure as set out in this article does not by any stretch of the imagination, agree with the evidence that has been given by the corporates and Deutsche Bank before this
5 Commission.

CHAIRPERSON: So does your investigating team say there is nothing more to investigate in this regard?

MR BROOKS: Unless hard facts and evidence can be put before us, Mr Commissioner. This structure does not agree.

10 CHAIRPERSON: Yes.

MR BROOKS: With what happened or we have heard happened.

CHAIRPERSON: Thank you, Mr Brooks.

MR BROOKS: Thank you.

CHAIRPERSON: I know Mr Wasserman that Deutsche Bank had asked the Commission to
15 deal with this article because of the adverse publicity. You heard what Mr Brooks has said and does that deal with your concerns?

MR WASSERMAN: That takes care about my concerns .. (intervenes)

CHAIRPERSON: The Commission investigated it and you heard Mr Brooks.

MR WASSERMAN: We are indebted to the Commission, Mr Chairman.

20 CHAIRPERSON: I have no further questions. Mr Smith can stand down. Mr Smith, in the course of today we have been delivering letters to say that Mr Papadakis will give evidence on 2 May and that you and the other parties such as Sasol are given notice to attend on that day in case the Commission has further questions arising out of subsequent evidence. If you could just bear that in mind. --- Thank you.

25 Thank you. You may stand down.

MR BROOKS: Could we just also bear in mind that the Reserve Bank will be giving evidence on Monday.

CHAIRPERSON: Yes.

MR BROOKS: It may, and I bring it not any higher than that, be necessary to recall Mr
30 Smith briefly should there be evidence by the Reserve Bank that requires his recall. But I put it no higher than may.

CHAIRPERSON: Fine.

MR BROOKS: Thank you.

CHAIRPERSON: But at least we have got a date then to deal with.

MR BROOKS: Yes.

5 CHAIRPERSON: Right you can stand down. Thank you. --- Thank you.

NO FURTHER QUESTIONS

MR BROOKS: Mr Commissioner, we will now be dealing with the evidence of National Treasury.

CHAIRPERSON: Yes. Right are we ready to proceed?

10 MS FAYEEZA KATHREE: We have two witnesses this morning.

CHAIRPERSON: Yes.

MS KATHREE: The one would be Mr Brian Molefe, the deputy director general of National Treasury, Asset and Liability Management, and Mr Chris Malan, chief director, Financial Regulations. Mr Malan will begin to give evidence and we will deal with the transactions
15 (indistinct).

CHAIRPERSON: Yes.

MS KATHREE: Mr Brian Molefe will then follow on the relationship between Deutsche Bank and National Treasury.

CHAIRPERSON: Yes, and my understanding is Mr Malan you are about to give evidence.

20 CHRISTOPHER CYRIL MARTIN MALAN: d.s.s.

CHAIRPERSON: You may be seated. --- Thank you.

EXAMINATION BY MR BROOKS: Mr Malan, there is before you a bundle of documents which we call the National Treasury bundle. Could you just tell the commissioners in what capacity you are employed? --- I am employed as the chief director, Financial Regulation,
25 and one of its responsibilities is exchange control matters.

I do not think that you are coming over the air. Just move that mike a little bit closer.

--- I am employed as the chief director, and one of the responsibilities is exchange control matters.

Mr Malan, in the bundle of documents will you turn to page 45? You will find your
30 CV there. Could you just give us a brief overview of that CV please? --- The brief overview is that I am currently employed as the chief director, Financial Regulation, as I have stated,

commenced there 1 January 2000 to date. Prior to that I was the director, Financial Regulation from May 1999 and prior to that for some nine years as a practising attorney in Cape Town. Born in South Africa and my qualifications are as stated.

Thank you very much. If you can then please turn to your statement which you will
5 find at page 1 and it runs up to the page numbered 8. Will you please just confirm the content of this statement? --- I do so confirm.

Thank you. Mr Malan, will you please then read your statement into the record and should you wish to add anything to the statement, please feel free to do so. --- Thank you. I will start with under A "Transaction delivered to the the Rand Commission and go straight to

10 1.1:

"Deutsche Bank

1.1 National Treasury dealt with two applications from Deutsche Bank during the period 1999 to 2000. It received no applications for Deutsche Bank during the period under review.

15

1.2 Sasol

The managing director, Mr Neil Morrison of Deutsche Bank AG Johannesburg, a branch of Deutsche Bank AG Germany, sent a letter to the director general, Ms Ramos, dated 17 November 2000."

Mr Malan, sorry. I am told from the audience at the back that you are not on the air.
20 --- Sorry.

Can we put you on the air? --- Would you like me to start over?

No, continue. --- Okay. Let me then continue with the letter from Mr Morrison to the DG, Ms Ramos, dated 17 November 2000.

That is at page 12? --- Page 12. In which he sought to obtain, and this is a quote
25 from the letter:

"In principle in view of whether Sasol could secure permission to service an offshore Euro bond issued from domestic cash flows and a full recourse of its balance sheet. The Euro bond would constitute about one third of the total cost of Sasol's planned acquisition of the German company Condea. (A copy of this letter is annexed
30 marked A).

Continue. ---

"The letter was copied to me from the director general's offices on Monday, 4 December 2000 with the note "Can you please contact SARB on this matter? It is urgent." (and that is also described in annexure A).

1.2.3 I called Mr Tom Coetzee of Exchange Control Department on the same day
5 and he followed up our discussion with a fax dated 4 December 2000 which is annexure B. This fax also refers to discussions between Ms Ramos and Mr Bruce-Brand on 5 December 2000 which in the words of Mr Coetzee concerned a letter submitted directly to National Treasury by Mr Morrison of Deutsche Bank. I made contact with Mr Morrison to establish the nature of
10 his enquiry to National Treasury.

I reported to the director general by E-mail on 6 December 2000 that the pressure was from Deutsche Bank and not Sasol for consideration of the Euro bond option. A copy of the E-mail sent by me to the director general is annexed marked C)."

15 Should I read these annexures into the record?

No, I can just record. That is at page 17. --- Yes.

CHAIRPERSON: Yes, and we can read them. ---

"The director general responded thereto by E-mail on 8 December 2000 that she found the approach by Deutsche Bank not acceptable. (A copy of the
20 E-mail is annexed marked D)

MR BROOKS: Page 18. ---

"1.2.5 I received a call from Mr Richard Ketley of Deutsche Bank on 7 December 2000 and 11 January 2001 requesting that we give urgent attention to the proposal.

25 National Treasury received a further letter from Mr Coetzee dated 11 December 2000 with Sasol's annexure of 8 December 2000 advising us of a meeting with Sasol on 8 December 2000. (This letter is attached as annexure E)

Which is at 19 to 42. --- The next paragraph 1.2.7:

30 "1.2.7 National Treasury also received a copy of a letter from Mr Ketley to the deputy governor of the Reserve Bank, Mr Marcus dated 7 December 2000

which stated:

"We are informed that the minister will be considering the Sasol issue tomorrow".

It may have been that the SARB was meeting Sasol on 8 December 2000."

5 What I basically mean there is that the reference to the minister is possibly a reference to the SARB. A copy of this letter is annexed marked F.

"Importantly the matter did not result in a submission to the director general or to the minister. Again no decision was made by the Treasury or the Ministry on that.

10 On 2 January 2001 ... (intervenes)

29 January. --- Sorry.

"On 29 January 2001 at a meeting with Sasol which National Treasury called to gain a better understanding of how Sasol had managed to expand from its South Africa base, we were advised by Sasol's general manager, Mr Van Rooyen that Sasol do not require the Euro bond option and was engaged in discussions with the SARB on its application."

15

Mr Malan, will you confirm that according to your records and your information this is the only involvement which Treasury had in regard to the Sasol deal? --- This is to my knowledge and we have checked with the DG's records and the ministry's records and this is the truth as far as I am concerned or Treasury is concerned.

20

Thank you. --- Paragraph 1.3:

"1.3 M-Cell and MTN

1.3.1 During 2000 the National Treasury received several SARB requests on behalf of the MTN Group. Also its parent company, Johnnic for a special dispensation for MTN and for revisiting of the current allowances for investments in Africa and the wider Sadek region.

25

These requests were considered in preparing the exchange and control announcement in the budget speech of 21 February 2001."

Basically these two requests were taken into consideration when we made the announcement which as you would know increased the limits to investment in Africa.

30

Paragraph 1.3.2:

"1.3.2 MTN made a slide presentation to the minister and National Treasury on 12 March 2001 during which it was agreed that the MTN Group would furnish the National Treasury with further details, information and data. These, however, were not furnished. Accordingly the National Treasury made no recommendation to the minister and the minister did not grant approval in this matter. We later heard from the Exchange Control Department that it had approved the MTN offshore financing arrangements within the exchange control policy parameters.

1.3.3 It must be mentioned that there was several MTN/Johnnic applications made to the SARB for expansion into Africa and elsewhere. All of these applications were dealt with and resolved by the SARB."

Mr Malan, in the same vein will you confirm that according to your documents and information available to you, that that is Treasury's only involvement in the M-Cell transaction? --- That is my knowledge, yes.

Thank you. --- Paragraph 1.4:

"1.4 Nampak

National Treasury had not received an application from the SARB in this regard. That is according to our records as well.

1.5 Billiton

National Treasury had not received an application from the SARB in this regard. This is according to our records."

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

CHAIRPERSON: Any questions?

NO QUESTIONS BY ANY OF THE PARTIES

CHAIRPERSON: Thank you, Mr Malan. You may stand down.

NO FURTHER QUESTIONS

CHAIRPERSON: Mr Molefe?

BRIAN MOLEFE: d.s.s.

CHAIRPERSON: Please be seated. --- Thank you.

EXAMINATION BY MR BROOKS: Mr Molefe, you are employed by National Treasury. Is that correct? --- That is correct.

In what capacity? --- I am the deputy director general responsible for Asset and Liability Management.

Would you please in the National Treasury bundle which is before you, will you turn to page 46. It is in fact the last page in that bundle. --- Yes.

5 Would you deal briefly with your CV? --- As I said I am currently the deputy director general in the National Treasury. Before I was promoted to deputy director general, I was chief director Asset Management in the National Treasury. Before then in 1997 and 1998 I was a director for Intergovernmental Relations and before then I had been chief director, Strategic Planning since 1995 in the Office of the Premier in the Northern Province. I also
10 work at the Development Bank as an institutional specialist. In 1988, I think there is an error there, in 1988 I was a clerk in the Golden Foreign Exchange Department of the Reserve Bank. The qualifications are as they are stated and the other occupations that I held.

Thank you very much. Mr Molefe, will you then please turn to page 9 in the same bundle? --- Yes.

15 That is your statement. --- That is my statement.

Would you confirm that statement? --- I confirm that is my statement.

Would you then please read the statement into the record and add whatever you wish to add. ---

"Deutsche Bank was appointed as a primary dealer in the domestic bond market in
20 April 1998, a permanent dealer of government bonds. 11 other institutions have like Deutsche Bank also been appointed after due process was followed. Today I must mention that we only have 9 primary dealers and are processing a further two applications from other banks.

As primary dealers they have obligations to make a market on South Africa's
25 domestic bonds and to participate in the weekly bond options that we have.

Primary dealers as the relationship between us and primary dealers are government by the rules for primary dealers that we have, the Code of Conduct and the Confidentiality Agreements that we sign with the permanent dealers.

So those are the three main documents that if the commission feels are relevant, we
30 can supply it.

In addition to borrowing in the domestic capital market, South Africa has also

borrowed in the international capital market annually since 1994 except in 1998. A total of 17 transactions including public bonds, private placements and a syndicated loan were concluded during this period, three of which were managed by Deutsche Bank.

5 The transactions that were managed by Deutsche Bank were 1996 Deutsche Mark 500 million bond, 7%; 1999 Euro bond of 300 million, 7%; and in 2001, 500 million Euro bond.

In appointing lead managers and arrangers for foreign bond transactions ... "

I must also state that in the three transactions that I mentioned, Deutsche Bank was a
10 colleague. There was another bank. The first one it was Morgan Stanley and the second one UBS and the third one Merrill Lynch.

"In appointing lead managers and arrangers for foreign bond transactions, the National Treasury invites banks to present their proposals. All banks are adjudicated using the same sort of criteria. The criteria have (indistinct) and these are used to
15 determine which bank will be appointed as lead manager or arranger. A recommendation is then made to the minister who then gives the final approval.

There are no credit lines or liquidity support that the National Treasury has provided to Deutsche Bank nor did the National Treasury received any private credit lines or liquidity support from Deutsche Bank.

20 In July 2001 the South African Reserve Bank and the National Treasury concluded a syndicated loan of \$1,5 billion as co-borrowers. Deutsche Bank was one of 31 institutions that participated in this loan. In fact they were one of 18 banks that were the lead arrangers of the loan. A former employee of National Treasury, Mr Richard Ketley, who left the National Treasury, the then Department of Finance, in the year
25 2000, joined Deutsche Bank in their bond market section. Other former National Treasury employees also joined other banks upon leaving the Department of Finance or the National Treasury."

I can mention here Mr André Roux who went to Investec who was also a deputy director general in the National Treasury went to Investec a couple of years ago.

30 "Mr Ketley has since left Deutsche Bank and is presently at Stanbic Africa. While in the employment of the National Treasury, Mr Ketley functioned as a senior manager

macro economic policy."

Thank you. I have no further questions.

CHAIRPERSON: Any questions?

NO QUESTIONS ASKED BY PARTIES

5 CHAIRPERSON: We have no questions, Mr Molefe. You may stand down. --- Thank you.

NO FURTHER QUESTIONS

CHAIRPERSON: Does that conclude .. (intervenes)

MR BROOKS: Those are the proceedings for today. I understand that we will deal with the Reserve Bank on Monday morning at 10:00.

10 CHAIRPERSON: Mr Ginsberg, can you just come forward. I just wanted to confirm that.

MR GINSBERG: I beg your pardon?

CHAIRPERSON: Mr Ginsberg, it is correct that we would have heard the Reserve Bank but we are standing down until Monday?

MR GINSBERG: Yes, that is correct. Thank you very much.

15 CHAIRPERSON: Yes. As far as the media is concerned, the position is that we will not deal with the Reserve Bank today because they asked for an opportunity to deal with the evidence that they heard this week which they will be using that opportunity this weekend. Standard Bank that was scheduled to give evidence on Monday, will not give evidence on Monday of these reasons and will give evidence some time later during the sitting of the Commission.

20 The date has not yet been fixed. The rest of the programme remains as is.

MR BROOKS: Thank you.

CHAIRPERSON: We will then adjourn until 10:00 on Monday.

PROCEEDINGS ADJOURN