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Zondo Commission – only loan fixers and banks benefited from Transnet's interest rate swaps

In determining the best choice of loans to fund the multi-billion-rand locomotives procurement project that was concluded in 2014, Transnet executives may have opted to use the concept of interest rate swaps strategically to the benefit of their loan fixers, among them Regiments.

This possibility will need to be investigated, and if found to be the case, could have major implications of fraud for the state-owned entity, which lost hundreds of millions of rands as a consequence of the swapped transactions. Paul Pretorius, head of the legal team for the commission of inquiry into state capture, holds the view that the commission should get to the bottom of it. He was leading the evidence of Dr Jonathan Bloom, a finance expert commissioned by Mncedisi Ndlovu Sedumedi Attorneys (MSN) to break down the lawfulness of the transactions relating to loans entered into by Transnet as funding for the procurement project, its largest in decades. MNS was commissioned in February last year by the Transnet board of that time to investigate the procurement processes involving locomotives.

Evidence submitted to the commission to date has shown that after selecting its preferred manufacturers, Transnet concluded four separate loans to fund the R54-billion programme. Three of these loans involved financial institutions in China, the US and Germany, as the selected manufacturers were from these countries – while the fourth was with several South African financial institutions. The local transaction, referred to as the ZAR club loan, because it comprised separate loans negotiated simultaneously, was the highest at R12-billion. It was paid out in two tranches, the first in December 2015 and the second in March of the following year.

Transnet concluded the ZAR club loan agreement on 23 November 2015 in terms of a floating interest rate. This transaction by its nature is not unusual, as all it meant was that the bank(s) involved would determine and calculate the agreed rate, but the risk to Transnet was that it had no control over how the rate could fluctuate over the 15 years of the loan term. Less than two weeks later, on 4 December, Transnet made a rate swap, replacing the floating rate with a fixed one. For swapping to occur, Transnet would have to incur a fee to its financiers that "covers" their anticipated losses, in what works similarly to a penalty fee. Oddly enough, Transnet's change of mind came three days after the first tranche of R4.5-billion had been withdrawn.

It was not only the financial institutions that got a bargain. For their part in executing the swap, Regiments was paid over R200-million.

According to Bloom, it is safe to speculate that Transnet executives knew from the beginning that they wished to enter into a fixed rate loan, despite going for the floating one initially. It was odd, he added, that Transnet would change its mind just after concluding an agreement of this size. "Because of the circumstances and the timing of the transaction, the club loan…should have entered into a fixed rate loan, that was the intention.

“It wasn’t necessary to first enter into a floating rate loan, and then into a fixed rate loan later, because the financial risk management policy [of Transnet] also clearly says you must fix the rate at source, in other words whilst at the point where you conclude the agreement.”

Bloom added that the policy further places limits on the number of transactions where floating and fixed approaches can be used intermittently. The preferred option is always to go with the fixed rate approach from the beginning of the negotiations. With that said, he could not rule out the possibility of the swap being used to circumvent the policy, and be made to look like a way of curtailing spending.

The second swap, used in the remaining tranche of R7.5-billion in March 2016, also happened after the funds had been withdrawn. From the time of the first swap in 2015 to date, the exercise of swapping has cost Transnet R850-million in realised cashflow losses, with the banks and Regiments profiting.

In his testimony in May, Transnet’s current acting group CEO Mohamed Mahomedy said there was no record of a procurement process that entitled Regiments to render such a service on behalf of Transnet.

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