

CENTRO INTERNACIONAL DE ARREGLO DE  
DIFERENCIAS RELATIVAS A  
INVERSIONES

CARLOS RÍOS Y  
FRANCISCO JAVIER RÍOS  
Demandantes

Contra

LA REPÚBLICA DE CHILE  
Demandada

(Caso ARB/17/16)

AUDIENCIA SOBRE EL FONDO

Día 4  
Lunes 15 de abril de 2019  
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(A la hora 9:01)

ASUNTOS DE PROCEDIMIENTO

PRESIDENTA KAUFMANN-KOHLER: Muy buenos días a todos. ¿Estamos listos para comenzar el día 4 de esta audiencia?

Buenos días, señores. Vamos a -- tenemos un asunto a discutir antes de pasar a su interrogatorio.

Recibimos ayer noche una carta de la demandada solicitando la introducción de dos documentos en el expediente relacionados al tema del préstamo de Alsacia a Panamerican para la adquisición de Express. Si no me equivoco, eran 80 millones. Y una respuesta esta mañana de los demandantes que se oponen a la admisión de los documentos. Hemos leído las dos cartas y no hemos tenido hasta ahora el tiempo para consultarnos entre los miembros del Tribunal, pero lo haremos en una pausa más tarde.

De todas formas, no me parece particularmente urgente. Como la interrogación

del señor Ríos ya está terminada, en un momento tenemos que decidir esta solicitud. Pero no veo yo la urgencia particular. Pero posiblemente me equivoco y la demandada tiene otra cosa en mente.

SEÑOR DI ROSA: Gracias, señora presidenta.

Era nuestra intención que PwC abordara este tema en su presentación de hoy en la medida en que el Tribunal aceptara el documento -- estos dos documentos. De modo que tendría urgencia en ese sentido. Si el Tribunal decidiese que convendría más tratar esto por escrito después de la audiencia, obviamente comprenderíamos también eso. Así que queríamos una oportunidad de explicarles el motivo por el cual se hizo lo que se hizo y no se presentó antes esta documentación y esa solicitud.

PRESIDENTA KAUFMANN-KOHLER: ¿Quieren hacer esta presentación ahora o más tarde?

SEÑOR DI ROSA: Ahora sí -- con la venia del Tribunal lo podemos hacer ahora, sí.

1 PRESIDENTA KAUFMANN-KOHLER: Sí.

2 SEÑOR DI ROSA: No voy a repetir el contexto  
3 en el cual ocurrió, porque estaba en nuestra  
4 carta. Lo que sí quiero explicar es que los  
5 operadores como Alsacia tienen la obligación  
6 trimestralmente de presentar ciertos informes  
7 al DTPM que incluyen un informe sobre gestión  
8 financiera. Y el documento que estamos tratando  
9 de incorporar al expediente es el informe  
10 trimestral que corresponde al cuarto trimestre  
11 del año 2018.

12 Hemos examinado la carta de los demandantes  
13 de esta mañana y considerado el tema  
14 adicionalmente y consideramos que no sería  
15 injusto en absoluto que se incorporara este  
16 documento al expediente por los siguientes  
17 nueve motivos.

18 Primero, la información se estaría  
19 presentando para impugnar la afirmación de un  
20 testigo, es decir, lo que se llama en inglés  
21 impeach a witness, lo cual está permitido.

1 Tenemos generalmente en el arbitraje  
2 internacional también en todos los sistemas,  
3 por lo menos, de Common Law para impedir que  
4 jueces o árbitros tomen una decisión sobre la  
5 base de un expediente que está por lo menos  
6 parcialmente incorrecto.

7 En la carta de esta mañana los demandantes  
8 se quejan de que Chile no le presentó el  
9 documento en el momento al señor Ríos. En  
10 primer lugar, no es eso lo que dijeron; la  
11 objeción de ellos no fue que no les estábamos  
12 presentando el documento sino simplemente que  
13 no se le podía hacer una pregunta sobre un  
14 documento que no estaba en el expediente. En  
15 segundo lugar, no teníamos motivo alguno para  
16 tener ese documento a mano porque no sabíamos  
17 que el señor Ríos iba a decir lo que dijo.

18 Por otro lado, el documento pertinente  
19 consiste de un archivo Excel, de modo que no se  
20 prestaba simplemente para pedirle a nuestro  
21 asistente legal que lo imprimiera, lo trajera.

1 Es una cuestión un poco más compleja.

2 El segundo motivo es que socavaría la  
3 integridad del procedimiento arbitral que  
4 quedara como evidencia en el expediente una  
5 afirmación testimonial con respecto a la cual  
6 se tiene motivo fundado para pensar que es  
7 falso o incorrecto.

8 Tercero, no hubo de hecho una oportunidad  
9 procesal de presentar ese documento antes,  
10 porque el documento lleva fecha de 30 de enero  
11 de 2019, y el último escrito de Chile fue el 28  
12 de enero de 2019, que fue la dúplica. Por otro  
13 lado, no sabemos exactamente en qué fecha lo  
14 recibió de hecho el DTPM.

15 Cuarto, los demandantes no sufrirían ninguna  
16 desventaja o perjuicio porque se trata de un  
17 informe contable de la propia empresa. En  
18 consecuencia, no se justifica ni se entiende  
19 que las demandantes se resistan a su  
20 incorporación al expediente.

21 Quinto, se trata de solamente de parte de un

1 archivo Excel y de la carta conductora de ese  
2 archivo Excel, que es un documento de una  
3 página de un par de párrafos, por lo cual no  
4 sería oneroso para los demandantes y sus  
5 asesores examinarlo rápidamente.

6 Sexto, se trata de un documento reciente por  
7 lo cual está fresco en los demandantes y sus  
8 empresas.

9 Séptimo, sería equitativo desde un punto de  
10 vista procesal porque los demandantes han  
11 presentado un montón de documentos nuevos en  
12 vísperas de la audiencia. Por ejemplo,  
13 presentaron 25 documentos nuevos hace dos  
14 semanas, presentaron otro documento nuevo el 4  
15 de abril -unos días antes de la audiencia-, al  
16 cual dicho sea de paso Chile no se opuso en  
17 parte precisamente porque se trataba de un  
18 documento del propio DTPM, es decir, una  
19 circunstancia exactamente análoga a la cual  
20 actual. Pues lo que estamos pidiendo es que se  
21 incorpore al expediente un documento de la

1 propia empresa de los demandantes, de Alsacia.  
 2 Adicionalmente, la noche anterior a la  
 3 audiencia los demandantes se presentaron casi  
 4 una hora y media tarde 10 gráficos  
 5 demostrativos. No fue 20 minutos tarde como  
 6 dijeron las demandantes el primer día sino que  
 7 lo presentaron a las 20 horas y 29 minutos,  
 8 hora de Londres, en circunstancias en que el  
 9 plazo establecido por la Orden Procesal número  
 10 8, párrafo 10, era 20 horas CET, que viene a  
 11 ser 19 horas de Londres.

12 Todos estos envíos de último momento de las  
 13 demandantes implicaron una distracción mucho  
 14 mayor para la defensa de Chile de lo implicaría  
 15 para los demandantes la incorporación de este  
 16 archivo Excel.

17 Octavo, los demandantes todavía están a  
 18 tiempo para contrainterrogar sobre este archivo  
 19 Excel a PwC y a Versant y también para  
 20 analizarlo con sus abogados y sus expertos de  
 21 Brattle Group.

1 Noveno, Chile no tendría ningún problema en  
 2 que además de que los abogados y expertos de  
 3 los demandantes traten el tema en esta  
 4 audiencia, que tengan adicionalmente tengan la  
 5 oportunidad de pronunciarse y comentar por  
 6 escrito después de la audiencia en el plazo que  
 7 quieran sobre este documento.

8 Por esos motivos consideramos que no sería  
 9 inapropiado ni injusto que se incorpore el  
 10 documento al expediente.

11 PRESIDENTA KAUFMANN-KOHLER: Sí, gracias.  
 12 ¿Los demandantes quieren replicar?

13 SEÑOR SILVA ROMERO: Gracias, señora  
 14 presidenta y miembros del Tribunal. Buenos  
 15 días.

16 Yo no tengo sino cuatro comentarios para  
 17 responder evidentemente que incorporan lo que  
 18 ya dijimos en la carta que ustedes recibieron  
 19 esta mañana.

20 El primer comentario es que la explicación  
 21 que se nos había dado del interés que tiene la

1 demandada de introducir ese documento era para  
 2 rebatir una respuesta de Carlos Ríos. Ahora  
 3 acabamos de descubrir que la premura para  
 4 introducir el documento consiste en que quieren  
 5 utilizarlo para los interrogatorios y las  
 6 explicaciones de los expertos. Es evidente que  
 7 por lo menos el cambio de razón me parece de  
 8 mala fe.

9 Segundo comentario: nos hablan de  
 10 impeachment documents. Un impeachment document  
 11 es un documento que se utiliza durante el  
 12 interrogatorio del testigo; no después de su  
 13 testimonio. Adicionalmente, no es cierto que el  
 14 impeachment sea una práctica en el arbitraje  
 15 internacional, y no tengo que explicarle eso a  
 16 este distinguido Tribunal. En mi experiencia  
 17 solo he visto que se utilizan impeachment  
 18 documents cuando las partes expresamente se  
 19 ponen de acuerdo en ello, porque es una  
 20 desviación de lo que normalmente ocurre en la  
 21 práctica del arbitraje internacional.

1 Sobre esto, de alguna manera, y esto debe  
 2 tenerlo muy claro el Tribunal, la demandada  
 3 intentó introducir ese documento, y lo intentó  
 4 -ustedes recordarán- durante el interrogatorio  
 5 de Carlos Ríos cuando empezaron a hacer  
 6 preguntas sobre un documento que no estaba en  
 7 el expediente. En ese momento yo objeté a esa  
 8 pregunta sobre el fundamento de que la pregunta  
 9 estaba siendo formulada sobre un documento que  
 10 no estaba en el expediente y esa objeción fue  
 11 aceptada por el Tribunal. De tal manera que lo  
 12 que nos están pidiendo de alguna manera es una  
 13 reconsideración de esa decisión que ya tomó el  
 14 Tribunal, y a mi modo de ver solo podría  
 15 prosperar esa reconsideración si hubiera  
 16 elementos nuevos en lo que la demandada  
 17 propone. Y yo no veo, y no han intentado  
 18 alegarlo de ninguna manera en ese sentido, que  
 19 exista un elemento nuevo en lo que nos han  
 20 dicho hoy. Es simplemente un documento que  
 21 quieren utilizar -por lo menos eso dijeron al

1 principio- para contradecir un argumento de --  
2 una respuesta de Carlos Ríos.

3 Si la regla hubiera sido que podíamos  
4 presentar impeachment documents, nosotros  
5 habríamos querido quizá utilizar algunos  
6 documentos también, lo que no pudimos hacer  
7 durante el interrogatorio de los testigos de la  
8 demandada.

9 Tercer comentario, este es un documento -se  
10 nos dice- de fecha 30 de enero del 2019. Es un  
11 documento que sin ninguna duda la República de  
12 Chile ha tenido durante por lo menos un par de  
13 meses, y es simplemente incomprensible que esos  
14 documentos sean introducidos en mitad de la  
15 audiencia. Es cierto que no teníamos, como se  
16 acostumbra a llamar, una cut-off date, pero yo  
17 creo que en la práctica si existe una cut-off  
18 date en cualquier arbitraje es antes de la  
19 audiencia para que, entre otras cosas, los  
20 testigos y los expertos de ambas partes puedan,  
21 si es necesario, comentar los nuevos

1 documentos, ser examinados e interrogados sobre  
2 esos documentos, y para dar simplemente un  
3 ejemplo, quizás el señor José Ferrer tenga algo  
4 relevante que decir sobre ese documento, y el  
5 señor Ferrer ya se fue. Está ya de regreso en  
6 la República de Chile, y allí pues habrá sin  
7 ninguna duda una afectación del derecho de  
8 defensa de los demandantes.

9 Y quiero terminar, y este es mi cuarto  
10 comentario por ahí: me parece que la manera de  
11 hacerlo, anunciar un objetivo y después cambiar  
12 el objetivo para introducir el documento en  
13 medio de la audiencia, evidentemente crea una  
14 situación de indefensión. No hemos podido  
15 comentar el documento con gente de la empresa o  
16 con nuestros clientes, de tal manera que de  
17 aceptar este documento en un momento tan tardío  
18 me parece sería contrario al debido proceso al  
19 que tiene derecho nuestro cliente.

20 Gracias, señora presidenta y miembros del  
21 Tribunal.

1 PRESIDENTA KAUFMANN-KOHLER: Gracias.

2 Vamos a empezar con el interrogatorio de los  
3 testigos -- de los expertos en este momento,  
4 que ya están esperando, y después, durante la  
5 primera pausa, el Tribunal se reunirá para  
6 deliberar la solicitud.

7 INTERROGATORIO CONJUNTO A LOS PERITOS

8 LUIS WILLUMSEN Y HUGO E. SILVA

9 PRESIDENTA KAUFMANN-KOHLER: ¿Ustedes van a  
10 dar su testimonio en inglés?

11 SEÑOR WILLUMSEN: No, en español.

12 PRESIDENTA KAUFMANN-KOHLER: En español.

13 SEÑOR GARCÍA REPRESA: Perdón, señora  
14 presidenta. Aquí me sorprende la respuesta que  
15 acabo de escuchar, porque las partes -- yo  
16 recuerdo que tuvimos que identificar el idioma  
17 en el que iban a testificar los testigos y  
18 expertos. Y de parte de Chile se nos dijo que  
19 testificaría en inglés, lo que obviamente tiene  
20 un impacto en cómo nos hemos preparado.

21 PRESIDENTA KAUFMANN-KOHLER: A mí también me

1 sorprendía, porque los informes son redactados  
2 en inglés, pero...

3 SEÑOR GRANÉ LABAT: Gracias, señora  
4 presidenta.

5 Hubo una comunicación posterior que se envió  
6 en la cual se hizo el cambio y esto fue algo  
7 que incluso se discutió con los abogados de las  
8 demandantes muchos días antes. Vamos a buscar  
9 la fecha precisa de esa comunicación, señora  
10 presidenta.

11 SEÑOR GARCÍA REPRESA: Agradecería que la  
12 busquen porque yo me quedé en una carta del 22  
13 de febrero. Quizá no lo haya visto yo, pero el  
14 22 de febrero se nos dijo que efectivamente  
15 iban a testificar en inglés. Pero veamos la  
16 comunicación con mucho gusto.

17 Ahora, el problema sigue siendo el mismo: si  
18 estaba previsto que fuera en inglés pues en ese  
19 caso yo estoy preparado para hacer el  
20 interrogatorio en inglés.

21 SEÑOR WILLUMSEN: No tenemos ningún problema

1 en escuchar preguntas en inglés, y si quiere  
2 contestaremos en inglés también. Eso no es un  
3 problema.

4 SEÑOR GARCÍA REPRESA: Perfecto.

5 PRESIDENTA KAUFMANN-KOHLER: Vamos a  
6 comenzar de todas formas con la presentación, y  
7 la presentación ya entiendo que está en la  
8 pantalla y que se lee en español.

9 SEÑOR WILLUMSEN: Así es.

10 PRESIDENTA KAUFMANN-KOHLER: Sí. Antes de  
11 empezar con la presentación, ¿pueden por favor  
12 confirmar quién es Luis Willumsen?

13 SEÑOR WILLUMSEN: Yo soy Luis Willumsen.

14 PRESIDENTA KAUFMANN-KOHLER: ¿Es usted que  
15 tendrá la responsabilidad primera de responder  
16 las preguntas o delegar a su socio?

17 SEÑOR WILLUMSEN: Así es.

18 PRESIDENTA KAUFMANN-KOHLER: Entonces es  
19 usted Hugo Silva.

20 SEÑOR SILVA: Sí, yo soy. Buenos días.

21 PRESIDENTA KAUFMANN-KOHLER: Han entregado

1 dos informes en este arbitraje: el primero del  
2 día 13 de junio de 2018 y el segundo del día 24  
3 de enero de 2019. ¿Correcto?

4 SEÑOR WILLUMSEN: Correcto.

5 PRESIDENTA KAUFMANN-KOHLER: Comparecen como  
6 expertos en este arbitraje. Como expertos  
7 tienen el deber de hacer solo estas respuestas  
8 en conformidad con su leal saber y entender.  
9 ¿Lo pueden confirmar leyendo la declaración de  
10 experto cada uno, por favor?

11 SEÑOR WILLUMSEN: Luis Willumsen. Declaro  
12 solemnemente, por mi honor y conciencia, que lo  
13 que manifestaré estará de acuerdo con lo que  
14 sinceramente creo.

15 PRESIDENTA KAUFMANN-KOHLER: Gracias.

16 SEÑOR SILVA: Declaro solemnemente, por mi  
17 honor y conciencia, que lo que manifestaré  
18 estará de acuerdo con lo que sinceramente creo.

19 PRESIDENTA KAUFMANN-KOHLER: Bien.

20 ¿No sé si hay preguntas antes de pasar a la  
21 presentación?

1 SEÑOR GRANÉ LABAT: No hay preguntas, señora  
2 presidenta, pero entiendo que los doctores  
3 Willumsen y Silva tienen una pequeña corrección  
4 que hacer a uno de sus informes, y vamos a  
5 distribuir esa corrección, y voy a invitar al  
6 doctor Silva a que simplemente explique en qué  
7 consiste esa corrección.

8 SEÑOR SILVA: La corrección es sobre la  
9 figura 7 del segundo reporte, donde por algún  
10 problema -no sé si de impresión o de  
11 transformación de Word a PDF- la línea punteada  
12 se desplazó. Debiera estar sobre el 3 por  
13 ciento, que es la versión corregida que tienen  
14 abajo, y arriba aparece cerca del 4 por ciento.  
15 No sé si han llegado a verla.

16 PRESIDENTA KAUFMANN-KOHLER: ¿En qué página  
17 se encuentra?

18 SEÑOR SILVA: Lo busco de inmediato. Página  
19 31 del segundo informe.

20 PRESIDENTA KAUFMANN-KOHLER: Sí.

21 SEÑOR SILVA: ¿Sí? La figura 6 tiene la

1 línea correcta. La 7 se desplazó un poco.

2 También tuve la oportunidad de revisar lo  
3 que señaló la doctora Weinstock en su  
4 presentación sobre un posible error en los  
5 reportes de vandalismo de nuestro informe,  
6 donde, no especificó el año, pero dijo que,  
7 para Express, 55 -- habíamos señalado 55  
8 reportes por mes siendo que en realidad eran  
9 226. Tuve la oportunidad de revisarlo y creo  
10 confirmar que no hay ningún error. Creo que su  
11 afirmación fue debido a que no entendió bien la  
12 metodología que yo utilicé, que está claramente  
13 explicada en los párrafos anteriores a esa  
14 figura.

15 PRESIDENTA KAUFMANN-KOHLER: ¿No hay más  
16 preguntas?

17 SEÑOR GRANÉ LABAT: No, señora presidenta.  
18 Gracias.

19 PRESIDENTA KAUFMANN-KOHLER: Bien. Entonces  
20 tiene la palabra para su presentación.

21 SEÑOR WILLUMSEN: Muchas gracias, señora

1 presidenta, miembros del Tribunal y asistentes  
2 a esta sesión.

3 Mi nombre es Luis Willumsen, soy uno de los  
4 dos...

5 PRESIDENTA KAUFMANN-KOHLER: Perdón.

6 ¿Puede acercar el micrófono, por favor? Sí,  
7 gracias.

8 SEÑOR WILLUMSEN: Gracias.

9 Mi nombre es Luis Willumsen. Soy uno de los  
10 dos expertos que testifican en esta ocasión. He  
11 destinado la totalidad de mi vida profesional  
12 al transporte. Tengo una maestría en  
13 transporte, un doctorado en transporte y uno de  
14 los proyectos relevantes a este caso es que fui  
15 el director del proyecto que hizo el diseño  
16 operacional del Transmilenio en Bogotá.

17 A mi izquierda está el experto Hugo Silva,  
18 que es un investigador y profesor de la  
19 Universidad Católica de Chile. También cuenta  
20 con un doctorado de la Universidad Libre de  
21 Ámsterdam, y es activo participante en varios

1 centros de investigación, uno de los cuales es  
2 BRT+, un centro de investigación que cuenta con  
3 financiamiento de Volvo en este caso.

4 El alcance de nuestro trabajo quedó definido  
5 como aportar un análisis objetivo y crítico de  
6 los informes de BRT Plan y Transconsult, y esa  
7 es la totalidad de nuestro trabajo.

8 El contexto en que estamos operando es  
9 importante. El Transantiago que se implementó  
10 en 2005, 2007, tenía algunos problemas de  
11 diseño y también tuvo problemas de  
12 implementación. Requirió una intervención  
13 importante del Estado que en su momento  
14 significó un subsidio que originalmente no  
15 estaba planeado. Ese subsidio llega hoy en día  
16 a 2 millones de dólares al día. Es un valor  
17 alto que le cuesta al país y demuestra un  
18 esfuerzo de Chile por lograr mejorar el sistema  
19 de transporte de Santiago.

20 A pesar de ese esfuerzo en 2007, 2008  
21 algunos problemas persistieron. El contrato de

1 ese momento fundamentalmente pagaba a los  
2 operadores por el kilómetro recorrido. Eso  
3 generó que algunos de ellos abusaran de este  
4 contrato, e incluso circularan buses sin tomar  
5 pasajeros, porque eso les permitía aumentar el  
6 ingreso. No era -- tomar pasajeros costaba caro  
7 comparado con circular los buses vacíos.

8 Esos tipos de abusos y el hecho de que los  
9 ciudadanos de Santiago opinaran que la calidad  
10 del servicio era muy pobre hizo que se  
11 desarrollaran nuevos contratos. Son los  
12 contratos del 2011 en los cuales se pone mucho  
13 énfasis en la calidad del servicio. Se  
14 introducen una serie de indicadores nuevos. Se  
15 pone mucho énfasis también en la que reducción  
16 o el control de la evasión porque se observó  
17 que la (insatisfacción) de los ciudadanos había  
18 sido volcada en una creciente evasión que  
19 llegaba alrededor del 24, 25 por ciento a  
20 finales de 2011. Los operadores analizan este  
21 contrato y lo aceptan, lo firman, y eso hace

1 que estemos en esta conversación hoy en día.

2 La opinión de BRT Plan y Transconsult  
3 nosotros la resumimos en dos aspectos, y la  
4 tratamos en más detalle en nuestro informe.  
5 Primero, que Chile no hizo esfuerzo adecuados  
6 para reducir la evasión y que esto resultó en  
7 pérdida de ingresos importantes para Alsacia y  
8 Express. Y segundo, que Chile causó el pobre  
9 desempeño, que no se discute, de Alsacia y  
10 Express al no reducir el vandalismo, no aprobar  
11 un aumento de la flota y por enfrentarlos a  
12 condiciones adversas de varios tipos que vamos  
13 a discutir hoy.

14 Aquí tenemos una diferencia muy importante  
15 entre la opinión de BRT Plan, Transconsult y  
16 nosotros. BRT Plan y Transconsult sostienen que  
17 existen estándares y buenas prácticas que  
18 Transantiago debió haber implementado desde su  
19 primer momento al firmar los nuevos contratos,  
20 por ejemplo, para reducir la evasión a un  
21 objetivo del 9 por ciento.



1 La verdad es que Transantiago nunca  
2 pretendió ser un BRT. Las palabras que parecen  
3 ser importantes, porque BRT Plan Transconsult  
4 destina un par de páginas a sostener que  
5 Transantiago debió ser un BRT. La importancia  
6 parece ser poder contrastarlo con el BRT  
7 Standard, un nivel de evaluación de distintos  
8 corredores en el mundo.

9 Como decía, Transantiago nunca pretendió ser  
10 un BRT, no aparece en ninguna documentación, no  
11 aparece en ninguna presentación ni puede  
12 argumentarse que la calidad o la situación del  
13 Transantiago en este momento pudieran  
14 eventualmente corresponder a un BRT.

15 A mí me ha tocado en la vida profesional más  
16 frecuentemente asesorar a los inversionistas  
17 que preparan una oferta para una concesión como  
18 esta que al sector público. Tengo que  
19 confesarlo. No estoy en la misma posición de  
20 BRT Transconsult.

21 En estas opiniones que yo doy donde asesoro

1 al inversionista tengo que mirar cuál es el  
2 contexto, cuál es el nivel de desarrollo del  
3 país, cuáles son las condiciones en que en ese  
4 momento el transporte público opera, cuáles son  
5 las condiciones que el contrato establece.  
6 Puede ser en algunos casos una propuesta de  
7 contrato pero todavía en negociación, que el  
8 contrato establece cómo el nuevo operador o el  
9 operador puede utilizar esas condiciones del  
10 contrato para contener el riesgo y para ver  
11 cuáles son las recompensas que él puede obtener  
12 dentro de un contrato nuevo.

13 Yo considero cuáles son las condiciones del  
14 país, qué es lo que el Estado parece prometer,  
15 qué es lo que el Estado en un caso está  
16 deseando hacer pero no es necesariamente una  
17 promesa. Y en base a esas condiciones yo  
18 recomiendo a mis clientes inversionistas que  
19 tomen una acción o que no tomen ninguna y que  
20 abandonen el proyecto.

21 Por eso creo que lo relevante en este caso

1 no son los estándares y las mejores prácticas  
2 internacionales sino en qué condiciones se  
3 estaba operando en el año 2011 cuando se  
4 propusieron y se firmaron los nuevos contratos,  
5 cuál era el nivel de evasión que existía, cuál  
6 era el nivel de vandalismo que ya preexistía y  
7 qué podría hacer el operador y el Estado para  
8 contener esos problemas, qué apoyo podría  
9 esperarse razonablemente del Estado en esas  
10 tareas. Y ahí es importante si el contrato dice  
11 que el Estado tenía una obligación o solamente  
12 una facultad para contener la evasión, por  
13 ejemplo, y qué ventaja, que upside se podría  
14 contar si el Estado realmente como dice que  
15 planea hacerlo realmente invierte en  
16 infraestructura en el tiempo y en la calidad  
17 que aparece en un plan de desarrollo.

18 En mi experiencia de más de cuarenta años  
19 profesional hasta ahora nunca me he encontrado  
20 con un plan de transporte que se haya cumplido  
21 en la fecha y en la magnitud que ha sido

1 publicado.

2 ¿Cuáles son los aspectos claves del  
3 contrato? Y algunos de ellos ya  
4 desgraciadamente o felizmente los hemos  
5 revisado varias veces en esta audiencia. El  
6 pago a los operadores es fundamental. Sabemos  
7 que es un pago basado por una parte en los  
8 buses kilómetros y, por otra parte, en el  
9 número de pasajeros transportados traducidos  
10 en un fondo a través del indicador IPK. Sabemos  
11 que estos factores de pago se ajustan  
12 mensualmente por inflación y por cambio en el  
13 valor de alguno de los insumos que tiene la  
14 operación. Hay un ajuste anual que es muy  
15 importante de recuperación de pérdidas de  
16 ingresos que pueden deberse a variación de la  
17 demanda, reducción de la demanda por evasión o  
18 sencillamente reducción de la demanda porque el  
19 usuario prefiere otros modos. Eso se llama el  
20 AIPK.

21 Y un ajuste cada dos años al valor de PPT,

1 que es el valor pagado por pasajero  
2 transportado, de tal forma que ese valor  
3 aumenta si ha habido una baja en las  
4 validaciones, que son las que se cuentan, o  
5 disminuye si ha habido un aumento de las  
6 validaciones, a menos que -y esto es  
7 importante- el operador pueda demostrar que ha  
8 hecho suficientes esfuerzos, que esa reducción  
9 de la evasión se debe a los esfuerzos del  
10 operador para reducir la evasión.

11 Esta evasión también se puede hacer por --  
12 este ajuste también se puede hacer por otras  
13 causas. No quiero aburrirlos con las  
14 ecuaciones, sino sencillamente llevarlos a este  
15 gráfico que muestra cómo cuando partimos de una  
16 demanda de referencia, que yo la llamé 100 por  
17 ciento acá, cuando hay una pequeña reducción de  
18 demanda que es inferior al 3 por ciento de  
19 reducción, hay una banda de más/menos 3 por  
20 ciento sobre la demanda de referencia que no  
21 tiene compensación.

1 Cuando la demanda aumenta y aumenta a un  
2 nivel que yo he representado aquí como el 113  
3 por ciento de la demanda, un 13 por ciento de  
4 crecimiento, ese aumento de la recaudación que  
5 se produce dividido el aumento de las  
6 variaciones se reparte: un 65 por ciento lo  
7 retiene el operador, un 35 por ciento va al  
8 Ministerio de Transportes y Telecomunicaciones  
9 para que pueda hacer otras acciones para  
10 mejorar el servicio de transporte.

11 Si las validaciones caen, y aquí en el  
12 ejemplo utilizado, 87 por ciento, o sea 23 por  
13 ciento -- 13 por ciento de reducción de las  
14 validaciones, el operador tiene una  
15 compensación. La compensación no es el total  
16 hasta llegar al 97 por ciento pero recupera el  
17 65 por ciento de la recaudación que había  
18 perdido por la caída de validaciones.

19 Noten también que esta situación no es  
20 simétrica: cuando aumenta la demanda el  
21 operador retiene el 65 por ciento y el Estado

1 solamente recupera el 35 por ciento. Cuando cae  
2 la demanda el operador es recompensando o  
3 compensado con un 65 por ciento. O sea, toda  
4 esta acción está en general en favor del  
5 operador.

6 Yo quisiera decir un par de cosas sobre la  
7 evasión que son importantes antes de continuar  
8 adelante. En primer lugar, es un problema  
9 general, afecta a todas las ciudades en  
10 distintas medidas. Y aquí pongo solamente tres  
11 ejemplos que están en los textos que hemos  
12 puesto a disposición del Tribunal.

13 Santiago tiene alrededor del 27 por ciento.  
14 Bogotá aparentemente tiene alrededor del 20 por  
15 ciento en este momento del sistema. La verdad  
16 es que es interesante que no sabemos por qué no  
17 se hace una evaluación de la evasión en Bogotá.  
18 Esta es solamente una estimación. Bogotá ha  
19 estado operando por -- Transmilenio ha estado  
20 operando por 19 años y aun hoy no adopta lo que  
21 presumiblemente es una buena práctica de medir

1 la evasión. Lo está empezando a considerar en  
2 este momento.

3 Reggio Emilia, en el norte de Italia,  
4 aparentemente en un momento tuvo 43 por ciento,  
5 pero aquí lo que yo quisiera destacar es que a  
6 menudo cuando se habla de niveles de evasión,  
7 no son necesariamente niveles de evasión  
8 correctamente medidos. La forma habitual -- la  
9 mayor parte de las tasas de evasión resultan de  
10 las inspecciones, de la fiscalización. Cuando  
11 un fiscalizador, generalmente uniformado, se  
12 sube a un bus o está en una parada de bus, el  
13 comportamiento del evasor cambia: o valida o no  
14 se sube, o se baja si puede. Entonces, la tasa  
15 de evasión detectada por la fiscalización  
16 siempre es menor que la tasa de evasión medida  
17 de otra forma más científica.

18 La forma adoptada en Santiago no es única,  
19 pero es muy buena: es tener observadores de  
20 incógnito que solamente observan y no  
21 fiscalizan. Cuentan cuántas personas validan,

1 cuántas personas no validan, y de allí sale  
2 esta evaluación de la evasión que se publica  
3 cada tres meses. En realidad los periódicos de  
4 Santiago la publican cada tres meses llevando  
5 una evaluación de cómo evoluciona la tasa de  
6 evasión en el mundo.

7 Algo parecido pero menos imperfecto, y en  
8 ese sentido estamos de acuerdo con el doctor  
9 Hook de que los problemas de estudiar la  
10 evasión seriamente son difíciles porque los  
11 datos son malos y hay pocos estudios -estamos  
12 totalmente de acuerdo con eso-, es que las  
13 tasas de inspección a veces también son  
14 dudosas. A menudo las inspecciones se hacen en  
15 campañas y aquí ha habido varias campañas  
16 sucesivas durante la evolución de Transantiago,  
17 y ocurre lo mismo en otros países.

18 Cuando se hace una inspección por campaña  
19 obviamente se aumenta el número de inspectores  
20 y se focaliza en un lugar. Las tasas de  
21 inspección que estamos hablando aquí, en

1 general, las que reporta Transantiago, son  
2 tasas anuales. En realidad son mes a mes, como  
3 lo vamos a ver, pero corresponden al promedio  
4 del año; no necesariamente al de una campaña  
5 específica de inspección.

6 Creo que hay cuatro formas de atacar la  
7 evasión, que es un problema complejo. Uno,  
8 antes de subir o al subir al bus, fuera del bus  
9 mediante medidas de fiscalización, legislación,  
10 comunicación y facilidades de pago. Al subir al  
11 bus el conductor tiene bastante que hacer: debe  
12 manejar las puertas inteligentemente, sobre  
13 todo la puerta trasera, o las puertas traseras.  
14 Varios de los buses en Transantiago son  
15 articulado con tres puertas. También el uso del  
16 torniquete. No es ideal, a nadie le gusta el  
17 torniquete; sin embargo, en situaciones de alta  
18 evasión es necesario emplearlo como una forma  
19 de contener el problema. Aquí tenemos dos  
20 fotografías; la superior corresponde a los  
21 torniquetes que utilizan algunas empresas en el

1 Transmilenio de Bogotá. La inferior es la  
2 introducción del uso del torniquete en  
3 Santiago.

4 Limitando la evasión fuera del bus requiere  
5 introducir zonas pagas -se ha mencionado varias  
6 veces- y se necesitan sistema de inspección  
7 tanto por el Estado como los operadores. La  
8 fotografía superior precisamente muestra un  
9 caso en que los dos tipos de inspectores y  
10 fiscalizadores están operando en un bus.

11 Mejorar la legislación. Ya se ha mencionado  
12 varias veces que Chile ha hecho esfuerzos hasta  
13 lograr finalmente en el año 2018 una mejor  
14 legislación para controlar la evasión, el  
15 tamaño de las multas y asegurarse que las  
16 multas se paguen, campañas de comunicación y la  
17 abundancia de puntos de recarga Bip!, que es el  
18 único modo de pago en el caso de Santiago.

19 Este gráfico es interesante, porque muestra  
20 cómo la línea gris oscura es la evolución de la  
21 evasión desde el comienzo de Transantiago, y

1 las barras verticales azules reflejan las  
2 inspecciones, la fiscalización por parte del  
3 Estado. Allí no aparecen las fiscalizaciones  
4 que empiezan por parte del operador, que  
5 empiezan a funcionar con los nuevos contratos.

6 Se puede observar que la evasión era  
7 creciente hasta el momento de llegar los nuevos  
8 contratos, se firman los nuevos contratos y yo  
9 veo, yo interpreto que el aumento de la  
10 preocupación por parte del operador significa  
11 que en el primer año al menos la evasión  
12 comienza a caer, comienza a ser controlada. Eso  
13 es muy positivo e indica que los contratos  
14 están razonables bien diseñados, los operadores  
15 toman acciones, capacitan a los choferes de  
16 otra forma distinta, interesados en subir  
17 pasajeros en lugar de considerarlos una  
18 molestia, pero sin embargo después de un año la  
19 evasión vuelve a subir nuevamente, y eso es un  
20 problema serio para el Estado y empieza a  
21 incentivar a que el Estado considere que la

1 acción de los operadores no es suficiente y  
2 debe aumentar sus esfuerzos.

3 Estos esfuerzos culminan con varias acciones  
4 en una mesa de trabajo y varias acciones, que  
5 no están reflejadas obviamente en el gráfico,  
6 pero sí las tasas de fiscalización, que logran  
7 contener la evasión alrededor del año 2017 y  
8 revertir la tendencia nuevamente y ahora se  
9 encuentra en una tarea de superar ese problema.

10 En la situación actual...

11 SEÑOR GRANÉ LABAT: Perdón que interrumpa,  
12 según mis cálculos tiene aproximadamente doce  
13 minutos restantes.

14 SEÑOR WILLUMSEN: Okay. Trataré de apurarme.  
15 Probablemente me he extendido demasiado.

16 Los esfuerzos que ha hecho Chile para  
17 reducir la evasión están mostrados como ejemplo  
18 en este gráfico en la columna izquierda. En la  
19 columna derecha se muestra cómo la colaboración  
20 con Alto Evasión, que es una buena empresa que  
21 Alsacia y Express contrataron para atacar este

1 problema, cómo han colaborado Alsacia y Express  
2 y sus fiscalizadores con el Estado, con  
3 Carabineros. Ha contado con este apoyo pero  
4 también muestra en esos documentos que están  
5 citados acá cómo Alto Evasión se ha visto un  
6 poco frustrado porque los fiscalizadores tenían  
7 un alto ausentismo, los choferes no siempre era  
8 posible capacitarlos en la forma que Alto  
9 Evasión quería hacerlo, etcétera.

10 Me salto el plan integral contra la evasión.

11 Quiero solamente señalar que en el uso de  
12 torniquetes Alsacia y Express solamente  
13 adoptaron los torniquetes que el Estado les  
14 pagó. El resto de las empresas hicieron  
15 inversiones importantes en aumentar su propio  
16 número de torniquetes en cada uno de los casos.

17 El número de puntos de recarga Bip! ha sido  
18 más que duplicado. Las plazas de zonas pagas  
19 han sido incrementadas significativamente  
20 también.

21 No quisiera abundar más en esto, así que le

1 voy a pasar la palabra a mi colega, Hugo Silva,  
2 para que continúe la presentación.

3 SEÑOR SILVA: Muchas gracias.

4 Esta segunda parte de la presentación trata  
5 sobre las causas del mal desempeño de Alsacia y  
6 Express, y lo que intentamos hacer acá es  
7 tratar de analizar la cantidad enorme de datos  
8 que existen para poder salir de los ejemplos o  
9 casos puntuales en el análisis y tratar de  
10 entregar una imagen completa del problema. Ese  
11 fue nuestro objetivo principal para poder  
12 responder al informe de BRT Plan Transconsult.  
13 Entonces, es un hecho que el desempeño de  
14 Alsacia y Express es deficiente en términos  
15 absolutos y relativos.

16 Nosotros mostramos que esto es cierto para  
17 todos los indicadores. En pantalla aparece el  
18 famoso ICR a esta altura que trata de  
19 regularidad donde la línea azul, abajo, es  
20 Alsacia, la línea hoja es Express y la línea  
21 verde, el promedio de todos los otros

1 operadores, donde se ve claramente que durante  
2 todo el período de la nueva concesión han  
3 tenido un desempeño significativamente inferior  
4 al promedio del resto.

5 Según BRT Transconsult el mal desempeño se  
6 debe a acciones u omisiones de Chile, y la  
7 causa primera principal que voy a tratar  
8 primero sería un déficit de flota, como hemos  
9 escuchado en estos días.

10 Entonces, los argumentos son que el  
11 vandalismo reduce la demanda y la flota  
12 disponible y que la infraestructura de buses --  
13 dedicada para buses no es suficiente y que la  
14 que existe no es efectiva. Por lo tanto, había  
15 velocidades menores, lo que lleva a un déficit  
16 de flota.

17 Nuestra conclusión principal respecto a esto  
18 es que el mal rendimiento y el incumplimiento  
19 no se deben a un déficit de flota. Y nuestro  
20 análisis se basa en que si el mal rendimiento  
21 fuera por déficit de flota debería tener un

1 buen rendimiento los fines de semana porque las  
 2 velocidades son en promedio 15 por ciento  
 3 mayores, las frecuencias en los programas  
 4 operacionales son menores y eso lleva a que la  
 5 flota que requieran para operar el programa de  
 6 operaciones es 50 por ciento de la flota base.  
 7 Es decir, aproximadamente necesitarían 1.000 de  
 8 los 2.000 buses que tienen para cumplir con el  
 9 programa de operación.

10 Cuando vemos las operaciones de los fines de  
 11 semana nos encontramos con que ni Alsacia y  
 12 Express ninguno de los dos mejora en ninguno de  
 13 los índices relevantes. El rendimiento -- en la  
 14 figura se muestra el ICR pero en nuestro  
 15 informe están todos los índices relevantes, en  
 16 los fines de semana es igual o incluso a veces  
 17 peor que los días de semana. Con esto  
 18 concluimos que el mal rendimiento e  
 19 incumplimiento no se deben a un déficit de  
 20 flota.

21 Y acá hay dos comentarios relevantes que

1 quisiera hacer. Primero, que BRT Plan  
 2 Transconsult en su segundo informe no responde  
 3 a esta conclusión principal. Y además que el  
 4 señor Mac Allister en su segunda declaración  
 5 testimonial dice que esto no sería correcto  
 6 porque tienen en mantenimiento buses los fines  
 7 de semana. Y como escuchamos hace unos días,  
 8 mencionó que regularmente serían 400 los buses  
 9 que tienen en mantención y en casos  
 10 excepcionales podrían llegar hasta 800. Yo no  
 11 pude encontrar ningún documento que respalde o  
 12 que tenga ese número de buses, pero sí quiero  
 13 observar que según los casos necesitarían 1.000  
 14 de 2.000 para poder cumplir.

15 Luego pasamos al nivel de vandalismo, a  
 16 estudiar el vandalismo, que es un problema en  
 17 Chile, es un problema común en el mundo. Y lo  
 18 que nos encontramos es que Chile ha  
 19 implementado numerosas medidas para combatir el  
 20 vandalismo y esto se ve reflejado en que han  
 21 sido efectivas, porque a partir del año 2014 ha

1 disminuido los niveles de vandalismo  
 2 fuertemente.

3 El gráfico muestra los reportes promedio por  
 4 mes de Alsacia y Express, Alsacia en azul y  
 5 Express en rojo, que tienen un pick en 2014 con  
 6 60 y 90 cada uno, y que para 2017 y 2018 ya  
 7 están en aproximadamente 10 reportes de  
 8 vandalismo por mes y 20 reportes por mes para  
 9 Alsacia.

10 También analizamos cómo incide el vandalismo  
 11 en la flota disponible y observamos --  
 12 estudiamos los días en que la flota en  
 13 operación de Alsacia y Express fue menor al 97  
 14 por ciento requerido, es decir, cuando al menos  
 15 3 por ciento o más de la flota no salía a las  
 16 calles. Y tratamos de relacionar esto con el  
 17 vandalismo que ocurre agregado en los 7 días  
 18 anteriores, y lo que concluimos es que en los  
 19 días en que tuvo menos del 97 por ciento de la  
 20 flota en operación o no hubo nada de vandalismo  
 21 en los 7 días anteriores o hubo una cantidad de

1 vandalismo limitada, es decir, que afectaría a  
 2 menos del 3 por ciento de la flota. Entonces la  
 3 conclusión es que el vandalismo observado no  
 4 causa una disminución de flota que pueda  
 5 explicar el mal desempeño.

6 También analizamos la infraestructura  
 7 dedicada a buses que ha aumentado desde 2011.  
 8 Alsacia y Express recorren más kilómetros en  
 9 vías prioritarias que el promedio y lo que  
 10 mostramos en este gráfico es el porcentaje de  
 11 los kilómetros que recorren los buses de cada  
 12 uno de los operadores en vías prioritarias. Se  
 13 puede ver, a la derecha: las barras son el  
 14 promedio de todos los operadores, en rojo el  
 15 2011 y la subida casi al doble en 2017. Y esto  
 16 es mirando los kilómetros recorridos por los  
 17 buses, es decir, si es que hubiera algún tipo  
 18 de duda de cómo se miden las pistas Solo-bus o  
 19 las vía exclusiva, esto no estaría afectado por  
 20 eso porque es mirando el recorrido. Y también  
 21 se observa que Alsacia y Express, U1 y U4,

1 están por encima de todo el promedio en todo el  
2 período.

3 También analizamos la evidencia que existe  
4 sobre la efectividad de la infraestructura  
5 actual, la vía exclusiva y las pistas Solo-Bus.  
6 Y esto es difícil, porque no es simplemente  
7 comparar la velocidad en un eje con otro,  
8 porque los distintos ejes, las distintas calles  
9 tienen distintas intersecciones, distinta  
10 cantidad de semáforos para distintos niveles de  
11 demanda en los corredores, y las pistas Solo-  
12 Bus, como son efectivas, normalmente tienen más  
13 demanda. Por lo tanto, se detienen más tiempo y  
14 los buses pueden andar más lento por esta  
15 razón.

16 Lo que hicimos fue presentar dos estudios,  
17 dos investigaciones dedicadas exclusivamente a  
18 entender la eficiencia de las pistas Solo-Bus y  
19 las vías exclusivas en Santiago. Y lo que  
20 concluyen estas investigaciones es que las  
21 velocidades en las pistas Solo-Bus son entre 18

1 por ciento y 22 por ciento mayores que en vías  
2 sin prioridad y que la velocidad y regularidad  
3 en vías exclusivas son mayores que en vías sin  
4 prioridad.

5 La infraestructura que existe, como se  
6 observa en los otros operadores, es suficiente  
7 para tener un desempeño adecuado.

8 Finalmente, la segunda causa que señala BRT  
9 Plan Transconsult es que las compañías se  
10 enfrentarían a condiciones adversas. Primero,  
11 la evidencia sobre la eliminación de los  
12 servicios indica que un aumento de flota no  
13 hubiera mejorado el rendimiento de Alsacia y  
14 Express. Por ejemplo, después de la eliminación  
15 de servicios ellos evidentemente necesitaban  
16 menos buses para operar, 80 y 40 cada uno de  
17 las empresas, y su rendimiento no mejoró  
18 después de esto, como se puede ver ahí.

19 Por ejemplo, no aumenta sustancialmente el  
20 porcentaje de salidas y despachos de buses que  
21 cumplen el programa de operación; siguen aún

1 con este 80 y 40 buses menos necesario teniendo  
2 un rendimiento muy inferior al promedio del  
3 resto.

4 También los servicios nuevos tuvieron un  
5 alza en la calidad. Como se puede ver ahí un  
6 ejemplo, en el informe está detallado. El ICR,  
7 el índice de regularidad para el servicio 102  
8 de Alsacia y el 712 nuevo de STP, como saltó en  
9 calidad inmediatamente, y estos son servicios  
10 que, como son nuevos, requieren nueva flota  
11 también.

12 Nuestro análisis de intervalos regulares es  
13 sencillo. Lo que hicimos fue analizar qué  
14 porcentajes de intervalos son regulares para  
15 todas las compañías y concluimos básicamente  
16 que desde que el DTPM instruyó que se usaran  
17 intervalos regulares las compañías lo adoptaron  
18 y todas usan mayoritariamente intervalos  
19 regulares sin haber diferencia significativa  
20 entre los operadores.

21 Finalmente los indicadores usaban el sistema

1 que analizamos. Son objetivos, son  
2 transparentes, están desde el principio y son  
3 aplicados iguales para todas las compañías y  
4 son usados en muchas ciudades de muchos países.

5 A modo de conclusión, Alsacia y Express no  
6 hicieron en nuestra visión esfuerzos  
7 suficientes para controlar la evasión. Chile  
8 hizo esfuerzo para controlar la evasión en  
9 inspecciones, legislación, zonas pagas, puntos  
10 de recarga Bip!, torniquetes y comunicaciones.  
11 La evasión no causa un mal desempeño e  
12 incumplimiento. El vandalismo ha disminuido  
13 debido a acciones de Chile y no causa un  
14 déficit de flota. La infraestructura  
15 prioritaria para buses que existe es efectiva y  
16 todos los operadores son medidos con los mismos  
17 indicadores.

18 Alsacia y Express tienen un mal rendimiento  
19 y su incumplimiento no puede ser explicado por  
20 acciones u omisiones de Chile. Todos los  
21 operadores usan mayoritariamente intervalos

1 regulares y ellos enfrentan condiciones  
2 similares o mejores que el resto. El déficit de  
3 flota no puede ser la causa del mal desempeño y  
4 por lo tanto el mal rendimiento parece deberse  
5 a factores que están bajo el control de Alsacia  
6 y Express.

7 Muchas gracias.

8 PRESIDENTA KAUFMANN-KOHLER: Gracias.

9 Le paso la palabra al doctor García Represa.

10 SEÑOR GARCÍA REPRESA: Muchas gracias,  
11 señora presidenta. Y como conversamos  
12 anteriormente, con la venia, voy a hacerle  
13 preguntas en inglés. Si en algún momento por  
14 algún motivo le pareciera confusa, no dude en  
15 aclararlo.

16 I will begin by introducing myself. I am  
17 José Manuel García Represa, as you might have  
18 guessed I am representing the Claimants in  
19 these proceedings. And I will be asking you a  
20 few questions which I hope will be clear and  
21 precise and hopefully I will get answers that

1 are clear and precise too. We will try not to  
2 cut each other so there is no problem with the  
3 transcription, and to describe the process,  
4 I will be giving you a bundle of documents, and  
5 every time I refer you to a document I will  
6 tell you to the tab number and for the record  
7 I will give the exhibit number. So do not get  
8 confused. The tab number is going to be the  
9 tool you will use to identify the document.

10 Before we begin, I noted on slide 2 of your  
11 presentation, Mr Silva, you referred to the  
12 work you do for the Centro para el Desarrollo  
13 Urbano Sustentado. I understand that is  
14 CEDEUS.

15 SEÑOR SILVA: Yes, that is correct. I am a  
16 researcher in that centre.

17 SEÑOR GARCÍA REPRESA: How many years have  
18 you been working at CEDEUS?

19 SEÑOR SILVA: Approximately 3 and a half.

20 SEÑOR GARCÍA REPRESA: To be clear, CEDEUS  
21 provides services to the Chilean authorities,

1 including the DTPM, in relation to  
2 Transantiago, correct?

3 SEÑOR SILVA: Yes, there is a group of  
4 engineers that work -- I don't know if they are  
5 currently working but they have worked.

6 SEÑOR GARCÍA REPRESA: And you have worked  
7 in that group of engineers?

8 SEÑOR SILVA: No, I haven't.

9 SEÑOR GARCÍA REPRESA: So when we see on the  
10 website for CEDEUS that you authored certain  
11 reports for the DTPM, in fact you did not work  
12 on those reports, is that your testimony?

13 SEÑOR SILVA: Can I see the reports you are  
14 mentioning?

15 SEÑOR GARCÍA REPRESA: I am asking you. If  
16 we see your name in a report by CEDEUS for DTPM  
17 or on the CEDEUS website in relation to DTPM,  
18 should we understand that you did not work on  
19 those reports? Yes or no?

20 SEÑOR SILVA: Of course not. I have not  
21 done a report for DTPM.

1 SEÑOR GRANÉ LABAT: Perdón que interrumpa  
2 Sr. García Represa. Miembros del Tribunal,  
3 simplemente para volver al tema del idioma. Los  
4 Dres. Willumsen y Silva, entendemos nosotros,  
5 pueden contestar en español, no tienen que  
6 sentirse obligados a contestar en inglés.  
7 Tuvimos -como dije al inicio del  
8 interrogatorio- una comunicación con los  
9 abogados de la contraparte el 29 de marzo a las  
10 4 y 42 PM. Conversamos con los abogados, les  
11 comunicamos que iban a estar declarando en  
12 español. Ese mismo día nos comunicamos con la  
13 señora Kurowski, para también comunicarle el  
14 cambio. También con respecto a PwC, quien  
15 estaría declarando en inglés, y todo esto fue  
16 con ocasión de la carta que las partes tenían  
17 que enviar al Tribunal ese 29 de marzo, de  
18 conformidad con la sección 19 y 18 de la  
19 Resolución Procesal número 8. Gracias.

20 PRESIDENTA KAUFMANN-KOHLER: Pero ahora han  
21 contestado en inglés.

1 SEÑOR GRANÉ LABAT: Correcto, y  
2 justamente...

3 PRESIDENTA KAUFMANN-KOHLER: Sí, yo no me  
4 doy cuenta, pero pueden hablar -- pueden  
5 contestar en español. Las preguntas se harán en  
6 inglés, pero están libres de responder en  
7 español.

8 SEÑOR SILVA: Perfecto. Gracias.

9 ¿Puedo aclarar algo en relación a la  
10 pregunta anterior?

11 PRESIDENTA KAUFMANN-KOHLER: Sí, por favor.

12 SEÑOR SILVA: Tal vez el abogado García  
13 Represa se refería a que yo aparezco en la  
14 página web del CEDEUS como investigador, eso es  
15 efectivo. Pero como autor de un reporte para  
16 DTPM, no.

17 SEÑOR GARCÍA REPRESA: So is it your  
18 testimony, sir, that you have never worked for  
19 the DTPM or the Chilean authorities in relation  
20 to Transantiago? Yes or no?

21 SEÑOR SILVA: No, lo que yo dije es que no

1 he escrito ningún reporte, que fue lo que usted  
2 me preguntó, para DTPM. Yo sí he estado  
3 durante 11 meses como miembro de un consejo  
4 consultivo asesor del Ministerio donde me  
5 invitaron ad honorem a dar mi opinión sobre  
6 algunos temas.

7 P: And when was that, Sir?

8 SEÑOR SILVA: ¿Perdón? No recuerdo  
9 exactamente. Yo diría que a principios del  
10 2017.

11 P: But you don't mention that on your  
12 reports, do you?

13 SEÑOR SILVA: No recuerdo.

14 P: Professor Willumsen, this question  
15 I think is more to you. Am I correct in  
16 understanding that you advised Chilean  
17 operators when they were bidding for the  
18 Transantiago contracts back in 2004, 2005?

19 SEÑOR WILLUMSEN: That is correct.

20 SEÑOR GARCÍA REPRESA: Can you name those  
21 operators for me please?

1 SEÑOR WILLUMSEN: I don't recall the name.  
2 These were the small operators of the yellow  
3 buses at the time, and they were -- with the  
4 new contracts they had to set themselves up as  
5 companies. They could no longer operate as  
6 individual owners of buses and therefore they  
7 asked us and the University Andrés Bello to  
8 advise them, to help them, to prepare for the  
9 new contracts, and this was well before 2005,  
10 and -

11 SEÑOR GARCÍA REPRESA: Sorry to interrupt.  
12 Do you remember what my question was?

13 SEÑOR WILLUMSEN: Your question was whether  
14 I remember the name of the operators. At the  
15 time there were no names of the operators.

16 SEÑOR GARCÍA REPRESA: So the answer is no?

17 SEÑOR WILLUMSEN: The answer is I don't  
18 remember. The ones that remain today --

19 SEÑOR GARCÍA REPRESA: It is fine. The  
20 names of the ones that remain today I know.

21 I was asking about 2004.

1 Now, if we can turn, please, in tab 2 of  
2 your bundle, you will find your Second Report,  
3 and we will be using the English version, so if  
4 at any time you need the Spanish  
5 version -- I am assuming that it is a correct  
6 translation. By the way, which language did  
7 you prepare your report in?

8 SEÑOR WILLUMSEN: We wrote the reports in  
9 English, so we prefer to deal with the English  
10 version.

11 SEÑOR GARCÍA REPRESA: Very well then, thank  
12 you. So at page 24, in paragraphs 125 and 126,  
13 you refer to evasion --

14 SEÑOR GRANÉ LABAT: Perdón, Sr. García  
15 Represa. Como no tenemos la carpeta física.  
16 Cuando dice el divisor número dos no sabemos a  
17 cuál documento se está refiriendo.

18 SEÑOR GARCÍA REPRESA: Second report.

19 SEÑOR GRANÉ LABAT: ¿El divisor no. 2  
20 contiene el informe de ellos?

21 SEÑOR GARCÍA REPRESA: Second report.



1 SEÑOR GARCÍA REPRESA: Yes, that is correct.

2 So at paragraphs 125 and 126, you are  
3 challenging at 125 that the companies could  
4 have an expectation of a level of support from  
5 the state to fight evasion, to make it down to  
6 9 per cent. Just to be clear, you are not  
7 saying that 9 per cent is an unreasonable  
8 evasion rate, are you?

9 SEÑOR WILLUMSEN: No. I think, if anything,  
10 it is a modest target. I would recommend that  
11 people or companies should aim for a better  
12 target, a more demanding target than that, but  
13 at the same time recognise that it will take  
14 20, 30 years to get there, and many problems,  
15 other problems outside transport, will have to  
16 be solved in order to reach that target.  
17 Income inequality is a big problem in Chile,  
18 and is a big problem all over the world, and is  
19 one of the reasons behind the high evasion  
20 rate.

21 SEÑOR GARCÍA REPRESA: Now, you say in

1 paragraph 126 -- and we will get back to the  
2 timing issue; I am not forgetting that -- that  
3 it would be prudent to consider that any state  
4 support to reduce evasion would not be greater  
5 than that experienced at the time of the  
6 negotiations, you say particularly given the  
7 2011 contract's shift in the obligation to  
8 control evasion to the operators. Now, when  
9 you say shift, to be clear you are not  
10 suggesting, are you, that only the operators  
11 are responsible to fight against evasion?  
12 Correct.

13 SEÑOR WILLUMSEN: Only the operators are  
14 responsible to fight evasion. The government  
15 and the state has a faculty to do so but not  
16 the obligation.

17 SEÑOR GARCÍA REPRESA: So it is perfectly  
18 fine if the state simply does not do any  
19 enforcement; imposes no fines? Let me finish  
20 my question.

21 According to you, should the state, should

1 the state, if it is supporting Transantiago,  
2 consistent with its obligations under the law,  
3 enforce the fare or simply ignore evaders?  
4 What is your testimony?

5 SEÑOR WILLUMSEN: My testimony is that the  
6 state will normally -- should support the  
7 efforts to control evasion.

8 SEÑOR GARCÍA REPRESA: And that includes  
9 through inspections and fines, correct?

10 SEÑOR WILLUMSEN: Inspections and fines.  
11 All the methods that I mention in our report.

12 SEÑOR GARCÍA REPRESA: We will get to that.  
13 When you wrote paragraph 126 of your  
14 Second Report, had you evaluated how the state  
15 had implemented the December 2010 law against  
16 evasion?

17 SEÑOR WILLUMSEN: Honestly, no.

18 SEÑOR GARCÍA REPRESA: Did you review what  
19 the state was telling investors in the context  
20 of contract negotiations back in 2011 about  
21 evasion?

1 SEÑOR WILLUMSEN: I cannot say I have made a  
2 comprehensive review of those exchanges of  
3 views. They were not necessarily accessible to  
4 me. I looked very carefully at the contract,  
5 obviously, that was finally signed, and during  
6 the process of the audience here I have been  
7 aware of other documents that were also  
8 relevant. You will probably bring my attention  
9 to them.

10 SEÑOR GARCÍA REPRESA: That is a probably.  
11 We will see.

12 Now, is the fact that you did not look in  
13 detail at what was happening during the  
14 negotiations, is it because you received a  
15 legal instruction to focus your analysis on the  
16 period after February 2014? Yes or no?

17 SEÑOR WILLUMSEN: No.

18 SEÑOR GARCÍA REPRESA: But you did receive  
19 that instruction, correct?

20 SEÑOR WILLUMSEN: Originally, yes, and then  
21 I was allowed to expand that view.

1 SEÑOR GARCÍA REPRESA: That instruction was  
2 not apparent in your first report? It only  
3 surfaced in your Second Report, correct?

4 SEÑOR WILLUMSEN: I only reported it on the  
5 Second Report, yes.

6 SEÑOR GARCÍA REPRESA: Now, if you can now  
7 go please to tab 4 -- and this for the record  
8 is exhibit R-295 -- this is, at it says at the  
9 top, it is a working document, it is  
10 dated -- and I do not think this is in dispute  
11 so you should take my word for it -- dated  
12 17 August 2011, and it is a document that is  
13 sent by the Ministry to all the operators, or  
14 the entities negotiating with the state to  
15 become operators --

16 SEÑOR WILLUMSEN: I now know the document,  
17 yes.

18 SEÑOR GARCÍA REPRESA: You have seen it in  
19 these hearings for the first time?

20 SEÑOR WILLUMSEN: Yes, that is right.

21 SEÑOR GARCÍA REPRESA: Would it not have

1 been relevant to you in assessing what the  
2 investors' expectations were during  
3 negotiations?

4 SEÑOR WILLUMSEN: I don't think so, no...

5 SEÑOR GARCÍA REPRESA: So you would have  
6 ignored this document had you seen it anyway?

7 SEÑOR WILLUMSEN: No. If this document had  
8 become available to me, I would have looked at  
9 it.

10 SEÑOR GARCÍA REPRESA: My question is now  
11 that you have seen this document in these  
12 hearings, do you consider it relevant or not to  
13 assess what the investors' expectations were at  
14 the time of negotiations?

15 SEÑOR WILLUMSEN: No, I do not.

16 SEÑOR GARCÍA REPRESA: So you would have  
17 ignored it anyway?

18 SEÑOR WILLUMSEN: I would have ignored it  
19 anyway. I would have looked at it but I would  
20 have considered it very relevant in certain  
21 aspects of it but not the one that you are

1 probably --

2 SEÑOR GARCÍA REPRESA: No, I haven't, I  
3 haven't addressed with you any relevant-- any  
4 item yet. So, to be clear, would you have  
5 considered these documents, yes or no, relevant  
6 to assessing the investors' expectations?

7 SEÑOR WILLUMSEN: There are several aspects  
8 of this document that I would have considered  
9 relevant to assess the expectations of the  
10 investors.

11 SEÑOR GARCÍA REPRESA: Do you want to  
12 correct any part of your reports in accordance  
13 now that you have seen these documents?

14 SEÑOR WILLUMSEN: No, I don't.

15 SEÑOR GARCÍA REPRESA: Let's go to page 7,  
16 if you will, and to be clear, this is an  
17 extract of the document. At page 7 you will  
18 see item C-3 refers to demand projections and  
19 evasion. Do you see that?

20 SEÑOR WILLUMSEN: Yes.

21 SEÑOR GARCÍA REPRESA: Now, if you read the

1 second paragraph, the Ministry is asking for  
2 operators to project demand and for that to  
3 consider evasion. Correct?

4 SEÑOR WILLUMSEN: You have to give me some  
5 time to read it.

6 SEÑOR GARCÍA REPRESA: It is just the second  
7 paragraph. But go ahead read it, of course.

8 SEÑOR WILLUMSEN: I prefer to read the first  
9 paragraphs as well to understand the meaning of  
10 the second paragraph. (Pause) Yes.

11 SEÑOR GARCÍA REPRESA: So the last sentence  
12 of paragraph 2, if I understand correctly, in  
13 that sentence the state is asking to the  
14 operators to consider the control strategy in  
15 relation to evasion. Is that correct?

16 SEÑOR WILLUMSEN: Yes.

17 SEÑOR GARCÍA REPRESA: And by control  
18 strategy, is that the state's control strategy?  
19 Is that your understanding?

20 SEÑOR WILLUMSEN: It isn't clear from the  
21 document which one it is. It probably will

1 become clear when we look at the bullet points  
2 that follow.

3 SEÑOR GARCÍA REPRESA: Okay. Now, to be  
4 clear, this is indicating that there will be a  
5 control strategy, correct? It is using a  
6 conditional future tense, no?

7 SEÑOR WILLUMSEN: There will be a control  
8 strategy, yes.

9 SEÑOR GARCÍA REPRESA: And the first bullet  
10 refers to the improvement of the network of  
11 recharging points, charging points, and  
12 information to users, and those, I understand,  
13 are the bip! card recharging stations, correct?

14 SEÑOR WILLUMSEN: Yes.

15 SEÑOR GARCÍA REPRESA: And if you continue  
16 reading the second sentence, it is basically  
17 saying there will be a substantial increase in  
18 the number of bip! card recharging stations,  
19 correct?

20 SEÑOR WILLUMSEN: Yes.

21 SEÑOR GARCÍA REPRESA: And the effect of

1 that, if you read towards the end of the  
2 paragraph, is either to reduce or to eliminate  
3 the evasion that is due to those users who  
4 cannot charge.

5 SEÑOR WILLUMSEN: Yes, it says so.

6 SEÑOR GARCÍA REPRESA: And that is a problem  
7 that has been continuing thereafter, has it  
8 not?

9 SEÑOR WILLUMSEN: As I just demonstrated,  
10 the number of bip! charging points have been  
11 doubled.

12 SEÑOR GARCÍA REPRESA: But there are still  
13 people who are not validating because there are  
14 not enough recharging points?

15 SEÑOR WILLUMSEN: There would be people that  
16 claim that is the case, yes.

17 SEÑOR GARCÍA REPRESA: The second bullet  
18 point says the second instrument to fight  
19 evasion or treat evasion is the construction  
20 with recursos fiscales -- do you understand  
21 that to mean state funds?

1 SEÑOR WILLUMSEN: Yes. That is right.

2 SEÑOR GARCÍA REPRESA: So the construction  
3 with state funds of 60 new zonas pagas.

4 SEÑOR WILLUMSEN: Yes, I see that.

5 SEÑOR GARCÍA REPRESA: Those 60 zonas pagas  
6 were not built, were they?

7 SEÑOR WILLUMSEN: There are 350 zonas pagas  
8 built.

9 SEÑOR GARCÍA REPRESA: The state did not  
10 build 60 zonas pagas after the 2011 contracts,  
11 correct?

12 SEÑOR WILLUMSEN: I understand the state did  
13 build probably more than 60.

14 SEÑOR GARCÍA REPRESA: Let's go to tab 48 in  
15 that case, and we will come back to this  
16 document. For the record, that is exhibit  
17 WS-67. So by exhibit WS it means it is an  
18 exhibit to your reports, sir, and this is the  
19 data that underlies your analysis of zonas  
20 pagas, and to be clear, it is in A3 format to  
21 make it a bit more readable for members of the

1 Tribunal.

2 So what we see is the foundation for your  
3 analysis of zonas pagas, and if there is any  
4 doubt, we find the same graph in slide 20 of  
5 the presentation you just gave us this morning.  
6 Now, if we look at the left, we see the number  
7 of zonas pagas that existed at every point in  
8 time and who, according to you, operated them,  
9 correct?

10 SEÑOR WILLUMSEN: Yes.

11 SEÑOR GARCÍA REPRESA: And we see at the  
12 top, I think we have the additions of zonas  
13 pagas -- at least that is how I understand  
14 it -- the second chart, eliminadas, means those  
15 that were eliminated, and the neta means  
16 basically the net additions, additions minus  
17 eliminations of zonas pagas, correct?

18 SEÑOR WILLUMSEN: That is right.

19 SEÑOR GARCÍA REPRESA: So in the neta chart,  
20 if we look at DTPM, you would agree with me,  
21 would you not, that in 2012 there were zero net

1 additions of zonas pagas by the DTPM, correct?

2 SEÑOR WILLUMSEN: Not necessarily. These  
3 are the zonas pagas administered, run by DTPM,  
4 not the ones built by DTPM.

5 SEÑOR GARCÍA REPRESA: So what you are  
6 saying is that there could be --

7 SEÑOR WILLUMSEN: The operators could ask  
8 DTPM for the construction of zonas pagas for  
9 them to operate. So this is just the operation  
10 of zonas pagas, not the construction of zonas  
11 pagas. The funds for these came from the  
12 infrastructure transport plan. The operators  
13 had the right to ask for them to be built for  
14 them to use, for them to operate.

15 SEÑOR GARCÍA REPRESA: So your point is when  
16 I look at the role DTPM it doesn't mean those  
17 were the only ones by DTPM; there could be more  
18 additions by DTPM that are simply attributed to  
19 the lines of the operators, is that right?

20 SEÑOR WILLUMSEN: That is correct, yes.

21 SEÑOR GARCÍA REPRESA: So let's go to the

1 top chart then, which are the additions,  
2 because there, I guess, we will see the  
3 additions. Can you tell me the total number of  
4 additions of zonas pagas in 2012?

5 SEÑOR WILLUMSEN: Four.

6 SEÑOR GARCÍA REPRESA: That is not 60,  
7 right?

8 SEÑOR WILLUMSEN: It is not 60.

9 SEÑOR GARCÍA REPRESA: In 2013?

10 SEÑOR WILLUMSEN: 6.

11 SEÑOR GARCÍA REPRESA: 2014?

12 SEÑOR WILLUMSEN: 4.

13 SEÑOR GARCÍA REPRESA: 2015?

14 SEÑOR WILLUMSEN: 46.

15 SEÑOR GARCÍA REPRESA: So by 2015 we get to  
16 about 60, assuming that we attribute to the  
17 state all of the zonas pagas that were added to  
18 the system.

19 SEÑOR WILLUMSEN: Yes -- I am not sure it  
20 will be correct.

21 SEÑOR GARCÍA REPRESA: Let me finish,

1 please, and apologies; if I do interrupt you,  
2 you will tell me, I am sure. So even assuming  
3 that all of the zonas pagas that were added to  
4 the system by anyone, any company, any DTPM,  
5 let's say we attribute those to the state, it  
6 is not until 2015 that we actually reach the  
7 number that the state was telling the companies  
8 it will build in 2011, correct?

9 SEÑOR WILLUMSEN: The state did not say they  
10 would build them in 2011. They said they would  
11 build them. They didn't put a date. Not in  
12 the report you showed me.

13 SEÑOR GARCÍA REPRESA: Now, 2015, that is  
14 three years after the contracts came into  
15 force?

16 SEÑOR WILLUMSEN: Yes.

17 SEÑOR GARCÍA REPRESA: How many years  
18 remained of these contracts by 2015?

19 SEÑOR WILLUMSEN: Three.

20 SEÑOR GARCÍA REPRESA: So do you think that  
21 the companies, when they are entering into a

1 concession contract, for six years in 2012,  
2 they would be fine with the zonas pagas only  
3 coming online three years later, when there are  
4 only three years to remain in the concession?

5 SEÑOR WILLUMSEN: That is a difficult  
6 question. The operators have the opportunity  
7 to build them themselves if they want to, and  
8 in fact I recognize that that Alsacia and  
9 Express did build two of them, but they decided  
10 not to go ahead with any more. Other operators  
11 could have done the same. There would have  
12 been a degree of frustration, I will admit,  
13 that they were not built quickly enough.

14 SEÑOR GARCÍA REPRESA: How many were built  
15 by Alsacia and Express, according to you?

16 SEÑOR WILLUMSEN: As far as I know, two.  
17 That is the only ones I have seen in the  
18 reports.

19 SEÑOR GARCÍA REPRESA: Two in which year,  
20 according to you?

21 SEÑOR WILLUMSEN: I don't remember the year.

1 2014, probably.

2 SEÑOR GARCÍA REPRESA: So in the chart we  
3 were looking at, we should eliminate two from  
4 2014 because those were not built by DTPM,  
5 right?

6 SEÑOR WILLUMSEN: Yes, you should.

7 SEÑOR GARCÍA REPRESA: So it is even less  
8 total. Do you know who Sonda is?

9 SEÑOR WILLUMSEN: Yes, I do.

10 SEÑOR GARCÍA REPRESA: Sonda is the  
11 technological provider of systems for  
12 Transantiago, right?

13 SEÑOR WILLUMSEN: Yes.

14 SEÑOR GARCÍA REPRESA: And it is under  
15 contract by the Ministry?

16 SEÑOR WILLUMSEN: Yes.

17 SEÑOR GARCÍA REPRESA: Do you know whether  
18 Sonda is the only company that can provide the  
19 machines to validate bip! cards in zonas pagas?

20 SEÑOR WILLUMSEN: I understand that is the  
21 case.

1 SEÑOR GARCÍA REPRESA: Do you know, were you  
2 here, when Mr Edgar MacAllister testified as to  
3 the construction of zonas pagas by the  
4 companies?

5 SEÑOR WILLUMSEN: Yes, I remember he said  
6 there was a delay in that.

7 SEÑOR GARCÍA REPRESA: Did you assess in  
8 your reports how much delay the state  
9 accumulated in validating the contract with  
10 Sonda for the companies to actually build zonas  
11 pagas?

12 SEÑOR WILLUMSEN: I did not include that in  
13 my report.

14 SEÑOR GARCÍA REPRESA: I know you did not  
15 include it. My question was did you assess  
16 that delay in any of your analysis here.

17 SEÑOR WILLUMSEN: At the time of writing the  
18 report I was not aware of any delay in that.

19 SEÑOR GARCÍA REPRESA: Did you ask Chile to  
20 confirm whether there had been a delay in  
21 signing the contract that had to be signed

1 between Chile, Sonda and the companies to build  
2 zonas pagas?

3 SEÑOR WILLUMSEN: No, I did not.

4 SEÑOR GARCÍA REPRESA: Let's go back to  
5 where we were before we diverted, which is  
6 exhibit R-295 on tab 4. It is that documento  
7 de trabajo we were looking at. So we looked at  
8 the first two bullet points. And the third  
9 instrument to fight evasion, do you see at the  
10 bottom of page 7, is the complementary -- but  
11 I think the proper translation in Spanish is  
12 joint -- the joint work between the operating  
13 companies and the programa de fiscalizacion del  
14 Ministerio de Transportes y Telecomunicaciones.

15 Do you see that?

16 SEÑOR WILLUMSEN: Yes. The correct word is  
17 "support". But yes.

18 SEÑOR GARCÍA REPRESA: So trabajo  
19 complementario for you is support?

20 SEÑOR WILLUMSEN: Yes.

21 SEÑOR GARCÍA REPRESA: Fine. We have

1 interpreters. They can interpret that if need  
2 be. So again, even though the contracts  
3 provided an incentive to the companies, a  
4 financial incentive to fight evasion, the state  
5 had to do its part, right?

6 SEÑOR WILLUMSEN: Yes.

7 SEÑOR GARCÍA REPRESA: Do you agree or not  
8 that all of these would be relevant to someone  
9 seeking to enter into a Concession Contract  
10 with the Ministry for Transantiago?

11 SEÑOR WILLUMSEN: I agree.

12 SEÑOR GARCÍA REPRESA: Would you also agree  
13 with me that the correct way to fight evasion  
14 is the inspections of passengers?

15 SEÑOR WILLUMSEN: No. It is one of the ways  
16 of fighting evasion but not the correct way or  
17 the only way. There has to be a complement of  
18 several measures to fight evasion. It is a  
19 difficult problem.

20 SEÑOR GARCÍA REPRESA: Can we please go to  
21 your First Report at paragraph -- page 71.

1 I am interested in your reading out loud,  
2 please, paragraph 202.

3 SEÑOR WILLUMSEN: "An obvious way to tackle  
4 fare evasion is the inspection of passengers to  
5 check whether they have paid their fare. In  
6 our independent opinion, this is the correct  
7 one."

8 SEÑOR GARCÍA REPRESA: Do you want to  
9 correct your prior answer saying it was not the  
10 correct one?

11 SEÑOR WILLUMSEN: No. It is one of the ways  
12 of tackling fare evasion.

13 SEÑOR GARCÍA REPRESA: So you are amending  
14 your paragraph 202, is that right?

15 SEÑOR WILLUMSEN: No. I am just  
16 saying -- I don't need to amend it. Inspection  
17 of passengers is a way to control evasion.

18 SEÑOR GARCÍA REPRESA: My question is it the  
19 correct way?

20 SEÑOR WILLUMSEN: There is no correct way.  
21 There is a complement of several measures that

1 are necessary to fight evasion. There is no  
2 single correct way. It doesn't say here that  
3 it is the single correct way. It is a correct  
4 way, and suggests that is something you should  
5 do.

6 SEÑOR GARCÍA REPRESA: So at the time you  
7 drafted your first report you did consider that  
8 evasion was the correct way? Yes or no?

9 PRESIDENTA KAUFMANN-KOHLER: Inspection.

10 SEÑOR GARCÍA REPRESA: Excuse me.  
11 I misspoke. Yes. Inspection was the correct  
12 one?

13 SEÑOR WILLUMSEN: Is one of the correct ways  
14 of fighting evasion. Yes.

15 SEÑOR GARCÍA REPRESA: So you are amending  
16 paragraph 202. Instead of saying the correct  
17 one, the correct one amongst many. Is that  
18 your point?

19 SEÑOR GRANÉ LABAT: Objeción. Ya ha  
20 contestado la pregunta creo que tres o cuatro  
21 veces. Está tratando de que cambie su

1 respuesta, y no lo va a conseguir...

2 PRESIDENTA KAUFMANN-KOHLER: Me parece que  
3 el párrafo 202 no dice -- es "the correct way"  
4 It says "it is an obvious way," so I read this  
5 as one among others but it is an obvious one.

6 SEÑOR GARCÍA REPRESA: I was reading the  
7 last bit of that paragraph, Madam President,  
8 which is what was giving me concern in this  
9 line of questions. But I think we --

10 PRESIDENTA KAUFMANN-KOHLER: One should read  
11 paragraphs to the end before making comments!

12 SEÑOR GARCÍA REPRESA: I think I am ready to  
13 move on.

14 PRESIDENTA KAUFMANN-KOHLER: I think the  
15 answer has been given.

16 SEÑOR GARCÍA REPRESA: Yes, I acknowledge.

17 Let's go now, please, to tab 40 in your  
18 bundle. For the record, this is C-193. If you  
19 look at the front page, you will see that this  
20 is a study by the transport engineering  
21 division within the department of civil

1 engineering of the University of Chile. Do you  
2 see that?

3 SEÑOR WILLUMSEN: Yes.

4 SEÑOR GARCÍA REPRESA: And it's dated  
5 4 July 2016.

6 SEÑOR WILLUMSEN: Yes.

7 SEÑOR GARCÍA REPRESA: And the title is  
8 "Evasion in the payment of public  
9 transportation, international evidence and  
10 lessons for Santiago." Do you see that?

11 SEÑOR WILLUMSEN: That is correct.

12 SEÑOR GARCÍA REPRESA: Is this a study that  
13 you have considered, sir, in preparing your  
14 reports?

15 SEÑOR WILLUMSEN: Yes, it is.

16 SEÑOR GARCÍA REPRESA: Let's go to the key  
17 points on the first page. The first point says  
18 the evasion in Transantiago buses has doubled  
19 in nine years, and today it is a threat to the  
20 sustainability, financial sustainability of the  
21 system. Do you see that?

1 SEÑOR WILLUMSEN: I can see that.

2 SEÑOR GARCÍA REPRESA: Do you agree or  
3 disagree as of 2016 with this statement?

4 SEÑOR WILLUMSEN: I agree with this  
5 statement.

6 SEÑOR GARCÍA REPRESA: As of today, do you  
7 agree or disagree with this statement?

8 SEÑOR WILLUMSEN: I don't know whether it  
9 has doubled up to today, so I wouldn't know,  
10 but it is probably correct.

11 SEÑOR GARCÍA REPRESA: Now, the second  
12 paragraph says the actual evasion rate, that  
13 was about 28 per cent at the time. Do you know  
14 what the rate is today, sir?

15 SEÑOR WILLUMSEN: It is around 27.

16 SEÑOR GARCÍA REPRESA: So it is about the  
17 same?

18 SEÑOR WILLUMSEN: Yes.

19 SEÑOR GARCÍA REPRESA: So the evasion rate  
20 around 28 is disproportionate when you compare  
21 it with cities in Europe or Australia, evasion

1 below ten per cent, or with TransMilenio in  
2 Bogotá, 10-15 per cent evasion. Do you see  
3 that?

4 SEÑOR WILLUMSEN: I can see that, yes.

5 SEÑOR GARCÍA REPRESA: As of 2016 do you  
6 agree or disagree with this statement?

7 SEÑOR WILLUMSEN: I don't agree. I disagree  
8 with it.

9 SEÑOR GARCÍA REPRESA: And the reason you  
10 disagree is because of the rate of evasion in  
11 TransMilenio?

12 SEÑOR WILLUMSEN: Because TransMilenio  
13 doesn't assess evasion, so we don't know what  
14 the real evasion rate is.

15 SEÑOR GARCÍA REPRESA: Do you agree or  
16 disagree that an evasion rate of about  
17 27/28 per cent is disproportionate when  
18 compared to cities in Europe and Australia?

19 SEÑOR WILLUMSEN: I would say that  
20 27 per cent is a high rate of evasion, which  
21 I don't like, which I think should be reduced.

1 I would not compare it with European countries  
2 which have been operating public transport  
3 systems for 30, 40 years. Transantiago is a  
4 first effort Santiago makes, or Chile makes, to  
5 organise a public transport system along what  
6 I would call modern lines, so in that sense it  
7 is a young operation compared with Paris,  
8 London or Berlin, or any European or even  
9 American countries. So the direct comparison  
10 is not directly relevant.

11 SEÑOR GARCÍA REPRESA: Ok, that is your  
12 opinion.

13 SEÑOR WILLUMSEN: It is.

14 SEÑOR GARCÍA REPRESA: I wasn't asking you.  
15 I understand it is your opinion and I am glad  
16 we agree that it is your opinion. Now, these  
17 authors, if we go to the third paragraph did,  
18 however, consider that there were comparable  
19 cities such as Mendoza -- that is Argentina,  
20 right?

21 SEÑOR WILLUMSEN: Yes.

1 SEÑOR GARCÍA REPRESA: Bogotá? Colombia,  
2 right?

3 SEÑOR WILLUMSEN: Yes.

4 SEÑOR GARCÍA REPRESA: None of those two are  
5 in Europe?

6 SEÑOR WILLUMSEN: They are not.

7 SEÑOR GARCÍA REPRESA: Madrid, London,  
8 Berlin and Melbourne, for international  
9 comparison, and he explains that he has studied  
10 three variables: the probability of being  
11 inspected relative to the inspection rate, the  
12 fine that one has to pay to evade, and the  
13 socioeconomic variable, meaning how much it  
14 costs people to actually pay for the fare  
15 compared to how much they make. Do you think  
16 those are relevant variables to study?

17 SEÑOR WILLUMSEN: These are relevant -- not  
18 the only ones, and it is perhaps a bit  
19 unfortunate that he has only looked at those  
20 three variables, but that is what he looked at.

21 SEÑOR GARCÍA REPRESA: And the next

1 paragraph actually says that the fine in  
 2 Santiago is actually among the highest, and he  
 3 goes on to say in paragraph 5 that the cost of  
 4 the system to the population is relatively high  
 5 for people with low income, but -- but -- it  
 6 goes on to say this variable by itself doesn't  
 7 explain the excessive level of evasion in  
 8 Santiago. Do you agree that looking at  
 9 socioeconomic elements does not explain by  
 10 itself excessive evasion in Santiago?

11 SEÑOR WILLUMSEN: I will go beyond that.  
 12 I don't think there is a single variable that  
 13 explains by itself the level of evasion in  
 14 Santiago or in any other city. You have to  
 15 look at a package of measures and a package of  
 16 variables.

17 SEÑOR GARCÍA REPRESA: Now we turn the page.  
 18 The author concludes that, paragraph 6 at the  
 19 top, that the low inspection rate it is indeed  
 20 a relevant variable to explain evasion in  
 21 Santiago. Do you agree that it is a relevant

1 variable?

2 SEÑOR WILLUMSEN: Yes, I will agree it is a  
 3 relevant variable.

4 SEÑOR GARCÍA REPRESA: And as you can see,  
 5 according to this author, the rate of  
 6 inspection was estimated at 0.11 per cent in  
 7 Santiago but 1 person inspected per thousand  
 8 trips, and the inspection rate in Berlin was  
 9 five times higher, and in Melbourne was 63  
 10 times higher, correct?

11 SEÑOR WILLUMSEN: I can see that written  
 12 there, yes.

13 SEÑOR GARCÍA REPRESA: Do those figures seem  
 14 more or less correct to you?

15 SEÑOR WILLUMSEN: I doubt the figure of  
 16 Melbourne. I think it is too high. I think  
 17 that some of these figures have been extracted  
 18 from campaigns to reduce evasion and therefore  
 19 they don't reflect, they are not comparing the  
 20 same thing with the rate of 0.1 per cent in  
 21 Santiago. The rate in Santiago grows on some

1 years, is a bit higher, it reaches -- it is  
 2 still a low value but it reaches a value of  
 3 around 0.4 on occasions because the rate of  
 4 inspections is not constant. But, yeah, those  
 5 are my comments.

6 SEÑOR GARCÍA REPRESA: But as of 2016 do you  
 7 think a rate of 0.11 per cent was about right  
 8 for Santiago?

9 SEÑOR WILLUMSEN: I don't think it is right  
 10 or wrong here. That is the level of  
 11 inspections that the State, Chile, was  
 12 undertaking during the history of Transantiago  
 13 so far. So it hasn't reduced the rate of  
 14 inspections.

15 SEÑOR GARCÍA REPRESA: But it has barely  
 16 increased it, correct?

17 SEÑOR WILLUMSEN: The increase is small.  
 18 Yes.

19 SEÑOR GARCÍA REPRESA: And the increases are  
 20 recent, also? Correct?

21 SEÑOR WILLUMSEN: There are increases in

1 2013. They start to increase again and  
 2 continue to increase with variations, because  
 3 these are monthly figures. We have seen that  
 4 it is strongly recommended that in the case of  
 5 Santiago the inspections are accompanied by the  
 6 police, the carabineros. You cannot always  
 7 have enough police men. Police men have other  
 8 things to do. They cannot divert on occasions  
 9 the police force to support evasion rates  
 10 control. There are other things for them to  
 11 do. There have been occasions on which 100  
 12 police men have been used in these specific  
 13 campaigns in Chile. On other occasions there  
 14 were not so many available.

15 SEÑOR GARCÍA REPRESA: Just to be clear, the  
 16 reason why carabineros have to be present for  
 17 inspections is they are the only, or they were  
 18 until the recent law, the only persons allowed  
 19 to issue fines for evasion, correct?

20 SEÑOR WILLUMSEN: To issue fines and to drag  
 21 people out of buses, yes.



1 SEÑOR GARCÍA REPRESA: So if the company's  
2 inspectors were in a bus and saw someone  
3 evading, the most they could do is say  
4 "I invite you to pay, if you want to", and if  
5 not nothing, correct?

6 SEÑOR WILLUMSEN: Yes. I have seen reports  
7 from Alto Evasión that they show that even  
8 without the police men's presence, their own  
9 presence is important in achieving a reduction  
10 in the rate of evasion. It is enough for them  
11 to be there, uniformed, usually at the bus  
12 stop, not on buses. Sometimes they go on  
13 buses. That is not a sufficient deterrent but  
14 a valuable deterrent of evasion.

15 SEÑOR GARCÍA REPRESA: And the reason they  
16 are at the bus stops is because what they are  
17 trying to do is avoid people from getting on  
18 the bus without paying because once they are in  
19 the bus, there is not much they can do,  
20 correct?

21 SEÑOR WILLUMSEN: That is correct, yes. In

1 particular the evasion through the back door is  
2 an important problem, and that is where  
3 inspectors standing next to the back door is  
4 where they can deter most effectively evasion  
5 by users.

6 SEÑOR GARCÍA REPRESA: And that is also why  
7 zonas pagas are important because zonas pagas  
8 would prevent boarding through the back door if  
9 they are properly constructed with physical  
10 barriers, correct?

11 SEÑOR WILLUMSEN: No. They will not  
12 prevent. They will allow access through the  
13 back door, hmm?

14 SEÑOR GARCÍA REPRESA: Let me correct and  
15 see if we agree. The reason zonas pagas would  
16 prevent evasion through the back door is  
17 because a zona paga requires validation before  
18 you actually stand in front of the back door,  
19 hence you have already paid by the time you get  
20 in front of the back door, correct?

21 SEÑOR WILLUMSEN: That is correct.

1 SEÑOR GARCÍA REPRESA: Let's look at the  
2 conclusions of this study, paragraph 7. It  
3 says "Based on the evidence and the  
4 international experience in fighting against  
5 evasion in public transportation, we make the  
6 following recommendations for Santiago.  
7 Significantly increase and speed up, I would  
8 say -- apologies for my interpretation -- the  
9 inspection of evasion in the buses of  
10 Transantiago; there needs to be an increase in  
11 the number of inspectors per bus and the number  
12 of buses inspected. It is recommended to allow  
13 that in various places inspectors and fines  
14 could be issued without the presence of  
15 carabineros to enlarge the reach of inspection  
16 and that there would be an  
17 allowance -- inspectors would be allowed to  
18 issue fines even when they are not wearing  
19 uniform.

20 Do you think that is a good recommendation?

21 SEÑOR WILLUMSEN: It is a good

1 recommendation.

2 SEÑOR GARCÍA REPRESA: And actually that or  
3 a similar measure has been adopted recently in  
4 2018, correct?

5 SEÑOR WILLUMSEN: The new legislation, you  
6 mean? Yes.

7 SEÑOR GARCÍA REPRESA: Do you know when that  
8 new legislation came into force?

9 SEÑOR WILLUMSEN: March.

10 SEÑOR GARCÍA REPRESA: That is about 6  
11 months before the Alsacia's contract was due to  
12 expire, correct?

13 SEÑOR WILLUMSEN: Yes, that is correct, but  
14 it is nothing to do with the coincidence.  
15 There is no relationship between one and the  
16 other.

17 SEÑOR GARCÍA REPRESA: Ok. It is good that  
18 you say that because I want you to confirm, in  
19 your presentation this morning and in your  
20 reports, you do not make a chronological  
21 assessment of the measures implemented by the

1 State to fight evasion, correct?

2 SEÑOR WILLUMSEN: I do that in terms of  
3 zonas pagas and that is timed. I am just  
4 trying to think. There is information on the  
5 inspection rate which is timed as well. There  
6 is information on the increase in the number of  
7 bip! charging points, as well. So I disagree  
8 with you.

9 SEÑOR GARCÍA REPRESA: So everything you  
10 just described is because you have tables that  
11 have those figures per year, correct?

12 SEÑOR WILLUMSEN: Yes.

13 SEÑOR GARCÍA REPRESA: I put my question.  
14 You have not performed a chronological  
15 assessment of the state's measures to fight  
16 against evasion to see how those measures  
17 complied with the expectations at the outset of  
18 the contracts, put it that way?

19 SEÑOR WILLUMSEN: I didn't write text  
20 providing that comment? Is that what you mean?

21 SEÑOR GARCÍA REPRESA: No. I said you did

1 not assess the chronology of the measures  
2 implemented by the State in relation to the  
3 expectations that contractors had at the time  
4 they entered into the contract, correct?

5 SEÑOR WILLUMSEN: Well, no. I think here  
6 again, as I explained in my presentation at the  
7 beginning, I put myself in the position of  
8 advising an investor in 2011 how he should  
9 address the risks and rewards that are implicit  
10 or explicit in the Concession Contracts that  
11 are in front of me. I consider whether there  
12 have been particular opportunities for the  
13 State to do a certain type of interventions in  
14 them, but I would not assume that these  
15 interventions would happen immediately after  
16 2011 because in my experience that is never the  
17 case, and I would expect, when I considered  
18 this issue here, I would expect that the  
19 Hermanos Rios would have been in a similar  
20 position. Perhaps they asked somebody else, I  
21 did not support them, they asked somebody else

1 to support them, or they were sufficiently  
2 experienced to know that these things do not  
3 happen overnight, that aspirations from  
4 government are aspirations, but not promises to  
5 do everything on the first day of the new  
6 contracts.

7 SEÑOR GARCÍA REPRESA: Did you assess, did  
8 you not, the measures that the State adopted to  
9 fight against evasion since the adoption of  
10 the December 2010 law?

11 SEÑOR WILLUMSEN: No, I did not. I have  
12 already said that.

13 SEÑOR GARCÍA REPRESA: So between  
14 the December 2010 anti-evasion law  
15 and May 2012, you have more than a year in  
16 which the State could have taken effective  
17 measures to fight against evasion, correct?

18 SEÑOR WILLUMSEN: They could have taken  
19 measures, yes. In fact they did.

20 SEÑOR GARCÍA REPRESA: For example, had they  
21 doubled or tripled the number of fare

1 inspectors, that would have reduced evasion  
2 already by 2012, correct?

3 SEÑOR WILLUMSEN: I don't think in practical  
4 terms they could have done that. Governments  
5 are restricted by budgetary cycles. Doubling  
6 the number of inspectors is something that you  
7 need a budget to do. That may not have been  
8 possible. I don't know.

9 SEÑOR GARCÍA REPRESA: Ok, but do you agree  
10 with me that had the state doubled or tripled  
11 the number of inspectors soon after the 2010  
12 law, by 2012 one would have expected a lower  
13 evasion rate? Yes or no?

14 SEÑOR WILLUMSEN: Yes, I would have expected  
15 doubling the number of inspectors would have  
16 reduced evasion rate, yes.

17 SEÑOR GARCÍA REPRESA: And the state had,  
18 between December 2010 and May 2012 to do it  
19 before the contracts came into force, correct?

20 SEÑOR WILLUMSEN: They did have the time and  
21 therefore, if I have seen that, and I was

1 advising the Hermanos Rios, I would have said  
2 look, this is a risk, and this risk is an  
3 important one. You may not get the support you  
4 think you might get.

5 SEÑOR GARCÍA REPRESA: Do you agree that  
6 studies of Transantiago recommend that a proper  
7 evasion target be below ten per cent?

8 SEÑOR WILLUMSEN: I have already said that  
9 in my view a proper, a good evasion target  
10 should be around perhaps 5 per cent. That is  
11 my personal view. But it will not be achieved  
12 tomorrow. It will take at least 20 years to  
13 get to that rate, in my view.

14 SEÑOR GARCÍA REPRESA: Do you agree that  
15 reduction [evasion] can be reduced by a third a  
16 year under normal circumstances?

17 SEÑOR WILLUMSEN: I doubt it, but it might  
18 be possible. But I doubt it.

19 SEÑOR GARCÍA REPRESA: That is what you  
20 wrote in your reports actually, no?

21 SEÑOR WILLUMSEN: Possibly. I don't

1 remember.

2 SEÑOR GARCÍA REPRESA: Now, I think you were  
3 in the room when Minister Gomez-Lobo was  
4 testifying, correct?

5 SEÑOR WILLUMSEN: I was.

6 SEÑOR GARCÍA REPRESA: Are you aware that  
7 according to him until 2014 there were only 20  
8 carabineros assigned to monitor evasion in  
9 Transantiago?

10 SEÑOR WILLUMSEN: He says so, yes.

11 SEÑOR GARCÍA REPRESA: Does that seem a very  
12 low number to you?

13 SEÑOR WILLUMSEN: Not necessarily a low or a  
14 high number.

15 SEÑOR GARCÍA REPRESA: So 20 people putting  
16 fines to about 3.5 million daily passengers is  
17 about right to you?

18 SEÑOR WILLUMSEN: It is not about right or  
19 about wrong. It depends on what other  
20 requirements are for carabineros in a  
21 particular time. Again, it is a matter of

1 resources and how you deploy the resources in  
2 the best possible way, and in this case, the  
3 carabineros, to address all the problems that  
4 you expect the police to address.

5 SEÑOR GARCÍA REPRESA: Assuming -- and it is  
6 a hypothetical; you are an expert -- assuming  
7 the State had decided, let's say, not to spend  
8 the money in buying a couple of jets and  
9 instead decided to invest in enforcement in  
10 Transantiago, would you agree that having only  
11 20 carabineros is insufficient?

12 SEÑOR WILLUMSEN: I would recommend to have  
13 a higher number than that, yes.

14 SEÑOR GARCÍA REPRESA: Would 80 carabineros  
15 for 3.5 million passengers a day be also  
16 insufficient to you?

17 SEÑOR WILLUMSEN: I don't know, to be  
18 honest. I don't know how to answer that  
19 question. I don't have in my mind an optimum  
20 number of carabineros to address this issue.

21 SEÑOR GARCÍA REPRESA: But you do know there

1 is a metric in the industry of the number of  
2 inspections per thousand trips that should be  
3 or that are recommended in the industry,  
4 correct?

5 SEÑOR WILLUMSEN: Yes, I have already  
6 mentioned my doubts about that rate, and it is  
7 very interesting to see that in the  
8 presentation on Saturday from BRT/Transconsult  
9 they provide two figures, one of them with  
10 evasion rates and the other with inspection  
11 rates. It is interesting, I notice, that only  
12 two cities appear in both of them, so some  
13 people measure evasion, other people quantify  
14 inspection rates, and it is also interesting to  
15 see that from the 15 cities which appear in the  
16 recommended inspection rates, only 5 adhere to  
17 that principle.

18 SEÑOR GARCÍA REPRESA: Now, you refer to a  
19 number in the industry of number of inspections  
20 per thousand trips. What do you think is good  
21 practice -- I am not saying best practice, just

1 good practice -- in terms of how many  
2 passengers per thousand trips should be  
3 inspected?

4 SEÑOR WILLUMSEN: I think it would probably  
5 be between 5 and 1.5 per cent.

6 SEÑOR GARCÍA REPRESA: That is single to  
7 triple? That is kind of a broad range, isn't  
8 it?

9 SEÑOR WILLUMSEN: Yes, it is, because, as  
10 I said, inspection rates is not the only way to  
11 control evasion.

12 SEÑOR GARCÍA REPRESA: For  
13 Transantiago -- and I know you do a lot of  
14 demand studies for these sort of transport  
15 systems -- what would have been your  
16 recommendation as to the proper number of  
17 inspections per thousand trips?

18 SEÑOR WILLUMSEN: When?

19 SEÑOR GARCÍA REPRESA: Let's take it  
20 chronologically. 2011.

21 SEÑOR WILLUMSEN: I would have recommended

1 an increase in the number of inspection rates.  
2 I would not have put a target because  
3 I recognise that the government cannot do those  
4 things overnight. We are coming back to the  
5 same problem. These things take time to  
6 develop. I would have recommended a  
7 comprehensive plan which -- attempts to develop  
8 that comprehensive plan were made on 2 or 3  
9 occasions during the duration of the contracts,  
10 of the new contracts.

11 SEÑOR GARCÍA REPRESA: In 2017, so before  
12 the 2018 law, what is the number -- and I am  
13 looking for a number -- of inspections per  
14 thousand trips that you would have recommended  
15 for Santiago?

16 SEÑOR WILLUMSEN: I would have again, and  
17 I cannot do any better than that, I am sorry,  
18 because we have a difference of opinion on the  
19 value of standard practice and best practices  
20 from different places. I think each city has  
21 to learn how to control evasion and has to

1 learn some lessons from other cities but  
2 lessons from their own experience, and I can  
3 see those efforts made in the case of  
4 Transantiago. The DTPM was trying different  
5 approaches to inspections in particular. In  
6 some cases they went for the places where  
7 evasion rates were higher. In some places they  
8 recognised it was very difficult to go without  
9 police support because it was too dangerous, so  
10 they were able to identify other places where  
11 police support was not necessary because they  
12 were safer. They would ask the operators,  
13 "Where would you like us to focus the evasion  
14 control measures?" And they provided 83  
15 locations where they thought it was going to be  
16 more useful to deploy inspectors and the  
17 police, and the city did that. They made those  
18 attempts and they recorded the rates of  
19 success, and those enabled them to develop  
20 better and better policies.

21 Am I going too long?

1 SEÑOR GARCÍA REPRESA: Yes. I hate to  
2 interrupt but I must. If you can keep going  
3 with the same document, at page 6, please.  
4 I understand that one of the problems at  
5 page 6 -- and I am interested in the second  
6 paragraph. In that paragraph one of the  
7 problems reported in Santiago, and I think you  
8 know about it, is that, even with a low  
9 inspection rate, a lot of people were actually  
10 not paying the fines because they would just  
11 simply give a false address or ultimately would  
12 never pay, correct?

13 SEÑOR WILLUMSEN: Yes, I can see that, yes.

14 SEÑOR GARCÍA REPRESA: And in fact, if you  
15 look at this report, it is telling you that  
16 even though it is known that in 2013 evasion  
17 was between 19 and 24 per cent, perfect  
18 inspection would have meant you have about  
19 19 -- one hundred percent of those evaders  
20 inspected and fined and pay the fine, but  
21 I think that hardly happens, but here actually

1 the rate of fines was 2.7 to 8.5 of the  
2 inspections, which means there is a very large  
3 gap with the actual evasion rate at the time,  
4 correct?

5 SEÑOR WILLUMSEN: Yes. As I mentioned again  
6 in my presentation at the beginning, part of  
7 that explanation is because when people see  
8 that inspectors appear, they change their  
9 behaviour. Therefore they either do not board  
10 the bus or they actually validate, because many  
11 evaders do have the bip! card with enough  
12 funds, but they prefer not to pay.

13 SEÑOR GARCÍA REPRESA: Can you turn, now, to  
14 page 8, please, same report, and I am  
15 interested in the paragraph right above title  
16 3. This author notes that an optimum level of  
17 inspections is approximately 4 per cent, so  
18 I think it is within your 1.5 to 5 per cent  
19 range, in an open public transport system. Do  
20 you see that?

21 SEÑOR WILLUMSEN: No. Sorry. I don't see

1 it yet. Could you repeat where I can find it?  
2 SEÑOR GARCÍA REPRESA: Of course. The  
3 paragraph above title 3, and you can look at  
4 the last sentence of that paragraph.

5 SEÑOR WILLUMSEN: Yes. I can see the  
6 4 per cent.

7 SEÑOR GARCÍA REPRESA: So do you agree that  
8 4 per cent would have been a reasonable rate  
9 for Transantiago? Yes or no?

10 SEÑOR WILLUMSEN: No. I have already  
11 answered several times the same question.  
12 I don't think there is an optimal rate that you  
13 can determine beforehand. You have to learn  
14 what is the best approach.

15 SEÑOR GARCÍA REPRESA: So neither a  
16 3 per cent nor a 1 per cent rate would seem to  
17 you optimum or good practice for Transantiago?  
18 Is that your testimony, that there is simply no  
19 good practice?

20 SEÑOR WILLUMSEN: I don't know how to  
21 explain this to you again. Dealing with

1 evasion requires a number of different  
2 measures, complementary measures, all of them.  
3 These are mostly city-specific. There are some  
4 international standards. Incidentally,  
5 4 per cent is not an international standard.  
6 Not even international standard. There are  
7 some recommended rates. Every author discovers  
8 a new way of identifying a recommended rate for  
9 inspections, and there are not very many.  
10 There are very few studies here. But these  
11 have to be seen in the context of all the other  
12 measures that are being taken, what is the  
13 conditions of the citizens that live in the  
14 country borders, what is the income  
15 distribution in the country, what other modes  
16 are available for them to use. For example, in  
17 general, most Metro systems do have turnstiles;  
18 very few operate on an open basis. All of  
19 those considerations are important. So I don't  
20 think there is an optimum value, an absolute  
21 value, that you should recommend everywhere.

1 SEÑOR GARCÍA REPRESA: Let's be clear. I am  
2 not asking you about any system in any town  
3 with any citizens at any time. I am asking you  
4 about Transantiago, I am asking you about  
5 buses, not about metro, and I am asking you,  
6 let say about 2012, and I am asking about the  
7 citizens in Santiago in 2012 and about the  
8 socioeconomic environment of Santiago in 2012.  
9 So considering all of that, what would have  
10 been a recommended or good practice inspection  
11 rate for Transantiago in those circumstances?

12 SEÑOR WILLUMSEN: I don't know. I would  
13 recommend an increase in the rate of  
14 inspections, and strengthening other  
15 interventions, but there is not an optimal rate  
16 that can be fixed beforehand.

17 SEÑOR GARCÍA REPRESA: Let's turn now to  
18 vandalism, if you will.

19 SEÑOR WILLUMSEN: I will ask my colleague to  
20 answer these questions.

21 SEÑOR GARCÍA REPRESA: Do you accept, sir,

1 that vandalism increases maintenance,  
 2 reparation, maintenance cost of buses?  
 3 SEÑOR SILVA: It depends on which type of  
 4 vandalism you mean. Some incidents do, others  
 5 don't.  
 6 SEÑOR GARCÍA REPRESA: If you need to pay on  
 7 the bus, that costs money, right?  
 8 SEÑOR SILVA: Right.  
 9 SEÑOR GARCÍA REPRESA: If you need to clean  
 10 the bus, it costs money?  
 11 SEÑOR WILLUMSEN: That is right.  
 12 SEÑOR GARCÍA REPRESA: If you need to  
 13 replace the bus, that costs money?  
 14 SEÑOR SILVA: Yes.  
 15 SEÑOR GARCÍA REPRESA: If you need to fix a  
 16 broken door that costs money?  
 17 SEÑOR SILVA: I think so.  
 18 SEÑOR GARCÍA REPRESA: And if you need to  
 19 fix a broken window, that costs money, right?  
 20 SEÑOR SILVA: Definitely.  
 21 SEÑOR GARCÍA REPRESA: Okay. So let's

1 assume that is vandalism, okay?  
 2 SEÑOR SILVA: Okay.  
 3 SEÑOR GARCÍA REPRESA: Do you agree that  
 4 that type of vandalism costs money?  
 5 SEÑOR SILVA: Yes.  
 6 SEÑOR GARCÍA REPRESA: And it increases  
 7 maintenance costs of buses, right?  
 8 SEÑOR SILVA: Right.  
 9 SEÑOR GARCÍA REPRESA: Do you agree that  
 10 vandalism affects the ability of operators to  
 11 comply with their operating programmes?  
 12 SEÑOR SILVA: Can you repeat it, please?  
 13 SEÑOR GARCÍA REPRESA: Yes, do you accept  
 14 that vandalism affects the ability of operators  
 15 to comply with their operating programmes, yes  
 16 or no?  
 17 SEÑOR SILVA: So, yes it affects, but -- so  
 18 as I say in the report -- can I explain,  
 19 please?  
 20 PRESIDENTA KAUFMANN-KOHLER: Of course you  
 21 can explain. You can also explain in Spanish,

1 if you prefer. It is up to you, really.  
 2 SEÑOR SILVA: Is there a preferred language  
 3 for you?  
 4 PRESIDENTA KAUFMANN-KOHLER: No, no.  
 5 Whatever is best for you.  
 6 SEÑOR SILVA: Let's see what comes  
 7 naturally.  
 8 PRESIDENTA KAUFMANN-KOHLER: You can also  
 9 switch.  
 10 SEÑOR SILVA: Is it possible if we go to the  
 11 figure 7 of my report to explain this, because  
 12 I think it is quite important, and I think it  
 13 answers what you are asking?  
 14 SEÑOR GARCÍA REPRESA: Let's go to  
 15 paragraph 260 of your First Report.  
 16 SEÑOR GRANÉ LABAT: Perdón, el testigo ha  
 17 pedido ir a una figura específica. Gracias.  
 18 SEÑOR SILVA: In the Second Report.  
 19 SEÑOR GARCÍA REPRESA: Madam President,  
 20 I would like to conduct my cross-examination.  
 21 I will be walking the experts through their

1 reports --  
 2 PRESIDENTA KAUFMANN-KOHLER: Yes,  
 3 I understand that, but you asked a question  
 4 whether vandalism affects the ability to comply  
 5 with the operational plans, and in response to  
 6 this very question the expert wanted to refer  
 7 to figure 7. I think it is fair to allow him  
 8 to go to this figure.  
 9 SEÑOR SILVA: Thank you. So figures 6 and 7  
 10 are the same. Only that 6 is --  
 11 PRESIDENTA KAUFMANN-KOHLER: Where are they?  
 12 SEÑOR SILVA: On page 31 of the Second  
 13 Report, or if you have in hand the corrected  
 14 figure, it is the same. If you are in the  
 15 report, bear in mind that the dotted line in  
 16 figure 7 should be in 3 per cent and not around  
 17 4 per cent.  
 18 So those figures summarise my analysis for  
 19 the relationship between vandalism and the  
 20 fleet available to operate and fulfil the  
 21 Operational Programme, which was the question.

1 So what you can see there is every dot has two  
 2 variables. So in the vertical axis it is the  
 3 IFO, which is the percentage of the base fleet  
 4 that is in operation for every single day. So  
 5 if you look at the dot that is in 92 per cent,  
 6 that means that the company used only  
 7 92 per cent of the base fleet, the one hundred  
 8 percent. And this is also not counting that  
 9 they, in this case Alsacia, if you look at  
 10 figure 6, it has 6 per cent of reserve fleet.  
 11 So the total available fleet in this figure is  
 12 106. And if you look at the dot in 92 it means  
 13 that at least 14 per cent was not on the  
 14 streets on that day. That is one dot.

15 And in the horizontal axis it is the  
 16 percentage of the fleet that suffered vandalism  
 17 in the preceding 7 days.

18 So I want to draw the attention, to answer  
 19 this question, to the upper left corner. So  
 20 you see most of the dots are there, in this  
 21 block, and that means that most of the days in

1 which the companies had between 92 and  
 2 97 per cent of the fleet in operation they  
 3 didn't suffer vandalism, because they are in  
 4 the 0 per cent. Or they did suffer some  
 5 vandalism, between 0 and 3, let's say, but  
 6 still there was between 3 and 8 per cent of the  
 7 base fleet not on the street, and 6 per cent of  
 8 the reserve fleet not on the street. So in  
 9 general I would say, by looking at these dots,  
 10 that in general, most of the time, vandalism  
 11 does not affect the available fleet to fulfil  
 12 the Operational Programme.

13 SEÑOR GARCÍA REPRESA: Now, to be clear,  
 14 those graphs, you are using the base fleet  
 15 throughout your analysis, right? You are  
 16 considering the base fleet?

17 SEÑOR SILVA: Yes.

18 SEÑOR GARCÍA REPRESA: January/February mean  
 19 you should not consider the base fleet but the  
 20 required fleet, correct?

21 SEÑOR SILVA: Probably, yes.

1 SEÑOR GARCÍA REPRESA: But you have not  
 2 adjusted for that your figures, have you? Yes  
 3 or no?

4 SEÑOR SILVA: Can I answer, please?

5 SEÑOR GARCÍA REPRESA: Did you adjust your  
 6 figures for January/February to account for the  
 7 fact that in January, February, required fleet  
 8 is the proper metric, not base fleet, yes or  
 9 no?

10 SEÑOR SILVA: Let me say this -- I did not  
 11 adjust any data because this is data that was  
 12 provided to me by DTPM, so I don't adjust or  
 13 modify the official data for this -- let me go  
 14 further.

15 SEÑOR GARCÍA REPRESA: Just to confirm,  
 16 okay, you did not adjust it, but did you verify  
 17 whether the DTPM actually considered the months  
 18 of January and February are not months in which  
 19 you need the base fleet but something called  
 20 the required fleet? Yes or no? Did you verify  
 21 it?

1 SEÑOR SILVA: I did, but only after writing  
 2 in these recent days, when I checked the  
 3 comments by Dr. Weinstock, and I think I can  
 4 explain graphically what would be the impact if  
 5 we don't, because if you see the annex WS 0074,  
 6 or WS 0075, you would see that indeed there are  
 7 some summer months, not in all years, in which  
 8 the IFO, the fleet available is around 82/80  
 9 per cent, and the vandalism is zero. So  
 10 if -- I got the data from the DTPM, right? So  
 11 it is not that I constructed the data, but if  
 12 you remove all of the points that you are  
 13 mentioning in January and February, in some  
 14 years you would have to remove the dots that  
 15 are around 77 per cent and zero, so right to  
 16 the left. So if you remove all those dots in  
 17 0 per cent and 80 per cent, 0 per cent the  
 18 horizontal axis, 77, 82 per cent in the  
 19 vertical axis, nothing about what I said before  
 20 in my previous answer and the main conclusion  
 21 of my analysis would change.

1 SEÑOR GARCÍA REPRESA: Now, you have  
2 analysed something called the IFO there. Did  
3 you run a similar analysis for the impact of  
4 vandalism on the ICR, ICF and ICT? Yes or no?

5 SEÑOR SILVA: No.

6 SEÑOR GARCÍA REPRESA: Do you accept or do  
7 you not that vandalism has an impact on  
8 ridership or demand?

9 SEÑOR SILVA: I have not seen evidence that  
10 relates vandalism and ridership.

11 SEÑOR GARCÍA REPRESA: Okay, so if I board a  
12 bus at Santiago and someone puts a gun at me,  
13 have me go down the bus and burns down the bus,  
14 that would certainly not affect my willingness  
15 to ride the buses in Santiago. Is that your  
16 testimony?

17 SEÑOR SILVA: No. That is not my testimony.  
18 I think those extreme cases are of course  
19 worrying. That is undeniable. What I tried to  
20 say is it depends on your alternative. People  
21 in Santiago sometimes have to ride a bus and

1 they don't have a choice. I also want to point  
2 out that these examples are quite infrequent,  
3 so for instance --

4 SEÑOR GARCÍA REPRESA: Madam President, may  
5 I ask the witness to try to respond to the  
6 question, because I am afraid that we are  
7 getting into sort of another presentation of  
8 their report when the purpose is to respond to  
9 my questions.

10 PRESIDENTA KAUFMANN-KOHLER: I will ask you  
11 later, because there is something that occurred  
12 to me when I read your report how, when you  
13 assess demand and impacts on demand you take  
14 into consideration options that users have or  
15 don't have. But we can put this off to later,  
16 and now why don't you try to answer directly  
17 the question that is put to you. If you need,  
18 then, to give an explanation, of course you may  
19 do so.

20 SEÑOR SILVA: Just to be clear, and so that  
21 I don't get misinterpreted, I was going to say

1 how many buses were burned in the example he  
2 used in a period of time. That is what I was  
3 going to say when he interrupted me. I don't  
4 know if you want to hear it.

5 PRESIDENTA KAUFMANN-KOHLER: Yes.

6 SEÑOR SILVA: So between 2012 and 2016 you  
7 can check it in annex R-0216 Express had only  
8 two buses burned in the entire period. So it  
9 was just to make context about his  
10 question -- sorry, Alsacia. I correct myself.  
11 Alsacia had two buses burned between 2012 and  
12 2016.

13 SEÑOR GARCÍA REPRESA: That is very  
14 important. Let's go to tab 16, if you will.  
15 There you will find a letter from Express to  
16 the DTPM dated September 2015, right?

17 SEÑOR SILVA: September 2015, yes.

18 SEÑOR GARCÍA REPRESA: C-274. And if you  
19 read the second paragraph it says: "Once again  
20 as every year our buses and drivers have been  
21 again affected by serious acts of vandalism

1 associated with the set date,  
2 11 September -- 11 September, it is an  
3 important date in Chile. We know that -- and  
4 it gives an example of a bus in servicio 402 in  
5 the second paragraph, and it describes the  
6 facts -- in the third paragraph -- it says a  
7 group of approximately 30 people intimidated  
8 the driver and I think the passengers with  
9 firearms, forced them to descend, and then  
10 burned down the bus.

11 Fourth paragraph. In addition to this  
12 situation we had 49 buses with damage in its  
13 exterior -- let's call it that way -- because  
14 of vandalism. This is for Express. So it is  
15 not what you were responding to before. Do you  
16 agree there were more than two buses vandalised  
17 in the period 2012 to 2016, as you said before?

18 SEÑOR SILVA: I said there were two for  
19 Alsacia. For Express I don't remember exactly  
20 but it must be around maybe 10, which would be  
21 like 0.1 per cent of the fleet.



1 SEÑOR GARCÍA REPRESA: Have you seen a video  
2 by -- where Mr Munoz Senda describes how many  
3 buses were burned down of Express?

4 SEÑOR SILVA: Is it the one in the opening?

5 SEÑOR GARCÍA REPRESA: Yes.

6 SEÑOR SILVA: Yes, I did.

7 SEÑOR GARCÍA REPRESA: If you turn the page  
8 you will see that the companies actually  
9 complain that because of this burned down bus  
10 and the 49 vandalised buses, that is affecting  
11 their ICF, ICR and ICT. Do you see that?

12 SEÑOR SILVA: I do.

13 SEÑOR GARCÍA REPRESA: And this is certainly  
14 not something that you have analysed in your  
15 reports, have you?

16 SEÑOR SILVA: No. But one of the reasons  
17 why I did it is because there is a mechanism in  
18 which the companies -- and that is why the  
19 reports are so detailed -- in which the  
20 companies explain this to the DTPM and  
21 request -- it is called an exogenous event, and

1 with this report they proceed to not have  
2 discounts on ICT, ICR and ICF because of  
3 exogenous events such as vandalism.

4 SEÑOR GARCÍA REPRESA: That is only every  
5 time there is a report and every time the  
6 authorities actually accept to not apply that,  
7 correct?

8 SEÑOR SILVA: I think there has to be a  
9 report. I think they can use as evidence like  
10 tweets or reports from the press.

11 SEÑOR GARCÍA REPRESA: So you know there are  
12 about 50 buses damaged every day by broken  
13 windows. Are you aware of that?

14 SEÑOR WILLUMSEN: That is what  
15 Mr MacAllister said in his testimony.

16 SEÑOR GARCÍA REPRESA: Do you have any  
17 reason to doubt that testimony?

18 SEÑOR SILVA: Yes.

19 SEÑOR GARCÍA REPRESA: You have reasons to  
20 doubt it?

21 SEÑOR SILVA: Yes, it doesn't match the

1 figures that I have analysed.

2 SEÑOR GARCÍA REPRESA: Do you know who was  
3 completing the vandalism reports until 2017  
4 that you have used?

5 SEÑOR SILVA: Who was completing the  
6 reports?

7 SEÑOR GARCÍA REPRESA: Who was filling in  
8 the data in those reports of those vandalism  
9 that you have looked at until 2017?

10 SEÑOR SILVA: No, I don't know.

11 SEÑOR GARCÍA REPRESA: Don't you know it is  
12 the DTPM, and the companies only began filling  
13 in those reports in 2017? Are you aware of  
14 that?

15 SEÑOR SILVA: I am aware of that but I am  
16 also aware that there is a bus monitoring  
17 centre in DTPM, which is a centre in which they  
18 have lots of cameras and they follow on real  
19 time what is going on, and, more importantly,  
20 there is a policeman, 24 hours, 7 days of the  
21 week, in that room together with people from

1 the operators checking in real time vandalism  
2 incidents. So I don't see...

3 SEÑOR GARCÍA REPRESA: Do you know how many  
4 buses run on a daily basis in Santiago, sir?

5 SEÑOR SILVA: Yes. Around 6000.

6 SEÑOR GARCÍA REPRESA: In all Transantiago?

7 SEÑOR SILVA: Yes.

8 SEÑOR GARCÍA REPRESA: Go to paragraph 163  
9 of your Second Report, please, page 32 of your  
10 Second Report. There you refer -- you say "we  
11 believe more importantly ... that the State has  
12 been effective in reducing vandalism since  
13 2014." So let me ask you a first question.  
14 You are not making any statement about  
15 vandalism fight before 2014, correct?

16 SEÑOR SILVA: No, that is not correct. What  
17 I said to say there is what I said in the  
18 presentation, that if you look at the  
19 figures -- I analysed the years before -- you  
20 see a peak in 2014 and from that moment it  
21 begins decreasing. And there is another fact

1 that is relevant for this. Because the DTPM  
2 was, from what I read, was always worried about  
3 this and in 2013 the system for reports  
4 changed, to get more information. And in 2014  
5 it changed again to have more detailed  
6 information.

7 SEÑOR GARCÍA REPRESA: If you go to page 29,  
8 there you will see the figure I think you are  
9 referring to, and if I understand correctly,  
10 your analysis in this case is based on the  
11 sharp drop between 2014 and 2015, correct?

12 SEÑOR SILVA: Yes, and most importantly on  
13 figure 5 in the next page, which looks at the  
14 same data but for Alsacia and Express.

15 SEÑOR GARCÍA REPRESA: Which also shows a  
16 drop between 2014 and 2015, correct?

17 SEÑOR SILVA: Yes. And there is  
18 a difference between those numbers --

19 SEÑOR GARCÍA REPRESA: Can I continue?

20 SEÑOR GRANÉ LABAT: Objeción. No he hecho mi  
21 objeción por favor, doctor García Represa.

1 En reiteradas ocasiones el abogado  
2 interrumpe al experto cuando quiere dar su  
3 explicación. Le pedimos nuevamente a la  
4 contraparte que extiendan a nuestros expertos  
5 la misma cortesía que nosotros les extendimos a  
6 los expertos de ellos. Gracias

7 PRESIDENTA KAUFMANN-KOHLER: Sí, una  
8 cortesía para extender en este momento sería  
9 una pausa. (Risas.) Hace más de dos horas que  
10 estamos.

11 SEÑOR GARCÍA REPRESA: Estoy a punto de  
12 terminar. Quería terminar con este punto, de  
13 ahí la premura, para pasar a otra cosa. Si  
14 puedo tener 5 minutos más, yo esperaría que sea  
15 útil. Muchas gracias.

16 SEÑOR SILVA: Can I make the precision I  
17 wanted to make?

18 PRESIDENTA KAUFMANN-KOHLER: Yes,  
19 absolutely.

21 SEÑOR SILVA: Because there is a difference

1 in the numbers. In figure 4 it is the total  
2 reports. From figure 5 onwards I consolidated  
3 the reports that were about one bus. So in  
4 those reports sometimes there is one report for  
5 the left window, and another different report  
6 for the back door. So when I looked from  
7 figure 5 onwards I considered those two events,  
8 which was one bus in a given time, in a given  
9 day, as only one bus vandalised. So that may  
10 show a difference between the numbers but  
11 I wanted to be clear.

12 SEÑOR GARCÍA REPRESA: I am interested in  
13 figure 4, which is the one that shows a sharp  
14 drop and which is the one you rely on to make  
15 your point at paragraph 154, where you say that  
16 it is evident that the argument of BRT is false  
17 and --about your conclusions is false, and  
18 that, you know, you say BRT are simply wrong.  
19 So I would like to go to the file that actually  
20 underlies this figure 4. We can see at the  
21 bottom WS 72, and you will find that at tab 14.

1 Let me know when you are there, sir. Tab 14,  
2 WS 72, and just to be clear, I will call it the  
3 initial WS 72.

4 We can see there -- and I am interested in  
5 2015 -- you have a total of 3,593 --

6 SEÑOR SILVA: Sorry, where?

7 SEÑOR GARCÍA REPRESA: 2015, 3,593, that is  
8 without strikes. That is your figure for 2015,  
9 which shows a sharp drop compared to the 5,162  
10 of 2014, correct?

11 SEÑOR SILVA: Correct.

12 SEÑOR GARCÍA REPRESA: As you know, we did  
13 ask for the native file of the data, so we  
14 looked at the native file of this data, and you  
15 may have heard Ms Weinstock saying that she  
16 reviewed and found a mistake, and you said this  
17 morning that Ms Weinstock simply did not  
18 understand the data. Let's test that.

19 SEÑOR SILVA: Can I make a precision?

20 SEÑOR GARCÍA REPRESA: No, No

21 SEÑOR SILVA: I said she did not understand

1 the methodology.

2 SEÑOR GARCÍA REPRESA: Ok, let's go to the  
3 next tab -- for the record, 15, C-706 -- and  
4 this is the native file, and you can go to the  
5 last page. Its 83 but at the end you have the  
6 tab. We printed it to make it easier. You  
7 have the tab called resumen, and you can see  
8 the last pages for 2015, and we see --

9 SEÑOR SILVA: I am still not there. Give me  
10 a second I don't see the resumen part.

11 SEÑOR GARCÍA REPRESA: It is the last page.  
12 If you go to the last page, you will find it.

13 SEÑOR SILVA: So that is something you made?

14 SEÑOR GARCÍA REPRESA: No, we didn't make  
15 it. That is your data. That is a print-out of  
16 Excel. It is your data, the one you relied on.  
17 So at 2015 we see actually -- and, by the way,  
18 if you look at the bottom row it is an Excel,  
19 so you can see the sum -- so you can see that  
20 actually what seems to have happened is that  
21 for 2015 in your graph you are not reporting

1 the full year, are you? Because full year for  
2 2015 is 5,710, which, if we go back to the  
3 previous tab, we can see that your graph was  
4 built using only 3,593 events for 2015, and  
5 actually, if you look at the bottom line of tab  
6 15, last page, Excel shows you that what you  
7 have done in your graph is simply to add from  
8 January to June 2015, so for 2015 you have  
9 actually excluded half a year in order to build  
10 your graph 4, correct?

11 SEÑOR SILVA: That is not correct. So the  
12 explanation is in paragraph 153 of my Second  
13 Report and says "We also follow the same  
14 methodology as in our First Report and leave  
15 out bus drivers' strikes as they are different  
16 type of event," so the difference between the  
17 number you are mentioning and my report is  
18 exactly that.

19 SEÑOR GARCÍA REPRESA: Ok, except that in  
20 your tab 14 you indicate that there are 184  
21 strikes in 2015.

1 SEÑOR SILVA: Where, sorry?

2 SEÑOR GARCÍA REPRESA: Tab 14. You have 184  
3 strikes in 2015.

4 SEÑOR SILVA: Average per month. So the  
5 total is 12 times that number, plus some  
6 corrections, because there might be decimals,  
7 and it could be 184.1.

8 SEÑOR GARCÍA REPRESA: Well, with apologies,  
9 I think that really doesn't match the data. If  
10 you look at the prior pages in C-706, let's  
11 look at 2014.

12 SEÑOR SILVA: Where?

13 SEÑOR GARCÍA REPRESA: Tab 15, C-706, and  
14 you can now go to 2014, for example. In 2014  
15 we see that you have reported for a total of  
16 5,685 -- right?

17 SEÑOR SILVA: Can you say the number again?

18 SEÑOR GARCÍA REPRESA: Yes, 5,685.

19 SEÑOR SILVA: Yes. That is the total  
20 including strikes.

21 SEÑOR GARCÍA REPRESA: And if we go back to

1 your tab 14, that is the addition, indeed, of  
2 5,162.

3 SEÑOR SILVA: Tab 14, where?

4 SEÑOR GARCÍA REPRESA: There is only one  
5 page in tab 14.

6 SEÑOR SILVA: Okay. Sorry.

7 SEÑOR GARCÍA REPRESA: So 2014, if you add  
8 those three figures, you reach the figure of  
9 5,636, which is quite close to 5,685. So you  
10 are not, to be clear, if you multiply --

11 SEÑOR SILVA: Can you repeat?

12 SEÑOR GARCÍA REPRESA: If you multiply your  
13 last column by 12, your figures don't match,  
14 sir, so I put it to you that that number of  
15 strikes is not 185 strikes per month, for the  
16 simple reason there are not more than 30 days  
17 in a month.

18 SEÑOR SILVA: I was not able to follow all  
19 the calculations that you were mentioning.  
20 Sorry.

21 SEÑOR GARCÍA REPRESA: So is your testimony

1 that you have 185 strikes per month in 2015?

2 SEÑOR SILVA: No. The number that is there  
3 is the amount of reports due to bus strikes on  
4 average per month, so that is counting the  
5 total and dividing it by twelve. That is what  
6 I did.

7 SEÑOR GARCÍA REPRESA: Okay.

8 SEÑOR SILVA: Can I get a calculator maybe,  
9 so we try to check whether the numbers are  
10 okay?

11 SEÑOR GARCÍA REPRESA: I think we can take a  
12 break, and maybe give a calculator to the  
13 gentleman.--

14 PRESIDENTA KAUFMANN-KOHLER: Yes. Maybe you  
15 can have a look at it during the break, because  
16 I must say I didn't follow either.

17 SEÑOR SILVA: It was hard for me too. Can  
18 you repeat the main point so that I can check  
19 it?

20 SEÑOR GARCÍA REPRESA: The main point is  
21 that when we look at your table, tab 14, 2015,

1 what we find there is exactly the number that  
2 we find in the native file that we only got  
3 after your report, after we requested it, for  
4 the months of January to June 2015, to the  
5 report. So it is the exact same figure. So I  
6 put it to you that what you have done in your  
7 figure 4 of your report is you have excluded  
8 six months of the year, and this is why you see  
9 a drop from 2014 to 2015 when you should see an  
10 increase. So I invite you to double check in  
11 the break and we can come back to it.

12 SEÑOR SILVA: Surely. And I want to make a  
13 precision for the First Report I also provided  
14 the native report.

15 SEÑOR GARCÍA REPRESA: No, you did not.

16 SEÑOR SILVA: I think it was asked and  
17 I provided. I don't know if you included it in  
18 the record. I gave all my native files and  
19 work papers.

20 SEÑOR GARCÍA REPRESA: We can check that.

21 PRESIDENTA KAUFMANN-KOHLER: That is fine.

1 I think we are now just interested in  
2 understanding the figure 4. Let's take 15  
3 minutes now, and, gentlemen, as you know, while  
4 you are on the witness stand you should not  
5 speak to anyone about your testimony, but you  
6 can do your calculations.

7 SEÑOR SILVA: But I do need a calculator.

8 PRESIDENTA KAUFMANN-KOHLER: I am sure  
9 someone will be kind enough to give you a  
10 calculator.

11 SEÑOR SILVA: I have my phone over there.  
12 I have a calculator there.

13 (Pausa para el café.)

14 PRESIDENTA KAUFMANN-KOHLER: Antes de  
15 continuar con la interrogación de los expertos,  
16 el Tribunal no ha decidido ya si admitiría o no  
17 los dos documentos por los cuales hay una  
18 solicitud. Pero, de todas formas, que sea  
19 incluido en el expediente o no, no vamos a  
20 permitir preguntas a los expertos que siguen  
21 sobre estos documentos, porque ya estamos

1 demasiado adelantados en este procedimiento y  
2 los testigos de hecho han terminado su  
3 interrogación.

4 Así volveremos más tarde con una decisión  
5 sobre la admisión, pero eso es una decisión  
6 parcial -si lo puedo decir así- de no permitir  
7 preguntas a expertos sobre estos documentos. De  
8 todas formas, no.

9 ¿Podemos continuar en este caso? Señor  
10 García Represa, por favor.

11 SEÑOR GARCÍA REPRESA: Con la venia, señora  
12 presidenta.

13 During the break you were going to run some  
14 figures, and I have done the same, so I would  
15 like to see if we agree on the figures. So  
16 I am back on tab 15, C-706. Can you confirm  
17 for me, looking at the last page, which  
18 summarises the year 2015, that in the graph we  
19 looked at before, figure 4 of your Second  
20 Report, you included the 3,593 evasion reports  
21 that comprise the months of January through

1 June, 2015. Yes or no?

2 SEÑOR SILVA: No. So, if I am allowed to  
3 elaborate, I have three points regarding your  
4 statement.

5 SEÑOR GARCÍA REPRESA: I have some follow-up  
6 questions, so I want to make sure we agree or  
7 disagree on a few things.

8 SEÑOR SILVA: My first point is exactly what  
9 you are asking. So in the last page, that is  
10 not from the native file. You can see it  
11 because the months are in French and I don't  
12 speak French, and I have just added the numbers  
13 highlighted: 174 plus 203, 748, 2034, 64, and  
14 2007 ... and it is indeed what it says there,  
15 and I think it is a coincidence that it matches  
16 the number that is in the figure and if you  
17 give me time I can explain.

18 SEÑOR GARCÍA REPRESA: Let me see if I get  
19 that straight. First thing, it is the native  
20 file. It is simply in French because when you  
21 print an Excel from a computer that is set in

1 French, it automatically updates, and, as you  
2 may know or may not know, my computer is set in  
3 French. Second, I confirm, because you said it  
4 before, I confirm that we only received these  
5 native data following a request we made after  
6 your Second Report, because this file, what  
7 actually is in tab 14, is the only thing we  
8 received with your Second Report.

9 Third, do you confirm therefore that the  
10 3,593 evasion reports from January to --

11 SEÑOR SILVA: Vandalism.

12 SEÑOR GARCÍA REPRESA: Excuse  
13 me -- vandalism reports -- excuse me -- from  
14 January to June 2015 are the same 3,593 that we  
15 can find in tab 14, which is WS-72, which is  
16 the data you use for your graph? Yes or no?

17 SEÑOR SILVA: No. It is not the data I use.  
18 I use the entire year. 2015. So, again, if  
19 I give me time I can explain what the source of  
20 your confusion --

21 PRESIDENTA KAUFMANN-KOHLER: Maybe you first

1 answer the questions and then you can explain  
2 if a confusion remains.

3 SEÑOR GARCÍA REPRESA: You made the point  
4 before the break that the difference would be  
5 made up of the strikes, which in tab 14 you  
6 said need to be multiplied by 12, because,  
7 according to you, it is a monthly figure, and  
8 then with that difference we would reach,  
9 according to, I think, what you said, the  
10 number that you use in your graph. Is that  
11 your testimony, sir, yes or no?

12 SEÑOR SILVA: My testimony is that --

13 SEÑOR GARCÍA REPRESA: Is that your  
14 testimony, yes or no?

15 SEÑOR SILVA: Can you repeat it?

16 SEÑOR GARCÍA REPRESA: Yes, you tried to  
17 explain before the break that the difference  
18 that we see -- according to you it is a mere  
19 coincidence that the same figure for 2015 that  
20 we have in your tab 14 corresponds to only six  
21 months of the year, for 2015. You said that it

1 is a mere coincidence and that the difference  
2 is explained by the number of strikes, which in  
3 tab 14 we need to multiply by 12 in order to  
4 bridge the gap between the figure you have  
5 reported in your graph and the total for the  
6 year in the source data. Is that your  
7 testimony?

8 SEÑOR SILVA: That is my testimony, and  
9 I want to add that what you printed is not the  
10 entire native file. You printed, as you said,  
11 I think, the tab summary, "resumen" in Spanish.

12 SEÑOR GARCÍA REPRESA: No, we printed the  
13 entire file, and you have it before you, so you  
14 can go back to the yearly data that is in the  
15 prior pages.

16 SEÑOR SILVA: No, I mean tab 15, I am sorry.

17 SEÑOR GARCÍA REPRESA: Yes, tab 15 has  
18 several pages and we printed the whole thing.  
19 But I have run the numbers --

20 PRESIDENTA KAUFMANN-KOHLER: Let the expert  
21 say. Look at the different charts we have in

1 tab 15 --

2 SEÑOR SILVA: Yes, I know them well, and  
3 they are the summary that is made out in the  
4 Excel spreadsheet by the DTPM, and what I did  
5 is count from every single report, which is  
6 also in the native file. So what I am trying  
7 to say is that the tabs that are printed are  
8 generated by DTPM based on every single report  
9 year by year. What I did is use the same  
10 source information, the reports for every day,  
11 and created my own count, which is on tab 14.

12 PRESIDENTA KAUFMANN-KOHLER: So if I look at  
13 the first page in tab 15, that is by year? Is  
14 this what you mean? Or you mean still  
15 something different?

16 SEÑOR SILVA: No. Those by year are  
17 constructed by the DTPM and are one of the tabs  
18 of the native file.

19 PRESIDENTA KAUFMANN-KOHLER: And you used  
20 this, or you used something different?

21 SEÑOR SILVA: I used the source reports that

1 are --

2 PRESIDENTA KAUFMANN-KOHLER: Summarised --  
3 SEÑOR SILVA: Summarised in these tables.  
4 PRESIDENTA KAUFMANN-KOHLER: That is clear,  
5 at least.

6 SEÑOR SILVA: But I still have the  
7 explanation on why the figures ...

8 PRESIDENTA KAUFMANN-KOHLER: Yes, we will  
9 need this explanation. You had other  
10 questions.

11 SEÑOR GARCÍA REPRESA: I have one final  
12 question on this, which is I have run the  
13 numbers. If you multiply -- we go back to tab  
14 14 -- if you multiply the strikes by 12, which  
15 I assume you did, you reach 2,208, and if you  
16 add that to the 3,593, you actually reach  
17 5,801, which is actually not coinciding; it is  
18 about 100 events more than what you find in  
19 your summary tab for 2015. So I am putting to  
20 you, and I want to be fair, that your  
21 explanation simply doesn't match. So go ahead.

1 SEÑOR SILVA: For instance, as you can see  
2 in tab 14, which I tried to say before, it  
3 could be now you are saying something different  
4 but ... if you divide -- if you multiply 299 in  
5 the year 2015 by 12, you get 3,588, which also  
6 doesn't match with the number on the left, and  
7 that is because you cannot see the decimals  
8 over there. If you divide 3,593 by 12, it is  
9 299.1416, and that is rounded in the file  
10 printed. Right? So these differences that you  
11 are suggesting I did on purpose by looking only  
12 at part of the year could be very well because  
13 the decimals are not there.

14 SEÑOR GARCÍA REPRESA: You will be able to  
15 put that, but a gap of 100 events of vandalism  
16 is really not explained by decimals.

17 SEÑOR SILVA: I disagree that there is a gap  
18 of 100 events.

19 SEÑOR GARCÍA REPRESA: The maths speak for  
20 themselves, but I can move on.

21 PRESIDENTA KAUFMANN-KOHLER: Let me ask for

1 clarification here, while we are on these  
2 charts.

3 Why is there this difference between this  
4 2015 figure in tab 14 of 3,593 without strikes  
5 and the summary in tab 15, where the total is  
6 5,710?

7 SEÑOR SILVA: Sure. The difference is the  
8 number of vandalism reports -- sorry, I now see  
9 on the screen that you see the native file with  
10 much more tabs. Right? So that was my comment  
11 before, that you said you printed the entire  
12 file. I just want to bring to the attention  
13 that I used the information that is in the tab  
14 for each year, so what I am saying is that  
15 I didn't calculate the 5,710 that he is  
16 pointing out. But I can also answer to your  
17 question, Madam President, because the  
18 difference is the number of vandalism reports  
19 due to bus drivers' strikes, which is around  
20 2,200 in that year. That was the year with the  
21 largest strike problem. There was, I think,

1 one week of strike for Express.

2 PRESIDENTA KAUFMANN-KOHLER: Fine. So the  
3 difference between the number in tab 14 and the  
4 final number in tab 15 is due to the strikes?

5 SEÑOR SILVA: Exactly.

6 PRESIDENTA KAUFMANN-KOHLER: So tab 15 takes  
7 into account the strikes?

8 SEÑOR SILVA: Exactly, which is what  
9 I wrote --

10 PRESIDENTA KAUFMANN-KOHLER: I think  
11 everybody agrees.

12 SEÑOR SILVA: In paragraph 153 of my report,  
13 that I was not including them, not in the first  
14 and not in the Second Report.

15 PRESIDENTA KAUFMANN-KOHLER: And the fact  
16 that it doesn't match precisely is due to the  
17 decimals?

18 SEÑOR SILVA: Probably. I don't see the  
19 decimals, so I can't double check that but it  
20 is probably that, yes.

21 SEÑOR GARCÍA REPRESA: Now, assuming that

1 the numbers we have in this tab, resumen, and  
2 you can look at it on the screen, are including  
3 the strikes related to vandalism, you would  
4 agree that those are events that arise from  
5 vandalism, correct?

6 SEÑOR SILVA: They are from bus drivers'  
7 strikes. They have been reported as vandalism.  
8 It could be the drivers that ...

9 SEÑOR GARCÍA REPRESA: So when drivers are  
10 on strike because of vandalism, they are not  
11 driving buses, correct?

12 SEÑOR SILVA: That is right.

13 SEÑOR GARCÍA REPRESA: So vandalism does  
14 impact the ability of companies to perform  
15 their operating programmes, correct?

16 SEÑOR SILVA: Yes, sometimes. So this is  
17 related to what I said in the presentation.  
18 Also what I tried was to get a big picture of  
19 the thing and not focus on the examples. So  
20 for instance this difference in this particular  
21 year I think is five days of strikes in the

1 entire year. The reason why I treated them  
2 differently is because they occur in specific  
3 moments, specific times, and also because it is  
4 a result of a problem between the company and  
5 the employees. And for instance in 2016, 2017,  
6 there were no strikes, and in 2018 I think  
7 Alsacia reported in the entire year two  
8 incidents and Express one, so that is why  
9 I left them out. I isolate them. I am not  
10 denying that they --

11 SEÑOR GARCÍA REPRESA: All of this is  
12 related to vandalism, we agree?

13 SEÑOR SILVA: Okay, yes.

14 SEÑOR GARCÍA REPRESA: Now, if all of this  
15 is related to vandalism, and you have on the  
16 screen at the top the total for 2014 and at the  
17 bottom the total for 2015, do you agree that  
18 vandalism-related events increased in 2015  
19 compared to 2014? Yes or no?

20 SEÑOR SILVA: Yes, because they include the  
21 bus drivers' strikes.

1 SEÑOR GARCÍA REPRESA: Okay. That was the  
2 point.

3 COÁRBITRO STERN: Maybe, just, you asked the  
4 question whether the strikes were due to  
5 vandalism and I think you said yes, but strikes  
6 can be for many, many other reasons, for the  
7 money you get, et cetera, et cetera, so could  
8 you precise this? I am not sure I understand.

9 SEÑOR SILVA: What I said was exactly what  
10 you are suggesting. So probably the origin of  
11 those vandalism reports is the actions by the  
12 drivers because of a conflict with the  
13 companies. Right? Is that what you are  
14 mentioning? So the strike itself was not due  
15 to vandalism. The reports come from the bus  
16 drivers' strikes.

17 COÁRBITRO STERN: That is clear. Thank you  
18 very much.

19 COÁRBITRO GARIBALDI: So, in other words,  
20 the vandalism reports during strikes correspond  
21 to acts of vandalism committed by strikers? Is

1 that the point?

2 SEÑOR SILVA: I don't know, because in the  
3 reports it is not that specific who committed  
4 the action, but it is due to the bus drivers'  
5 strikes. Most likely it is actions by the bus  
6 drivers but I cannot see that in the data, so  
7 if you see in the data every report says the  
8 category. So sometimes it is a sport event,  
9 which are the majority of the vandalism reports  
10 in the entire period, the sporting events, and  
11 this event said bus drivers' strikes.

12 COÁRBITRO GARIBALDI: I understand that, but  
13 just so I can visualise what happened, during  
14 the strike, one day, two days a week, however  
15 long it is, the buses are not running, right?  
16 These are total strikes or partial strikes?

17 There are some drivers on strike and some other  
18 drivers not on strike? What is the situation?

19 SEÑOR SILVA: Yes. So normally it is the  
20 strike of only one company. Rarely they happen  
21 more than one company at a time. And some of

1 the incidents could be within the same company,  
2 some drivers want to adhere to the strike and  
3 others don't, so it could be that strikers are  
4 preventing the drivers that do not want to  
5 adhere to the strike not to go out. So they  
6 could block the terminal, and this could be  
7 this.

8 However, the DTPM, when there are these  
9 events, and I know this for this particular  
10 strike in 2015, they create a contingency plan.  
11 So the buses are not necessarily not running,  
12 because sometimes actions by the DTPM allow  
13 them to take the buses out before, or on the  
14 night, and then provide services anyway, but it  
15 is not the service provided by the drivers that  
16 are on strike. So they have contingency plans  
17 also for strikes. That is my point.

18 COÁRBITRO GARIBALDI: So they are understudy  
19 drivers?

20 SEÑOR SILVA: They are what?

21 COÁRBITRO GARIBALDI: Substitute drivers?

1 SEÑOR SILVA: Yes, and sometimes other  
2 companies help, other operators in the system  
3 help to cover these special events and they get  
4 paid more because these are kilometres that  
5 were not in the programme.

6 COÁRBITRO GARIBALDI: One more question on  
7 this topic. Suppose that the drivers of one  
8 company, say Alsacia, are on strike and the  
9 drivers of Express are not on strike. Does the  
10 system segregate between vandalism reports  
11 related to Alsacia on those days from vandalism  
12 reports related to Express on those days?

13 SEÑOR SILVA: Yes.

14 COÁRBITRO GARIBALDI: Thank you.

15 PRESIDENTA KAUFMANN-KOHLER: Please.

16 SEÑOR GARCÍA REPRESA: Thank you,  
17 Madam President.

18 Now, I am not sure who to address this to.  
19 You have received and you have reviewed a  
20 report by Professor Alvaro Riascos, have you  
21 not?

1 SEÑOR SILVA: It is part of the file, yes.

2 SEÑOR GARCÍA REPRESA: You have reviewed it?  
3 Yes?

4 SEÑOR SILVA: I have seen it, yes.

5 SEÑOR GARCÍA REPRESA: You have reviewed it?

6 SEÑOR SILVA: What do you mean exactly by  
7 review?

8 SEÑOR GARCÍA REPRESA: One thing is to see a  
9 report. Another is to review it, analyse it.

10 SEÑOR SILVA: I have analysed it.

11 SEÑOR GARCÍA REPRESA: If we go to your  
12 Second Report, page 37, I am interested at the  
13 bottom of paragraph 190, there I understand you  
14 are in part responding to Quantil, and your  
15 point, if you look at the very bottom of that  
16 page, you say "we demonstrate" -- reading the  
17 second to last line of the bottom paragraph at  
18 page 37 -- "we demonstrate that the Companies  
19 and BRTPlan-Transconsult have used misleading  
20 language in their argument" -- that is kind of  
21 a strong accusation -- "In 2014, the DTPM



1 defined that an interval is considered  
2 irregular when the difference between the  
3 minimum and maximum interval between the  
4 dispatch of buses is strictly greater than one  
5 minute."

6 So if I understand your point, your point is  
7 that what Quantil did not consider is that in  
8 2014 there was a decision by the authority  
9 saying that we will define regular intervals as  
10 up to one minute, and above one minute we  
11 cannot define them as irregular. So for  
12 example if it is 1 minute 2 seconds, 1 minute  
13 20 seconds, that is an irregular interval,  
14 correct?

15 SEÑOR SILVA: The question was a bit long.  
16 The last explanation about the interval is  
17 right.

18 SEÑOR GARCÍA REPRESA: So, to be clear, what  
19 the rule says -- I just want to understand what  
20 you are saying here. So the rule says up to 1  
21 minute it is regular. Above 1 minute, like 1

1 minute 10 seconds, it is irregular. Correct?

2 SEÑOR SILVA: That is correct -- no, wait.  
3 Yes, go ahead.

4 SEÑOR GARCÍA REPRESA: And it is on the  
5 basis of that, if you now go to page 43 of the  
6 Second Report, we see on page 43 that you have  
7 actually presented a table that I understand is  
8 responding to the point that Professor Riascos  
9 was making. Now, table 4 in that page 43, as  
10 I said, responding to Professor Riascos, just  
11 to be clear, Professor Riascos did a few things  
12 in his report, one of which was to conduct a  
13 statistical analysis of the difference between  
14 the Metropolitana operating programme before 14  
15 January 2017 and the operating programme after  
16 14 January 2017, that he identified an anomaly,  
17 he said in his report. You have not conducted  
18 such a statistical study yourself, have you?

19 SEÑOR SILVA: Can I see the report  
20 by Professor Riascos --

21 SEÑOR GARCÍA REPRESA: I am asking about

1 your report.

2 SEÑOR SILVA: No, I have not.

3 SEÑOR GARCÍA REPRESA: What you have  
4 conducted is a study, so what we see here at  
5 table 4, which is, you have classified, again,  
6 for Metropolitana, you have also looked at the  
7 pre 14 January operating programme, at the post  
8 14 January operating programme, and you have  
9 classified the intervals as irregular or  
10 regular. Correct?

11 SEÑOR SILVA: In table 4? No. I have  
12 classified according to the difference between  
13 the maximum and minimum, 0, which is regular,  
14 1, which is regular, and 2 or more, which is  
15 irregular.

16 SEÑOR GARCÍA REPRESA: So I understand your  
17 testimony to be when we see 2 or more it is  
18 above 1 minute. That is your point?

19 SEÑOR SILVA: That is my point. In the DTPM  
20 reports they round the minutes, so I cannot see  
21 if there is 1.3 classified as 1, or 1.7

1 classified as 2.

2 SEÑOR GARCÍA REPRESA: But the rule is  
3 clear, I think we all agree, it is up to 1  
4 minute.

5 SEÑOR SILVA: Yes, but they respect that.  
6 So what is 2 or more is irregular. Only the  
7 last row of table 4.

8 SEÑOR GARCÍA REPRESA: Yes, and that  
9 I understand is your point.

10 Now, to be clear, the reference to this  
11 chart is at footnote 121 and you say it is data  
12 provided by DTPM. Do you see that?

13 SEÑOR SILVA: I do see it.

14 SEÑOR GARCÍA REPRESA: Do you know who  
15 Loreto Bravo is?

16 SEÑOR SILVA: No.

17 SEÑOR GARCÍA REPRESA: Because she is the  
18 author of the Excel file that's in there. You  
19 have no idea who she is?

20 SEÑOR SILVA: I don't know if she is the  
21 author and I don't know who she is.

1 SEÑOR GARCÍA REPRESA: I am representing to  
2 you that she is the author, and I understand  
3 you don't know who she is. That is fine. Did  
4 you independently verify and validate the data  
5 that DTPM provided to you? Yes or no?

6 SEÑOR SILVA: The data from DTPM, no.

7 SEÑOR GARCÍA REPRESA: So if I understand  
8 correctly, you took the DTPM table, you saw how  
9 the DTPM qualified or characterised the  
10 intervals, the difference between maximum and  
11 minimum, where the DTPM said it is regular, you  
12 considered it to be regular, and where the DTPM  
13 said it is irregular, you considered it to be  
14 irregular, correct?

15 SEÑOR SILVA: Correct, because these reports  
16 are also presented to the companies, and they  
17 agree on these figures in a basis of every  
18 single operational programme.

19 SEÑOR GARCÍA REPRESA: I apologise in  
20 advance but I think we are going to have to go  
21 again to a native file to understand what is

1 happening here.

2 SEÑOR SILVA: Is it about this subject?

3 SEÑOR GARCÍA REPRESA: I ask the questions.

4 SEÑOR SILVA: I apologise.

5 SEÑOR GARCÍA REPRESA: No need to apologise.  
6 Let's go to tab 25. Tab 25 is a printout of  
7 exhibit C-704, which is again the native file  
8 underlying the table 4 in your Second Report,  
9 page 43, and I would like you to help me  
10 understand what we are looking at. If we start  
11 from the top, we are looking at servicio 521,  
12 as an example -- that is unit 5, right?

13 SEÑOR SILVA: That is right.

14 SEÑOR GARCÍA REPRESA: And that is  
15 Metropolitana?

16 SEÑOR SILVA: Yes.

17 SEÑOR GARCÍA REPRESA: And we are looking at  
18 sentido ida, and, to be clear, to define an  
19 interval regular or irregular, one needs to  
20 look at the maximum difference, or the  
21 difference, let's say, between the shortest

1 interval and the longest interval within the  
2 same servicio sentido periodo, SSP, correct?

3 SEÑOR SILVA: That is correct.

4 SEÑOR GARCÍA REPRESA: So in this case we  
5 are looking at servicio 521, and I would like  
6 you to focus on line 4 --

7 SEÑOR SILVA: Which page?

8 SEÑOR GARCÍA REPRESA: The first one. We  
9 haven't moved. So line 4, and servicio is 521.

10 SEÑOR SILVA: Yes.

11 SEÑOR GARCÍA REPRESA: Sentido is ida, and  
12 the periodo, we have to move to column L, TNOC,  
13 that's transicion nocturno, correct?

14 SEÑOR SILVA: That is correct.

15 SEÑOR GARCÍA REPRESA: And we see that that  
16 period ends, if you keep going down, with  
17 period No 4, PMA, that's punta mañana, correct?

18 SEÑOR SILVA: That is correct.

19 SEÑOR GARCÍA REPRESA: Now, if you look at  
20 the interval, it is in column M, you can see  
21 that the first service for that period

1 is -- there is a difference of 8 minutes 26  
2 seconds with prior 1, and I have identified --

3 SEÑOR SILVA: 9 minutes?

4 SEÑOR GARCÍA REPRESA: No, 8.26. I am still  
5 on the first.

6 SEÑOR SILVA: Yes, sorry.

7 SEÑOR GARCÍA REPRESA: You will see that  
8 three lines down the yellow shaded area there  
9 is a red highlighted cell, that is the longest,  
10 and if you keep going down, we find in green  
11 the shortest.

12 SEÑOR SILVA: Yes. That is correct.

13 SEÑOR GARCÍA REPRESA: You will agree that  
14 the difference between 9 minutes 26 and 8  
15 minutes 24 is one minute 2 seconds?

16 SEÑOR SILVA: That is right.

17 SEÑOR GARCÍA REPRESA: And you would agree  
18 with me if you keep going down the columns that  
19 at the end of this chart, when we look at  
20 column W, this has been noted by DTPM as  
21 category 1, correct?

1 SEÑOR SILVA: Can you -- so if you show the  
2 decimal, it says 1.02. Because it is a  
3 formula, right? It is the actual difference.

4 SEÑOR GARCÍA REPRESA: We can certainly go  
5 to the format. Now, I put it to you, and we  
6 will be able to check, that when we find a 1 in  
7 this column W, that is exactly what you have  
8 transferred into table 4 in your report,  
9 correct?

10 SEÑOR SILVA: No, that is not correct.

11 SEÑOR GARCÍA REPRESA: So the ones in here  
12 you say you have put them as 2s in your table?

13 SEÑOR SILVA: What I have done is there is a  
14 macro in the Excel that calculates this based  
15 on the real number that is under the tab  
16 resumen operador.

17 SEÑOR GARCÍA REPRESA: So under this tab,  
18 I know, now under this tab --

19 SEÑOR SILVA: No. It is hoja 2. Sorry.  
20 That is not the one. I don't know the name of  
21 the tab. Can you look at valores 2?

1 SEÑOR GARCÍA REPRESA: We can check it  
2 later --

3 SEÑOR SILVA: You asked me which one I used.  
4 Right?

5 SEÑOR GARCÍA REPRESA: Apparently we now  
6 have the decimals here so what I was looking at  
7 is 100. So that has been noted by DTPM as 1,  
8 correct?

9 SEÑOR SILVA: Yes, correct.

10 SEÑOR GARCÍA REPRESA: But you agree that  
11 the interval, the difference between the  
12 maximum and the minimum, is more than 1 minute,  
13 right?

14 SEÑOR SILVA: I'm not sure. I think this  
15 refers to the first one. The 8.26.

16 SEÑOR GARCÍA REPRESA: No. Excuse me, sir.  
17 What you qualify as a 1, a 0 or a 2 is the  
18 entire period. And you can check the table.  
19 We have printed for you additional pages, and  
20 you will see that every time the numbers apply  
21 to the entire period, because, again, when you

1 define an interval as regular or irregular, it  
2 is for each servicio, sentido, periodo,  
3 correct?

4 SEÑOR SILVA: Yes, that is correct.

5 SEÑOR GARCÍA REPRESA: So here in this  
6 example I just showed you, would you agree or  
7 not that the interval has been marked by DTPM  
8 as 1, but that the difference between the  
9 longest and the shortest interval is more than  
10 1 minute. Correct?

11 SEÑOR SILVA: I agree, but what I don't  
12 agree is that I used that in my table.

13 SEÑOR GARCÍA REPRESA: We can check that.  
14 That is fine. We have done our homeworks.  
15 Now, I have highlighted for your reference  
16 other examples, and we stopped at three pages,  
17 but every single yellow example you have here  
18 is an interval that was marked by DTPM as  
19 regular, because --

20 SEÑOR SILVA: I don't agree with that.

21 SEÑOR GARCÍA REPRESA: Let me ask the

1 question. Marked by DTPM as regular, yet when  
2 we look at the difference between maximum and  
3 minimum interval, it is marked as 1 when it  
4 should have been irregular, so more than 1.  
5 And the reason that we see this in this table,  
6 I put it to you, is simply because someone at  
7 the DTPM has truncated the seconds when they  
8 did this conversion. Do you agree, or not?

9 SEÑOR SILVA: I agree that that column, W,  
10 has the seconds truncated, yes. What I am not  
11 confirming is that they used the truncated  
12 number to calculate the regular or irregular  
13 values.

14 SEÑOR GARCÍA REPRESA: So I will put it to  
15 you, and we don't have the time unfortunately  
16 to go through this, if I run the Excel with the  
17 proper methodology that is in the DTPM 2014  
18 document, I see that prior to 14 January 2017  
19 Metropolitana had 3.05 per cent of irregular  
20 intervals, and that after 14 January 2017 it  
21 moved up to 27.42 per cent of irregular

1 intervals, which is quite a significant change  
 2 from what you showed in table 4, where we can  
 3 see that according to you the change from  
 4 irregulars before and afterwards was only from  
 5 2.1 per cent to 3.2 per cent, and to simplify,  
 6 I put it to you that your argument, based on  
 7 the DTPM data, that there was not a significant  
 8 increase in irregular intervals for  
 9 Metropolitana in January 2017 simply doesn't  
 10 accord with the data if you apply properly the  
 11 DTPM regulation. Do you agree or disagree?

12 SEÑOR SILVA: I disagree, because,  
 13 unfortunately, I have not seen the calculations  
 14 you are mentioning.

15 SEÑOR GARCÍA REPRESA: Did you perform the  
 16 calculations in that Excel spreadsheet or got  
 17 them from DTPM sir?

18 SEÑOR SILVA: I got them from DTPM and we  
 19 can go to the tab in which the calculations are  
 20 and check it.

21 SEÑOR GARCÍA REPRESA: Well, I hope you do

1 that.

2 Let's go to another topic, and this is your  
 3 first expert report --

4 SEÑOR SILVA: Can I clarify something that  
 5 I was not able to do?

6 PRESIDENTA KAUFMANN-KOHLER: Yes, please.

7 SEÑOR SILVA: This was in the context of  
 8 replying to Professor Riascos report, and we  
 9 have not been able to see his statement, which  
 10 is the one I am rebutting, and he said  
 11 65 per cent, if I recall correctly -- because  
 12 I do not have the report. Or do I? Do I have  
 13 the report by Riascos?

14 SEÑOR GARCÍA REPRESA: Do you want to see  
 15 the report, Madam President? It is in the  
 16 bundle.

17 SEÑOR SILVA: You can check it later, but  
 18 I think he said that he did a statistical  
 19 analysis, and he detected, and in my view  
 20 correctly, a jump in the regularity index of  
 21 Metropolitana in this period of time between

1 1 January and the 14th. And I agree with that.  
 2 I think that is a proper statistical analysis.  
 3 And his explanation is that Metropolitana  
 4 increased the irregular intervals to  
 5 65 per cent, and that is what I don't agree  
 6 with.

7 SEÑOR GARCÍA REPRESA: And you say that  
 8 instead of 65 it should be 3.2 per cent? That  
 9 is what you said in your report, correct?

10 SEÑOR SILVA: No. I said the reason behind  
 11 that jump in regularity is because they move a  
 12 lot, a significant share of intervals from 0 to  
 13 1.

14 SEÑOR GARCÍA REPRESA: To up to 1 minute,  
 15 but again, that 1 minute includes intervals  
 16 that are larger than 1 minute, and that is 60  
 17 seconds, correct?

18 SEÑOR SILVA: That is something that, as you  
 19 said, we cannot corroborate now.

20 SEÑOR GARCÍA REPRESA: Fair enough. And  
 21 unfortunately Professor Riascos is not here to

1 explain his calculations. We know why.

2 First Expert Report, please. Page 26.  
 3 There you refer to on paragraph 70 to something  
 4 you said earlier today about the weekend  
 5 performance of the operators. Do you recall  
 6 that statement from this morning?

7 SEÑOR SILVA: I do.

8 SEÑOR GARCÍA REPRESA: And I understand your  
 9 point is that, if we look at the the bottom of  
 10 the last part of paragraph 70, that because the  
 11 companies don't have better ICR indicator  
 12 during the weekend, when the operating  
 13 programme is less demanding, your point is that  
 14 therefore, you say, we cannot agree with  
 15 Transconsult's assertion that with a larger  
 16 fleet Alsacia and Express would have performed  
 17 much better. That is your point, correct?

18 SEÑOR SILVA: Partially. So that is the  
 19 executive summary, and I am only in there,  
 20 putting the ICR figures, but as I say in  
 21 paragraph 69, I look at ICT as well. So it is

1 based on the comparison between week and  
2 weekend, yes.

3 SEÑOR GARCÍA REPRESA: Yes, and I would love  
4 to go to all the indicators but here at page 26  
5 I just have the ICR and I think we can go  
6 through that? Did you by any chance look at  
7 how other operators performed in terms of ICR  
8 during weekdays and weekends.

9 SEÑOR SILVA: Yes.

10 SEÑOR GARCÍA REPRESA: And you check that  
11 last night when we sent the demonstrative?

12 SEÑOR SILVA: I didn't did get any  
13 demonstrative.

14 SEÑOR GARCÍA REPRESA: Ok, nowhere in your  
15 report, nor this morning, do you explain that  
16 other operators also perform worse in ICR  
17 during the weekends than during the weekdays,  
18 correct?

19 SEÑOR SILVA: I recall that some operators  
20 at some moments in time perform worse in  
21 weekends than in weekdays, but with the

1 qualification that during weekdays they perform  
2 quite well. So it is different when you are  
3 performing well in the week to perform -- it is  
4 different to perform equally or slightly worse  
5 than when you are in the week performing  
6 poorly.

7 SEÑOR GARCÍA REPRESA: Good. But where  
8 I have a slight disagreement Sir is that you  
9 have made a big point about the companies  
10 having worse indicators during the weekends  
11 than in weekdays, and it is the only basis that  
12 you provide to say, 1, that the withdrawal of  
13 services in 2016 -- what we call an  
14 expropriation -- was entirely justified, and,  
15 2, it is what you use to criticise BRT for  
16 considering that with more fleet they would  
17 have had better indicators. So in that  
18 context, given the importance of that point,  
19 would it not have been relevant to tell this  
20 Tribunal that basically all the operators tend  
21 to perform worse during the weekends than in

1 weekdays?

2 SEÑOR SILVA: That is not what I said Mr  
3 García Represa. I said --

4 SEÑOR GARCÍA REPRESA: I did not ask you  
5 what you said. I said did you consider it  
6 relevant or not to tell the Tribunal that? Did  
7 you consider it relevant or not to tell the  
8 Tribunal that all the operators across the  
9 board tend to perform worse during weekends  
10 than in weekdays?

11 SEÑOR SILVA: I looked at those figures last  
12 night, preparing for this examination, and no,  
13 I don't think so. As I said -- and this is  
14 because they perform most of the times. They  
15 also perform better, I think, and at some  
16 moments, if I recall correctly, only at some  
17 moments, some of them perform worse. And the  
18 point of this, the context, was because they  
19 are not arguing that their problems are due to  
20 a fleet deficit. It is Alsacia and Express  
21 that are arguing that they have a fleet

1 deficit, and when they need only 1000 of 2000  
2 they don't perform better, so the conclusion  
3 is, from my view, that it is not a problem of a  
4 fleet.

5 SEÑOR GARCÍA REPRESA: But you see, the  
6 point is, it is your point that the weekends  
7 matter. It is not our point. So I want to  
8 understand why weekends matter. So let's go to  
9 tab 51, if we may. These are the  
10 demonstratives that you had not received but  
11 yet you looked at, apparently --

12 SEÑOR SILVA: No, I haven't looked at that.

13 SEÑOR GARCÍA REPRESA: So let's go to tab 51  
14 in your bundle, please. This is a  
15 demonstrative. The source is at the bottom.  
16 It is from the Quantil data, which is a large  
17 database, and you have on the first page you  
18 have SuBus, Chile. Do you know who that is?

19 SEÑOR SILVA: I know them, yes.

20 SEÑOR GARCÍA REPRESA: Would you say they  
21 are the most comparable company or operator, to

1 Alsacia and Express, yes or no?

2 SEÑOR SILVA: What?

3 SEÑOR GARCÍA REPRESA: Would you say SuBus  
4 is the most comparable one in terms of fleet  
5 size and number of employees to Alsacia and  
6 Express?

7 SEÑOR SILVA: No.

8 SEÑOR GARCÍA REPRESA: Is there any other  
9 operator that operates a troncal?

10 SEÑOR SILVA: The troncal alimentador  
11 changed with the new contract so there are no  
12 more troncales, and I think all the companies  
13 have different services, different lanes,  
14 routes, demands so it is not easy to compare.

15 SEÑOR GARCÍA REPRESA: So is it not a fact  
16 that SuBus was the only other company with  
17 Alsacia and Express who actually operated  
18 troncales at the beginning of the concessions  
19 and who actually bought new buses at if  
20 beginning of the concessions? Yes or no?

21 SEÑOR SILVA: I don't know.

1 SEÑOR GARCÍA REPRESA: So SuBus, you can see  
2 in blue font labour days performance in ICR and  
3 Saturdays are separated from holidays, but the  
4 orange and grey lines -- would you say that for  
5 SuBus they constantly under-performed during  
6 weekends -- let's start with holidays - día  
7 festivo. Do you agree that they constantly  
8 under-perform compared to the labour days in  
9 ICR? Yes or no?

10 SEÑOR SILVA: Again, I haven't looked at the  
11 figures. I analysed a larger sample, not only  
12 from January 2016 to March 2018. I looked from  
13 2012 to 2017 in my report. So what I am trying  
14 to say --

15 SEÑOR GARCÍA REPRESA: Can you tell me where  
16 in your report will I find the data for SuBus  
17 in ICR looking at weekdays -- let me  
18 finish -- looking at weekdays and weekends, so  
19 that we can see in your report that actually  
20 SuBus --

21 SEÑOR SILVA: No, you cannot. I didn't

1 provide it. But I agree that in that figure  
2 SuBus performs worse on weekends and festive  
3 days, like bank holidays, than in the week, and  
4 I would also conclude that they don't have a  
5 problem of fleet shortage. They probably have  
6 something else going on that they cannot  
7 perform.

8 SEÑOR GARCÍA REPRESA: And that is the  
9 point. That is precisely the point. The fact  
10 that one performs better or worse every weekend  
11 doesn't tell you anything about whether the  
12 fleet is sufficient or not sufficient, does it?

13 SEÑOR SILVA: It does. So --

14 SEÑOR GARCÍA REPRESA: Would you say that  
15 SuBus is a bad operator because it performs  
16 worse over the weekends when it has simply more  
17 fleet available? Is that your testimony?  
18 Because that is what is in your report.

19 SEÑOR SILVA: That is not my testimony.  
20 What I said is that they don't have a  
21 problem -- the performance, the poor

1 performance, is not due to a fleet shortage.  
2 So what I concluded --

3 PRESIDENTA KAUFMANN-KOHLER: Let him just  
4 finish. Why are you saying this?

5 SEÑOR SILVA: What?

6 PRESIDENTA KAUFMANN-KOHLER: That the poor  
7 performance is not due to fleet shortage? Is  
8 it because of this chart?

9 SEÑOR SILVA: Yes. What I am trying to say,  
10 I have to say a qualification also because  
11 I don't know the numbers, how much fleet they  
12 need in the weekends. So I know that for  
13 Alsacia and Express they need half. I don't  
14 know if you have calculated but I don't know,  
15 for this particular operator, how many buses  
16 they need. I am assuming that as speeds are  
17 lower they also require less fleet to operate  
18 on weekends, and my conclusion is that if you  
19 look at the weekday and weekend and you see a  
20 performance that is as bad, you can discard the  
21 fact that it is caused by a fleet shortage,

1 because they need less fleet and they perform  
2 equally or worse, so it cannot be the fleet the  
3 problem. It has to be something else, like  
4 management of drivers, it could be maintenance,  
5 it could be many other reasons. That is my  
6 point.

7 SEÑOR GARCÍA REPRESA: You said that speeds  
8 are lower; I think you meant speeds are higher.

9 SEÑOR SILVA: Sorry. Speeds are higher.  
10 Sorry.

11 SEÑOR GARCÍA REPRESA: Now, so according to  
12 you, SuBus, even though, and let's be clear, by  
13 definition -- and you will correct me if I am  
14 wrong -- over the weekends or holidays you need  
15 less fleet because you have less frequency than  
16 over labour days, correct?

17 SEÑOR SILVA: That is correct. For Alsacia  
18 and Express. I haven't checked for the others.

19 SEÑOR GARCÍA REPRESA: So are you telling me  
20 that it is possible that on a Sunday SuBus has  
21 the exact same frequencies that he has on

1 labour days?

2 SEÑOR SILVA ROMERO: No, I don't think that  
3 is true.

4 SEÑOR GARCÍA REPRESA: It has less, not more  
5 frequencies, right?

6 SEÑOR SILVA: Without having seen the  
7 details, I would assume the frequencies overall  
8 are higher -- are lower, sorry, on weekends.

9 SEÑOR GARCÍA REPRESA: You are an expert in  
10 Transantiago. I think you should know that on  
11 the weekends people don't go to work.

12 SEÑOR SILVA: Yes, but also the fleet that  
13 you need, it doesn't depend overall on the  
14 frequency. It depends on the frequency and the  
15 most congested time, and the most congested  
16 time is not the same in weekends that in  
17 weekdays. That is why a calculation is needed  
18 to understand how much fleet they need, because  
19 normally on Sundays around lunch time there  
20 could be more congestion than at 6/7 in the  
21 morning, which is something completely

1 different for weekdays.

2 SEÑOR GARCÍA REPRESA: Now if you turn the  
3 page, Vule also has, for example, (?), but it  
4 also has generally a lower performance over  
5 holidays and weekends than during labour days,  
6 correct?

7 SEÑOR SILVA: That is correct, although it  
8 is a level far superior than what I see for  
9 Alsacia and Express. They are around 0.8 and  
10 we are looking at sometimes 0.9, 0.85.

11 SEÑOR GARCÍA REPRESA: Sure, that is because  
12 they simply have a higher ICR.

13 SEÑOR SILVA: That is right.

14 SEÑOR GARCÍA REPRESA: And the higher ICR is  
15 not explained, according to you, or rather,  
16 your point is that weekends do not tell you  
17 whether someone is a good or a bad operator,  
18 right? Your performance in ICR over the  
19 weekend doesn't tell you if someone is a good  
20 or bad operator, does it?

21 SEÑOR SILVA: I can say in my statement

1 again, the weekend exercise, what I am using as  
2 a counterfactual for what the companies could  
3 do when they have more fleet available.

4 SEÑOR GARCÍA REPRESA: And according to you,  
5 had they more fleet available, they would not  
6 be performing better in ICR because you say  
7 look at the weekends. They are not performing  
8 better on ICR even though they have more fleet  
9 available. That is your point, is it not?

10 SEÑOR SILVA: Isolating the fleet, yes. If  
11 only the fleet changes, yes. If together with  
12 the fleet they also improve their management,  
13 they will be better. For instance, if  
14 management is the problem. That is a  
15 hypothetical.

16 SEÑOR GARCÍA REPRESA: If you turn the page,  
17 Redbus is also generally performing worse on  
18 ICR during the weekends than during weekdays,  
19 correct?

20 SEÑOR SILVA: I would say equally.  
21 Sometimes slightly below, sometimes slightly

1 above.

2 SEÑOR GARCÍA REPRESA: Again, that doesn't

3 mean they are a bad operator and they don't

4 know how to use their fleet, correct?

5 SEÑOR SILVA: Again, sorry?

6 SEÑOR GARCÍA REPRESA: That doesn't mean

7 they are a bad operator and don't know how to

8 manage the fleet, correct?

9 SEÑOR SILVA: Correct. They don't have a

10 fleet shortage.

11 SEÑOR GARCÍA REPRESA: That was not my

12 question, sir. My question is -- forget about

13 fleet shortage.

14 SEÑOR SILVA: I am not getting --

15 SEÑOR GARCÍA REPRESA: Let me ask the

16 question. You have made the point before this

17 Tribunal that because over the weekends Alsacia

18 and Express required less fleet, and because

19 over the weekends they perform worse on ICRs,

20 hence it doesn't mean that giving them more

21 fleet would allow them to comply with their

1 Operating Programmes -- that is your point, is

2 it not?

3 SEÑOR SILVA: Approximately, yes.

4 SEÑOR GARCÍA REPRESA: So my point here is,

5 well, it means therefore -- because you drove

6 that to the conclusion that hence there must be

7 some intrinsic problem with Alsacia and Express

8 why they cannot perform better over the

9 weekends even though they have better or easier

10 operating programmes, and I am putting to you

11 that the other companies face difficulties over

12 the weekends that don't apply over the

13 weekdays, and that explains why generally

14 everyone is performing worse on ICR over the

15 weekends. Do you accept that?

16 SEÑOR SILVA: Can you rephrase it, please?

17 It was a bit long, the question.

18 SEÑOR GARCÍA REPRESA: Do you accept that

19 all the operators, or at least these 3 that

20 have I shown you, in addition to Alsacia and

21 Express, all operate generally worse on ICR

1 over the weekends than during weekdays. Yes or

2 no?

3 SEÑOR SILVA: No. You only showed me some

4 operators, not all, and I can see that

5 sometimes it is equally, and my point again is

6 that the weekend is a good exercise to

7 understand whether a company will do better

8 with more fleet. And the difference again is

9 that it is much harder to perform better when

10 you are already performing really good on

11 weekdays than to perform better when you are

12 performing below standard during weekdays.

13 And, I don't know, for these companies, what

14 is the difference in requirement for fleet for

15 the weekends. So it is hard to draw

16 conclusions for those other days because I have

17 not seen the requirements. So my only point,

18 to be clear, is that if a company claims that

19 they have a fleet shortage and that is the

20 cause of bad performance, if you look that they

21 perform as bad in weekends when they need half

1 of the fleet to fulfil the programme, then that

2 rules out that the fleet shortage is the cause

3 of bad performance.

4 SEÑOR GARCÍA REPRESA: One more

5 question -- well, there may be more. But you

6 have seen, I believe, the calculations that

7 were performed by BRT/Transconsult, and

8 actually it is more Transconsult, to model

9 speeds, and you know that they rely on speeds

10 during peak hours. Is that correct? Do you know

11 that?

12 SEÑOR SILVA: Which calculations?

13 SEÑOR GARCÍA REPRESA: Speed calculations.

14 In order to assess a base line speed, let's

15 say, Transconsult uses peak hour speeds,

16 correct?

17 SEÑOR SILVA: Where in the report -- can you

18 refer me to a paragraph?

19 SEÑOR GARCÍA REPRESA: Let me ask a general

20 question, and see if you agree. Do you

21 generally agree that when you do speed studies



1 in these sort of systems, what you are meant to  
2 look at is the speed during peak hours, yes or  
3 no?

4 SEÑOR SILVA: It depends on what you are  
5 studying. To determine the fleet required, it  
6 is good to look at the speeds at peak hours,  
7 yes.

8 SEÑOR GARCÍA REPRESA: And that is exactly  
9 what BRT/Transconsult were using their speeds  
10 for?

11 SEÑOR SILVA: I don't think I agree with  
12 that, because sometimes they used peak speeds  
13 to assess the effectiveness of bus lanes, and  
14 that is something I am not claiming is correct.

15 SEÑOR GARCÍA REPRESA: But that is a  
16 different point, you see. I am speaking about  
17 the fleet. We were talking about the fleet  
18 until now.

19 SEÑOR SILVA: But --

20 SEÑOR GARCÍA REPRESA: Go to your First  
21 Report, paragraphs 298, page 103 and 104.

1 Paragraph 298 is in the section potential speed  
2 improvements of the corridors in dispute, and  
3 you describe at paragraph 298 that the  
4 methodology used by BRT/Transconsult to  
5 estimate the potential speed improvement from  
6 bus corridors is based on estimated speeds of  
7 Alsacia and Express buses rather than on  
8 observed speeds, as they argue it is relevant  
9 to look at changes in speeds during the morning  
10 peak hour because this determines the fleet  
11 requirements. We do the same and analyse  
12 changes in the morning peak hour. So for  
13 purposes of fleet shortage we agree you need to  
14 look at morning peak hours, correct?

15 SEÑOR SILVA: That is correct.

16 SEÑOR GARCÍA REPRESA: Thank you. I have no  
17 further questions.

18 PRESIDENTA KAUFMANN-KOHLER: Any questions  
19 in redirect, Mr. Grané?

20 SEÑOR GRANÉ LABAT: Solo una, Señora  
21 presidenta, bueno, por lo menos solo sobre un

1 tema que es el último que ha tocado el señor  
2 García Represa, sobre el comportamiento los  
3 fines de semana.

4 Se le ha presentado al experto, el doctor  
5 Silva, gráficos sobre ICR y se le ha hecho una  
6 serie de preguntas sobre ese indicador. Y mi  
7 pregunta para el doctor Silva, mi primera  
8 pregunta para el doctor Silva, es si el ICR es  
9 el mejor indicador para medir el comportamiento  
10 de la flota o del tamaño de flota.

11 SEÑOR SILVA: El ICR, como hemos visto en  
12 los días anteriores, solo mide la regularidad,  
13 es decir, la habilidad de los operadores para  
14 mantener la distancia en tiempo entre los  
15 buses, el que es más relevante para analizar la  
16 flota puede ser puede ser -- Ay, cambié al  
17 español. Disculpe.

18 PRESIDENTA KAUFMANN-KOHLER: Está bien.

19 SEÑOR SILVA: Puede ser el ICF que mide por  
20 ejemplo el porcentaje de despachos que se  
21 cumplen en el origen. Entonces es cierto que el

1 ICR tiene que ver más con management of the  
2 fleet que -- sorry. Tiene que ver más con cómo  
3 se maneja la flota en operación a que cuánta  
4 flota se dispone. Cuando uno mira el ICF, que  
5 es cuántos buses salen de acuerdo al programa  
6 de operación, es decir, si el programa dice  
7 tienen que salir diez buses por hora en la  
8 punta mañana, quince después, que se cumpla eso  
9 como porcentaje (inaudible). Yo diría que el  
10 ICF es más importante para entender el efecto  
11 de la flota en la performance. Es por eso que  
12 nosotros no solo analizamos el ICR en nuestro  
13 informe, sino que vimos todos los indicadores  
14 relevantes.

15 P: No tengo más preguntas. Gracias, señora  
16 presidenta.

17 SEÑOR GARCÍA REPRESA: Señora presidenta:  
18 puede hacer una -- es una aclaración para el  
19 Tribunal.

20 PRESIDENTA KAUFMANN-KOHLER: Sí.

21 SEÑOR GARCÍA REPRESA: Simplemente para

1 decirles que la misma fuente que citamos para  
2 el ICR en el tab 51, ahí no lo hemos puesto  
3 para no imprimir más, pero la misma fuente  
4 tiene la data para el ICF y se observa el mismo  
5 fenómeno. Entonces, miremos el que miremos,  
6 observamos lo mismo en ICF y en ICR. Y si al  
7 Tribunal le interesa podemos hacer una  
8 presentación en algún momento.

9 PRESIDENTA KAUFMANN-KOHLER: Es un alegato.  
10 Do my colleagues have questions?

11 COÁRBITRO GARIBALDI: Yes, Dr Silva. Now  
12 there is a new element here, which is the ICF,  
13 and we don't have before us the corresponding  
14 charts and numbers that relate to the ICF  
15 performance of the other companies.

16 Personally, I am very much interested in  
17 what was the ICF performance of the other  
18 companies during the weekdays and also during  
19 weekends, and so my first question to you is  
20 have you made that study?

21 SEÑOR SILVA: No, I have not. I have only

1 glanced at the figures.

2 COÁRBITRO GARIBALDI: Well, if the ICF is  
3 the most relevant indicator on the question of  
4 the size of the fleet, it seems to me that that  
5 is a critical piece of information that we  
6 don't have, because you are lacking a point of  
7 comparison. What you are trying to establish  
8 is negative causality, here.

9 SEÑOR SILVA: That is right.

10 COÁRBITRO GARIBALDI: And the problem with  
11 negative causality is that you have to exclude  
12 all the positive causes, and you haven't even  
13 analysed the possible potential causes. So  
14 with your expert testimony, I don't know if a  
15 drop in the performance of the companies during  
16 weekends is or is not the same as a drop in  
17 performance of the companies, of the other  
18 companies, in the same period, that is to say  
19 on weekends, and I don't know what other  
20 possible causes could explain that drop in  
21 performance. So, this is a critical point in

1 what is debated in this case, and I don't feel  
2 I have the right information.

3 SEÑOR SILVA: Can Okay, can I comment on  
4 that? So it could be that no operator has a  
5 fleet shortage, right? If they all perform  
6 equally -- and in some cases equally well, in  
7 others equally bad, during weekends -- what  
8 I am saying is that they don't have a fleet  
9 shortage, because they operate equally when  
10 they have more fleet available to fulfil the  
11 programme.

12 COÁRBITRO GARIBALDI: But it could be or it  
13 could not be, and I don't know which one it is,  
14 on this particular subject you are speculating.

15 SEÑOR SILVA: Yes. So let me say two  
16 things.

17 I am speculating about the other possible  
18 consequences, right? Because I know that it is  
19 not the speeds. I know that it is not the  
20 fleet. I know that it is not vandalism. And  
21 then it has to be something endogenous which

1 I cannot see because I don't have data of how  
2 the management of each company is. So one  
3 reason could be drivers management. They get  
4 the same management of drivers weekdays and  
5 weekends, for instance.

6 PRESIDENTA KAUFMANN-KOHLER: I just  
7 have -- now I need to go back to your  
8 clarification before. I understand that as  
9 annexes in the Quantil report, there is this  
10 information of the ICF of the other operators.  
11 Or did I misunderstand you, Mr Garcia Represa?

12 SEÑOR GARCÍA REPRESA: The annexes to  
13 Quantil do have this information. We prepared  
14 demonstratives for the ICR. We have them for  
15 the ICF too but we did not include them in this  
16 bundle, but yes, everything is in the annexes  
17 to the Quantil report.

18 PRESIDENTA KAUFMANN-KOHLER: But the  
19 demonstratives you prepared on what  
20 occasion and for what purpose?

21 SEÑOR GARCÍA REPRESA: For this hearing.

1 PRESIDENTA KAUFMANN-KOHLER: And you  
2 exchanged them last night?

3 SEÑOR GARCÍA REPRESA: Yes, we did.

4 PRESIDENTA KAUFMANN-KOHLER: But you did not  
5 exchange the others? The ones on ICF?

6 SEÑOR GARCÍA REPRESA: I don't think we  
7 exchanged the ones on ICF. I can double check.  
8 We did not include it in the bundle because we  
9 did not think we would have time for it, but  
10 ...

11 PRESIDENTA KAUFMANN-KOHLER: Fine. But we  
12 understand we can find this information in the  
13 annexes of the Quantil report --

14 SEÑOR GARCÍA REPRESA: Yes, my only doubt  
15 but we need to confirm whether the graphic form  
16 is presented or whether it is the underlying  
17 data. That is the only doubt and I can get  
18 back to the Tribunal on that.

19 PRESIDENTA KAUFMANN-KOHLER: No further  
20 questions.

21 SEÑOR SILVA: Can I say something?

1 SEÑOR GARCÍA REPRESA: Would you like me to  
2 give you the references to the folders of  
3 Quantil, and I am told that the data is there,  
4 not the graphic form. But I can give you the  
5 references for the ICR. It is annex Q.1.1.6,  
6 and for the ICF it is folder annex Q.1.1.3.  
7 These annexes are organised by company, just so  
8 you know, so these folders you will have the  
9 data for certain companies, so folder  
10 No 2 -- it is the same extension, I will not  
11 repeat -- but folder No 2 has the data for  
12 SuBus. Folder No 3 has the data for Unit 3,  
13 which is Vule. Folder No 6 has the data for  
14 Redbus, which is Unit 6. So, we followed the  
15 numbering of the Units.

16 PRESIDENTA KAUFMANN-KOHLER: And we have all  
17 the operators?

18 SEÑOR GARCÍA REPRESA: Yes, my understanding  
19 is yes, you have all the operators, in the  
20 folders 1-7. I have not listed them all.

21 PRESIDENTA KAUFMANN-KOHLER: You wanted to

1 add something?

2 SEÑOR SILVA: Yes. I also did a second  
3 analysis for the fleet shortage, and I think we  
4 lost the attention to it in the last  
5 discussion, which is what happened with the ICF  
6 in my presentation. After the elimination of  
7 the services and the reduction of the  
8 frequencies in the operational programme, that  
9 led to one company needing 80 less buses and  
10 the other 40 less buses, more or less. And  
11 after that, as you see in the presentation, the  
12 ICF also remained really low.

13 PRESIDENTA KAUFMANN-KOHLER: Fine. Thank  
14 you.

15 We mentioned one point as we went along in  
16 your examination which was when you -- and that  
17 was in your context, Dr Willumsen -- when you  
18 look at the impact of evasion on demand do you  
19 consider, and how, if so, what the other  
20 options are of users?

21 SEÑOR WILLUMSEN: The alternative modes of

1 transport that they could use?

2 PRESIDENTA KAUFMANN-KOHLER: Yes.

3 SEÑOR WILLUMSEN: Santiago is not very  
4 different from other countries in  
5 Latin America, where the car is perceived very  
6 much as a status symbol, and once you manage to  
7 buy a car you want to use it and you don't want  
8 to use anything else, and that is why  
9 congestion in Santiago, as in Mexico City or  
10 Sao Paulo, Buenos Aires is growing, therefore  
11 the majority, the very large majority of the  
12 users of the buses, of the public transport  
13 system, are people that have no choice. The  
14 alternative choice of using a taxi is too  
15 expensive, and although there is an increased  
16 use of bicycles nowadays in Santiago it is  
17 still a low proportion even compared to London  
18 or places like that. So most of the demand is  
19 actually captured demand and the options are to  
20 travel on buses or not to travel, basically.

21 I am exaggerating a little bit. There are

1 people like myself, when I am in Santiago I can  
2 afford a taxi but I still tend to use public  
3 transport as a matter of experimentation of how  
4 Transantiago or how TransMilenio is doing in  
5 Bogotá.

6 PRESIDENTA KAUFMANN-KOHLER: That is for  
7 professional reasons?

8 SEÑOR WILLUMSEN: Yes. And my wife hates  
9 it, I have to admit it!

10 PRESIDENTA KAUFMANN-KOHLER: Can you go to  
11 your first report, on paragraph 256. We are  
12 still in the context of evasion, and then you  
13 conclude your analysis, and you say at the end  
14 of the first bullet point -- do you have it  
15 there -- "Given that the State increased  
16 enforcement efforts consistently up to 2015  
17 this increase in evasion cannot be attributed  
18 to the State." I didn't understand this  
19 reasoning. The State may have increased its  
20 effort and yet they would be insufficient or  
21 misguided. Is that because you increase your

1 efforts that --

2 SEÑOR WILLUMSEN: The State increased their  
3 efforts and evasion continued to grow. That  
4 means that something else is not happening as  
5 strongly as it did happen between 2012 and 2013  
6 when there was a reduction in evasion, which  
7 I credited mostly to the efforts of the  
8 operators. The operators did make an effort in  
9 the first year to reduce evasion. They did the  
10 right thing. They hired Alto Evasión and they  
11 developed programmes to do that. After that,  
12 either these efforts became more weaker, tepid,  
13 they discovered it was too expensive and it was  
14 better to rely on the updates or the  
15 adjustments to the PPT and the APT [AIPK] where  
16 they recovered some of their lost revenue, but  
17 they continue. I don't deny that. They  
18 continued to make an effort. It was not as  
19 strong as they did in the first year, but that  
20 was not enough. This combined I would call it  
21 less enthusiastic effort combined with the

1 increased effort of the State were not  
2 sufficient to curtail evasion significantly, so  
3 evasion continued to grow.

4 PRESIDENTA KAUFMANN-KOHLER: So it is more  
5 by comparison with efforts of the operators  
6 earlier on --

7 SEÑOR WILLUMSEN: Yes.

8 PRESIDENTA KAUFMANN-KOHLER: And that was  
9 more efficient, rather than simply looking at  
10 the State's efforts, because if you just look  
11 at the State's effort, you cannot say. Maybe  
12 they did a lot of effort but it still was not  
13 enough.

14 SEÑOR WILLUMSEN: That is correct. It was  
15 certainly not enough. We don't want evasion to  
16 grow, it is clear. It is bad for the system,  
17 it is bad for the State. It is particularly  
18 bad for the State. There are constraints of  
19 what the State can do, how much it can  
20 accelerate an effort between one year and  
21 another, but it certainly did increase their

1 effort, as you can see from the numbers of  
2 inspections.

3 The effort has never disappeared. Always,  
4 after 2013/beginning of 2014 the effort  
5 increases and there is several evidence of  
6 that. Not just inspections. There is a round  
7 table with the operators trying to find better  
8 ways of dealing with this problem. They are  
9 consulting, they are identifying places where  
10 the effort can be focused so it is more  
11 efficient. And this is the process. The  
12 process takes a few years and it becomes more  
13 successful in 2017 with the programme, the  
14 Programa Integral de ReducciónReduccion de la  
15 Evasión ... . But it is still a problem, and  
16 it is still a problem that needs to be  
17 addressed and it still needs additional  
18 resources to be addressed, both on the part of  
19 the operators and on the part of the State.

20 I hope that the new contracts that are being  
21 prepared for the concessions at the end of the

1 year/beginning of next year will address these  
 2 better, in stronger ways, but the question is  
 3 always whether the State has abandoned the  
 4 operators. It never did. It always continued  
 5 an effort trying to develop new ways of dealing  
 6 with it, trying to introduce turnstiles when we  
 7 all agree we would prefer not to have them but  
 8 it is a method that works, and so on. So I can  
 9 see that from the figures. It is not just from  
 10 the reports, it is from the figures that appear  
 11 in front of me.

12 PRESIDENTA KAUFMANN-KOHLER: What are the  
 13 fundamental causes, in your view? You  
 14 mentioned income inequality plays a role. What  
 15 are the others? We heard something like  
 16 Cultura Cuidadana. What else is there?

17 SEÑOR WILLUMSEN: Cultura ciudadana is a  
 18 very broad aspect. I think my  
 19 feeling -- I visited Santiago with some  
 20 regularity during this period although I am  
 21 based here in London. I can see that these

1 were years which were difficult years  
 2 politically as well. There was a sense in  
 3 which evading was a way of manifesting  
 4 objections to the government, and there are a  
 5 few photographic evidence that this is the  
 6 case. The service is bad, your reaction should  
 7 be evade, evade, evade. Those are the mottos  
 8 of some of the protests against the government,  
 9 especially from younger people, I have to  
 10 admit. But income inequality or low incomes  
 11 are important. Fares have increased in that  
 12 period in order to try to -- not self fund,  
 13 that is impossible, but to reduce the amount of  
 14 subsidy that has to be injected into the system  
 15 so that again, acting against it, every fare  
 16 increase introduced protests again and the idea  
 17 that evading was the answer because the service  
 18 was still not good enough.

19 There are people that are opportunistic. We  
 20 have seen this in some research. If they see a  
 21 group of people are going to evade by boarding

1 through the back door, they join in, and this  
 2 is sad. This is not the right culture for the  
 3 country, but it happens as well, and I am sure  
 4 there are other effects as well.

5 But in my view, and it is not really a very  
 6 scientific view, this way of protesting against  
 7 the government through evasion was very  
 8 peculiar to that period.

9 PRESIDENTA KAUFMANN-KOHLER: But are there  
 10 recurrent patterns of user behaviour in terms  
 11 of evasion wherever you are in the world, or is  
 12 it specific to one place?

13 SEÑOR WILLUMSEN: I think -- I mention,  
 14 I think, Marseilles as a place where evasion is  
 15 very high in France. It has a similar pattern  
 16 of income inequality and in Marseilles there is  
 17 a lot of problem with immigration, which is not  
 18 really present that strongly at that time in  
 19 Chile. It is now starting. There is a bit  
 20 more immigration from Venezuela and Haiti,  
 21 which has come to the country and this is new.

1 They are not used to that as we are in Europe.  
 2 So there are some features like that. The  
 3 protests of the banlieue in France are similar  
 4 to the protests of the low income  
 5 people in -- they are not really shantytowns  
 6 but lower income areas where people live, and  
 7 there seems to be a similar psychology behind  
 8 it.

9 PRESIDENTA KAUFMANN-KOHLER: I have no  
 10 further questions, so if there are no questions  
 11 in follow up then that concludes your  
 12 examination, gentlemen. Thank you very much  
 13 for your help.

14 And that concludes our morning as well.  
 15 Should we resume at 2 o'clock? Yes?

16 SEÑOR SILVA ROMERO: If I may ask a  
 17 question, looking at the tentative agenda that  
 18 we had, the question is -- as always -- a very  
 19 selfish question which is that we had foreseen  
 20 for tomorrow afternoon questions by the  
 21 Tribunal and 30-minute closing statements from

1 the parties, and we have been working on our  
2 answers to the questions, and we may need some  
3 time to answer, about 20 or 30 minutes, so  
4 I wanted to make sure, or at least to  
5 have -- I guess we should have a limit to the  
6 time in which we can answer a question so that  
7 this could work tomorrow.

8 PRESIDENTA KAUFMANN-KOHLER: You say you  
9 have 20 to 30 minutes in addition to the 30  
10 minutes closing?

11 SEÑOR SILVA ROMERO: That is correct. I just  
12 wanted to put this on that table so that...

13 PRESIDENTA KAUFMANN-KOHLER: It might be a  
14 good idea. I had in mind to put on the table  
15 after the break the issue of how we go forward,  
16 because it is true that we are now where we  
17 should have been last night. I think we manage  
18 still -- we always manage -- but we are a  
19 little late.

20 Do you have indications about your  
21 cross-examination times for PwC and Brattle?

1 It is just an indication so that we get a feel.  
2 You also know, of course, what youre available  
3 time is.

4 SEÑOR GARCÍA REPRESA: Yes, of course.

5 Creo que para Price deberíamos estar entre  
6 una hora y cuarto, una hora y media. Ese sería  
7 el objetivo.

8 PRESIDENTA KAUFMANN-KOHLER: ¿Y tienen un  
9 tiempo estimado para Brattle?

10 SEÑOR GRANÉ LABAT: Señora presidenta, creo  
11 que serían aproximadamente 2 horas.

12 PRESIDENTA KAUFMANN-KOHLER: Dos horas. Va a  
13 ser difícil terminar con Brattle hoy, ¿no?  
14 Tendríamos que empezar de todas formas, porque  
15 si no va a ser demasiado corto el tiempo  
16 mañana. ¿Y cómo ven el contrainterrogatorio de  
17 Versant?

18 SEÑOR GARCÍA REPRESA: Aproximadamente una  
19 hora.

20 PRESIDENTA KAUFMANN-KOHLER: Una hora. Sí.  
21 Entonces, vamos a empezar -- empezar --

1 terminar Price, empezar Brattle, terminar  
2 Brattle mañana en la mañana y pasar  
3 inmediatamente a Versant. Y después, ¿podemos  
4 decir algo como 20 minutos para las respuestas  
5 a las preguntas del Tribunal? Haría 50 en  
6 total, porque no quiero dar demasiado, no sé si  
7 vamos a terminar.

8 SEÑOR SILVA ROMERO: Yo...

9 PRESIDENTA KAUFMANN-KOHLER: De todas formas  
10 eran los 30 minutos de alegato.

11 SEÑOR SILVA ROMERO: A mí 20 minutos me  
12 parece perfecto, nos podemos adaptar. Lo que no  
13 quería es que de pronto hagamos 40 minutos en  
14 respuesta del Tribunal y uno tiene tendencia a  
15 mezclar los temas. Veinte minutos está  
16 perfecto.

17 PRESIDENTA KAUFMANN-KOHLER: Así haría 50 en  
18 total con el alegato. ¿Le va bien también a la  
19 demanda?

20 SEÑOR GRANÉ LABAT: Sí, gracias, señora  
21 presidenta, nos va bien. Quizás tenga una

1 pregunta también para poder manejar nuestro  
2 tiempo.

3 Habíamos entendido nosotros con base en la  
4 RP8 que podía el Tribunal tener algunas  
5 preguntas para las partes que compartiría antes  
6 de llegar al final. Y quería preguntarle al  
7 Tribunal si todavía sigue siendo la intención  
8 de presentar preguntas adicionales que quizás  
9 no hayan salido en el transcurso de estos días  
10 y si esas preguntas serían entregadas a las  
11 partes esta noche, de tal forma que podamos  
12 nosotros prepararnos para eso.

13 PRESIDENTA KAUFMANN-KOHLER: Sí. Es la idea,  
14 pero no creo que haya muchas preguntas.

15 SEÑOR GRANÉ LABAT: Okay. Perfecto.

16 Y la segunda pregunta, señora presidente, y  
17 yo sé que es difícil anticiparlo ahora sin  
18 saber cómo se desarrolla el resto de la  
19 audiencia y los contrainterrogatorios, pero es  
20 una pregunta sobre si existiría una pausa entre  
21 el último -- la última presentación de los

1 expertos y antes de pasar a la sesión final,  
2 que es responder preguntas. ¿Habrá algún  
3 tiempo, si fuese posible y estuviesen  
4 disponibles las partes, para preparar pues...

5 PRESIDENTA KAUFMANN-KOHLER: Sí, hay -- el  
6 programa ahora prevé el almuerzo, que es una  
7 hora. Si podemos tomar más, lo haremos. Pero no  
8 sé qué hora estará cuando terminemos con los  
9 expertos.

10 SEÑOR GRANÉ LABAT: Gracias, pero ya eso nos  
11 ayuda mucho para saber que existiría quizás la  
12 posibilidad de tomar un poco más de tiempo.  
13 Muchas gracias.

14 PRESIDENTA KAUFMANN-KOHLER: Sí. Bien,  
15 ¿otras preguntas? ¿Comentarios? ¿No? Entonces,  
16 que tengan un buen almuerzo.

17 (Pausa para el almuerzo.)  
18

3 PRESIDENTA KAUFMANN-KOHLER: Sí. Buenas  
4 tardes, señores.

5 Antes de empezar con su testimonio, tenemos  
6 un asunto procesal para abordar. El Tribunal  
7 decidió autorizar la introducción en el  
8 expediente de la carta del 30 de enero 2019 y  
9 del archivo Excel adjunto. En este momento no  
10 podemos excluir potencialmente por ya ser --  
11 asistir el Tribunal en su análisis nos parece  
12 conforme con los derechos procesales de las dos  
13 partes, con la precisión que no autorizamos más  
14 preguntas a expertos sobre estos documentos,  
15 porque las interrogaciones de los testigos de  
16 hecho ya están terminadas.

17 También pensamos que las demandantes  
18 tendrían que tener una oportunidad de someter  
19 documentos para rebatir estos documentos. No  
20 sé, dos semanas después del fin de la  
21 audiencia. Eso lo podemos especificar mañana

1 cuando hablemos de temas procesales. Y después  
2 cada parte en sus escritos post audiencia  
3 podrán comentar los documentos si haya  
4 comentarios necesarios.

5 Así podemos dejar este tema y pasar a la  
6 interrogación de los señores de PwC.

7 INTERROGATORIO CONJUNTO A LOS PERITOS

8 COLIN BECKER Y JOAQUÍN PÉREZ

9 PRESIDENTA KAUFMANN-KOHLER: Ahora, no sé.  
10 ¿Ustedes declaran en inglés o en español?

11 SEÑOR BECKER: WeI will do the presentation  
12 in English and when we do the cross, we will do  
13 either English or Spanish. Spanish is his  
14 native language and English is my native  
15 language.

16 PRESIDENTA KAUFMANN-KOHLER: Fine. Is this  
17 fine with everyone?

18 SEÑOR GARCÍA REPRESA: Creo que no queda más  
19 remedio pero, una vez más, no es lo que nos  
20 habían dicho en la carta del 22 de febrero, y  
21 he confirmado que desde entonces no hemos

1 recibido ningún otro email o comunicación por  
2 escrito cambiando eso. Nos hablan de una  
3 conversación diciendo que en algún momento  
4 respecto únicamente del anterior testigo  
5 dijeron que podrían a lo mejor querer que los  
6 testigos -- experto anterior cambie de idioma.  
7 Nunca jamás enviaron un correo, nunca jamás  
8 enviaron una carta. No supimos más hasta hoy.  
9 Entonces ese es el problema en el que nos  
10 encontramos.

11 SEÑOR DI ROSA: Sí, señora presidenta.  
12 Entiendo que el intercambio con respecto a los  
13 testigos de PwC fue parte del mismo mail del 29  
14 de marzo a las 4.42 de la tarde, que luego fue  
15 también comunicado a la señora Kurowski, si no  
16 me equivoco. Podemos presentarle al Tribunal  
17 ese mail, pero nuestro entendimiento era que ya  
18 se había acordado esto. De modo que no entiendo  
19 por qué hay una diferencia de opinión con  
20 respecto a ello. Ah, disculpe, me dice que fue  
21 una conversación telefónica.

1 PRESIDENTA KAUFMANN-KOHLER: Sí, es lo que  
2 entiendo. Porque yo también había preparado  
3 esto en inglés. Pero tenemos la suerte de tener  
4 abogados que todos hablan los dos idiomas, de  
5 manera...

6 SEÑOR PÉREZ: Madame President: si me  
7 permite. Yo no tengo problema en recibir las  
8 preguntas en inglés. Únicamente me gustaría  
9 tener la oportunidad de contestar en español ya  
10 que es mi lengua materna y es como me siento  
11 más cómodo.

12 PRESIDENTA KAUFMANN-KOHLER: Sí, ya sé. Yo  
13 me sentiría más cómoda también en francés.  
14 (Risad.) Pero nadie me da la oportunidad.  
15 (Risad.)

16 SEÑOR GARCÍA REPRESA: Perdón.

17 PRESIDENTA KAUFMANN-KOHLER: Vamos a  
18 manejarlo lo mejor posible y no tengo duda de  
19 que estará bien.

20 SEÑOR GARCÍA REPRESA: Y mi intención era,  
21 como nos decía la carta, hacer las preguntas en

1 español. Osea, que no es que yo quiera cambiar  
2 el idioma. Nos dijeron que estos señores iban a  
3 testificar en español, así que yo les iba a  
4 hacer las preguntas en español.

5 PRESIDENTA KAUFMANN-KOHLER: Do you  
6 understand if you get the questions in Spanish?

7 SEÑOR BECKER: Perfectly, that is not a  
8 problem. They can continue. Thank you very much  
9 for accommodating us.

10 PRESIDENTA KAUFMANN-KOHLER: Fine. Then I can  
11 start with my introduction. You are obviously  
12 Colin Steve Becker?

13 SEÑOR BECKER: I am, thank you, yes.

14 PRESIDENTA KAUFMANN-KOHLER: And, Usted Sr.  
15 es Joaquín Pérez García?

16 SEÑOR PÉREZ: Así es, Madame President.

17 PRESIDENTA KAUFMANN-KOHLER: You have  
18 provided two reports, one of June 2018 and the  
19 other one of 28 January 2019. Is that correct?

20 SEÑOR BECKER: That is correct, Madame  
21 President.

1 PRESIDENTA KAUFMANN-KOHLER: Mr Becker, you  
2 will take the lead, I understand, and either  
3 respond to a question or defer to Mr Pérez, is  
4 that right?

5 SEÑOR BECKER: That is correct.

6 PRESIDENTA KAUFMANN-KOHLER: You are both  
7 heard as experts, and as experts you are under  
8 a duty to make only such statements in  
9 accordance with your sincere belief. Can I ask  
10 you, each of you, to read in either English or  
11 Spanish, the expert declaration?

12 SEÑOR BECKER: I solemnly declare upon my  
13 honour and conscience that my statement will be  
14 in accordance with my sincere belief.

15 PRESIDENTA KAUFMANN-KOHLER: Thank you.

16 SEÑOR PÉREZ: Declaro solemnemente, por mi  
17 honor y conciencia, que lo que manifestaré  
18 estará de acuerdo con lo que sinceramente creo.

19 PRESIDENTA KAUFMANN-KOHLER: Gracias.

20 Bien. Así doy la palabra -- ¿a quién le doy  
21 la palabra? Señor Di Rosa, por favor.

1 SEÑOR DI ROSA: Gracias, señora presidenta.

2 Señor Becker y señor Pérez: entiendo que  
3 tienen dos correcciones que hacer al segundo  
4 informe pericial. Y si pueden decir al Tribunal  
5 y a la contraparte cuáles son esas  
6 correcciones.

7 SEÑOR BECKER: We have two corrections. The  
8 first is to page 48 of our Second Report.  
9 There is a table on page 48, and at the bottom  
10 it includes a reference to consulting fees 2011  
11 to 2014. Previously we had included an amount  
12 under that concept, but based on comments that  
13 we heard from Mr Carlos Rios, we understood  
14 they had also engaged Booz Allen, so we  
15 extracted this information from the financial  
16 statements thinking that all the consulting  
17 fees were related to the bond, and now we  
18 understand there might be other types of  
19 consulting, so we decided to rather erase that  
20 amount and put non-quantifiable. We don't have  
21 the information to be able to quantify



1 consulting fees relating specifically to the  
2 bond, so we took it out. That is the first  
3 correction.

4 There is another correction on page 90 of  
5 our Second Report. Once again, the correction  
6 is in the table. This unfortunately is just a  
7 mathematical error. There was an error in the  
8 formula for the totals and we detected that  
9 error and we corrected. The changes are very  
10 minor, but we did change the totals because we  
11 found an error in the formula.

12 Those are the two pages that we have  
13 circulated. Those are the two errors we refer  
14 to, or the two changes.

15 SEÑOR DI ROSA: Thank you, Mr Becker, and we  
16 understand that the relevant replacement pages  
17 were already distributed. Thank you.

18 PRESIDENTA KAUFMANN-KOHLER: No more  
19 questions?

20 SEÑOR DI ROSA: No.

21 PRESIDENTA KAUFMANN-KOHLER: Then you can

1 proceed with your presentation.

2 SEÑOR BECKER: Thank you.

3 Presentation.

4 SEÑOR BECKER: I will be presenting the  
5 findings of PwC's analysis of Inversiones  
6 Alsacia y Express. We have already introduced  
7 ourselves but by way of a little bit more  
8 background, we both work in PwC Chile in the  
9 area of forensics and deals. I have been with  
10 the firm approximately 25 years, and my  
11 colleague's experience is around 12/13 years.  
12 And the point I would like to highlight is that  
13 both of us did participate in the 2017 analysis  
14 of Alsacia and Express that was requested by  
15 DTPM. That was a prior engagement. I just  
16 wanted to bring that up.

17 If I go to our principal findings, Alsacia  
18 and Express's financial losses were largely due  
19 to a combination of their own risky financing  
20 decisions, compounded by an inadequate  
21 operating structure, and here I am going to

1 refer firstly to this financing structure.

2 The capital invested by the Claimants was  
3 insufficient. Instead, what Alsacia and  
4 Express did was they resorted to a high-risk  
5 financial structure based on extremely high  
6 levels of USD-denominated debt. And regarding  
7 this debt, they failed to adopt a financial  
8 structure that would safeguard them against the  
9 fluctuations in the value of the USD against  
10 the Chilean pesos, and we referred to that as  
11 hedging their foreign exchange exposure.

12 In 2011 we heard that they already had  
13 serious liquidity problems, their incumbent  
14 banks were unwilling to refinance or expand the  
15 debt, and rather than Claimants investing  
16 additional capital at that stage, what they  
17 decided to do was take on additional debt  
18 through the 464 bond issuance, which in itself  
19 triggered enormous legal and consulting fees  
20 and locked the total debt into a higher  
21 interest rate.

1 Of that 464, the Claimants extracted  
2 \$80 million and they used that to acquire  
3 55 per cent of Express. But it was this huge  
4 onerous debt servicing commitments on this USD  
5 debt that forced Alsacia and Express to declare  
6 bankruptcy in 2014 under the US markets.

7 Quickly referring to the operating  
8 structure, well, the same bond issuance in 2011  
9 promised bond holders significant, substantial  
10 operating synergies and cost containment, but  
11 Alsacia and Express failed to deliver.

12 We also heard about the bottom of the class  
13 performance. They are always at the bottom.  
14 This was compounded by an inadequate  
15 maintenance programme and this led to higher  
16 operating costs and significant penalties  
17 against their revenue.

18 Our summary here is that Alsacia and  
19 Express's financial collapse was largely  
20 self-imposed. And we are going to look in a  
21 little bit more detail now.

1 There were seven operators, as we heard,  
2 under the new concession period, same contract  
3 framework, same conditions. Four of those  
4 operators were actually profitable.

5 On this one we are going to show what was  
6 the capital invested by the Claimants. We  
7 previously heard comments about \$70 million,  
8 \$40 million, but in fact the capital that was  
9 contributed by the Claimants was \$29 million.  
10 They also referred to an alleged offshore  
11 capital in kind contribution, but the point is  
12 that zero cash was injected into Chile.

13 Then they started extracting funds. They  
14 extracted through a management fee -- even  
15 though they were the owners of the company they  
16 extracted by a management fee \$6 million -- and  
17 then in 2011, a bit more detail here, there is  
18 an \$80 million extraction, of which 9 and a  
19 half million dollars is used to pay their own  
20 offshore debt. So it is an extraction. When  
21 you add this all up, you get to a net injection

1 from the Claimants into Alsacia and Express of  
2 only \$13.7 million.

3 I refer in a little bit more detail to this  
4 \$80 million extraction. So they extract  
5 \$80 million. We already heard they pay 9 and a  
6 half million dollars to their own offshore  
7 debts, and apparently that they used the  
8 \$70 million to acquire Express. When you read  
9 their own info memo, which was related to the  
10 bond issuance, it actually refers to another  
11 11.3 million which they might have also used to  
12 pay offshore debt. So we previously spoke  
13 about 13.7, now we have a potential another  
14 11 million extraction, so we are only talking  
15 about a remaining \$2 million. They used this  
16 2011 cash extraction to repay a large part of  
17 their initial capital injected into Alsacia and  
18 Express, and as a result they had very little  
19 remaining capital at risk.

20 This graph on page 8 just gives you an  
21 overview of what were their financial results

1 under the old concession compared to the new  
2 concession period, and I want to point out that  
3 even under the old concession period these  
4 companies had a financial loss: \$30 million.

5 This graph will show you the debt and the  
6 equity, that is to say how they financed their  
7 operations. The top curve is the debt and the  
8 bottom curve is the equity, and here you will  
9 see that there is always a big gap between  
10 those two, the debt and the equity. Also the  
11 thing I want to point out, there is a dotted  
12 line, which is the bond issuance, and there you  
13 see that gap widens dramatically after the bond  
14 issuance, and that to me was the tipping point.

15 We have heard, and we agree -- we  
16 agree -- that these kind of operations, it was  
17 always going to be envisaged that they were  
18 going to use debt to equity, debt financing,  
19 because it is capital intensive. However, the  
20 decision on what the level of debt financing  
21 was obviously a decision to each operator. So

1 what you see in this table, in the second  
2 column, this is a debt to equity, so what  
3 portion of the debt is in their total  
4 financing. In the second column you will see  
5 Alsacia and Express's debt equity levels, and  
6 in the third column the average of the other  
7 operators, and then in the fourth column you  
8 see this difference, and it is a substantial  
9 difference. That difference is really large  
10 compared to the other operators.

11 This debt overburden obviously imposed  
12 onerous debt serving commitments, paying the  
13 interest, paying the foreign exchange, paying  
14 the capital, which in turn must have severely  
15 limited their ability to invest in their fleet  
16 and maintain their fleet.

17 And here is an important point. Alsacia and  
18 Express's debt is in USD whereas the functional  
19 currency is the peso.

20 This is a situation as at the end  
21 of December 2015, and this just shows you the

1 level of USD debt compared to total debt in  
 2 each of the operators, some of the operators.  
 3 The extreme right is Alsacia, and next to it is  
 4 SuBus. Those two companies are the two  
 5 companies they had essentially elected to fully  
 6 finance their debt in USD. You have other  
 7 operators that used only local debt and then  
 8 you have other operators that used a mix of  
 9 debt. But also we must keep in mind that  
 10 Alsacia and Express's debt refers to a huge  
 11 amount of debt, almost a half a billion USD.

12 So how does this all translate into what was  
 13 the impact, the cost, of having this debt?  
 14 This is in this table.

15 This is for the period from the beginning of  
 16 the concession to 2017. Well, the accumulated  
 17 interest charges on this debt: \$356 million.  
 18 The foreign exchange loss net -- there were  
 19 years of gains and losses -- just the net  
 20 amount, was another \$50 million. The financial  
 21 consulting fees relating to this, the legal

1 fees, we haven't been able to quantify it, as  
 2 I mentioned earlier, but we know they are  
 3 significant. So what we are talking about here  
 4 is that the financing loss is between \$410 to  
 5 \$440 million, and when you compare that to the  
 6 total combined loss, it was more than that,  
 7 only \$309 million.

8 At the bottom of this page as well we are  
 9 going to refer to the interest rate, the  
 10 interest rate prior to the bond, average  
 11 interest rate, was 6.74 per cent, following the  
 12 bond 8.25 per cent. So that increment of  
 13 1.5 per cent, what that implied in actual real  
 14 additional interest charges: over \$100 million  
 15 to the companies.

16 Now we want to refer to more about the  
 17 hedging, and we are going to give our view on  
 18 this. Prior to 2011 the simple answer is there  
 19 was no hedging. You will see that there are  
 20 gains and losses, and this is evidence to me of  
 21 a willingness to speculate, a conscious

1 election not to hedge your currency risk, a  
 2 significant risk. Then we will talk about  
 3 following the 2011 bond issuance, and here the  
 4 Claimants argue that they had an adequate  
 5 hedging strategy, and we have already been told  
 6 by Mr Ferrer, he explained that it was actually  
 7 a margin, a margin of currency risk.

8 Once again, let's go to the numbers.

9 The net foreign exchange loss from 2011 to  
 10 2017: \$65 million. Of that amount -- there  
 11 were also large gains, once again -- of that  
 12 amount, \$45 million during the period 2011 to  
 13 2013, what is important about this? This is  
 14 the time when Alsacia and Express had made  
 15 their debt payments, and are saying this is the  
 16 period they had an effective hedging programme.  
 17 Well, there were \$45 million of loss. And this  
 18 is one of the key issues here, one of our key  
 19 findings. We believe that Alsacia and Express  
 20 failed to understand that the cost of hedging  
 21 is part of the cost of financing abroad. It is

1 not just the interest rate, not just the  
 2 expenses, it is not an afterthought. When you  
 3 go abroad to finance you must consider the cost  
 4 of hedging as part of that equation, and they  
 5 didn't. And by doing that, that is where they  
 6 exposed the company to these large fluctuations  
 7 in the volatility in the exchange rate, and  
 8 subsequently the losses.

9 Another comment I would like to clarify,  
 10 because I heard in the prior presentations,  
 11 foreign exchange losses in the profit and loss  
 12 statement do imply cashflows. They are not  
 13 just accounting. They do imply cashflows.

14 Here we are going to look now at the  
 15 proceeds of the 464 million bond issue in 2011.  
 16 The table shows that. The top two bars, you  
 17 will see there is 327 million. That was the  
 18 debt they essentially had to refinance, the  
 19 debt they had at that date. Why did they have  
 20 to refinance? We heard. We heard about the  
 21 liquidity issues, and we already know that the

1 Claimants refused to inject additional capital.

2 So what does the company do? It takes on  
3 \$137 million of additional debt. Of that  
4 amount, \$20 million leaves straight away to pay  
5 expenses. Another \$80 million is used to  
6 acquire Express, and this is one of the key  
7 drivers for this bond, because acquiring  
8 Express, they had these potential synergies  
9 that would favourably compensate all this  
10 higher interest rate and all the transaction  
11 costs.

12 You can see that on this table. So we know  
13 that the promise of these synergies that they  
14 actually promised to the bond holders, that was  
15 a key value driver in the 2011 bond issue, and  
16 this table is taken from Dow/Caldwell work  
17 papers where they try and open up the  
18 synergies. And in the dotted line you see that  
19 the total of those synergies are 787 billion  
20 pesos, or approximately \$150 million. Half of  
21 that amount is what they call a reduction in

1 spare parts costs.

2 So the question we have here is if Alsacia  
3 already owned 45 per cent of Express, so they  
4 were essentially joint owners, jointly  
5 operating the company -- and this is right from  
6 the beginning -- and if these promised  
7 synergies were so obvious and significant, why  
8 didn't the shareholders come together and try  
9 an attempt to realise them earlier? Why did  
10 they need the bond issuance? Why did they need  
11 to acquire another 55 per cent?

12 Let's see what happened with those  
13 synergies. We found very little evidence of  
14 the synergies. What we found was the costs  
15 actually increased after the bond issuance, and  
16 both us and the Claimants' experts were only  
17 able to identify a decrease in the  
18 administrative headcount of Alsacia and  
19 Express. But no other cost savings are  
20 apparent.

21 Costs increased thereafter.

1 Now, PwC didn't look really at the financial  
2 model because we didn't do the but-for  
3 analysis, but specifically on this case what we  
4 were trying to do was find a reference as to  
5 what were the assumptions behind the spare  
6 parts synergies, and what we did find in the  
7 Claimants' 2012 financial model, that projects  
8 the cashflows, that they project a 25 per cent  
9 savings in spare parts as from 2012 onwards.  
10 However, the costs increased in that period.

11 Here I am going to take an extract from  
12 Brattle's report, where they talk about these  
13 synergies on the spare parts, expected to be  
14 74 million, and they say the need for spare  
15 parts increased significantly after 2012,  
16 reflecting the accelerated deterioration of the  
17 bus fleet, and this comment just doesn't make  
18 sense to me because their model is 2012, so why  
19 would they have not modelled that they were  
20 going to spend more money on spare parts? To  
21 us, the synergy plan failed, and really

1 operating costs increased, and the failure to  
2 contain these costs cannot be attributed to  
3 external issues or one-off events.

4 We are also going to refer to the credit  
5 rating agencies. You would have heard also in  
6 the previous presentations about just below  
7 investment grade. That is not true. This was  
8 junk status. This was junk status from the  
9 start. But actually, more importantly, if we  
10 look in the table, we see how it gets  
11 downgraded. In all my experience I don't  
12 remember having seen a company that gets  
13 downgraded so repeatedly and so quickly.

14 The other thing is, we have highlighted the  
15 October 2013, where Fitch actually refers to a  
16 commitment to inject new capital by the  
17 shareholders, and in the financial statements  
18 there is a public statement where the  
19 shareholders had committed to, in the case of a  
20 shortfall on the debt repayment, so in one of  
21 the years, if Alsacia was not able to make its

1 debt repayment, they would contribute up to  
2 \$5 million to cover that shortfall. Well, we  
3 reviewed the financial statements and we cannot  
4 find any evidence of that new capital  
5 injection.

6 I am going to refer once again to this  
7 \$80 million extraction. These funds get sent  
8 to a Bermuda company that is owned by the  
9 Claimants that's called Pan American  
10 Investments. That is \$80 million.

11 And the first question we had here was why  
12 did the money go offshore and then come back  
13 into Chile? If Alsacia already had the funds,  
14 why didn't they invest directly in Express?  
15 What was the benefit to Alsacia and Express?  
16 We are not sure.

17 I would also like to refer to the loan a  
18 little bit. If you look at Alsacia's balance  
19 sheet, it talks about an asset balance on this  
20 loan of \$72 million, not \$80 million. There  
21 was no explanation for this difference.

1 Further, this loan is allegedly an interest  
2 bearing loan. However, the \$44 million of  
3 accrued interest was never paid, and this is  
4 despite Alsacia's serious liquidity problems.

5 Pan American should have repaid the  
6 principal and accrued interest in August 2008  
7 [2018]. That was when the payment was meant to  
8 be paid. So in the event of default, I am sure  
9 that Alsacia would need to assess the risk of  
10 repayment delinquency and disclose this impact  
11 on its December '18 financial statements. We  
12 will see if that is the case.

13 Once again, let's talk about this  
14 acquisition of Express. We would have spoken  
15 previously that \$70 million of the \$80 million  
16 that was extracted was used to pay for Express,  
17 but then the Claimants also referred to another  
18 offshore contribution, Bolivian, Lima, that was  
19 part of the price. They valued that at  
20 \$16.8 million, so the total price paid was  
21 \$87 million. The book value of Express at that

1 stage, \$34 million, so what we are looking at  
2 here is a premium of approximately \$54 million.

3 Previously I mentioned to you that the  
4 synergies that they hoped to harness by  
5 operating these two companies together was  
6 approximately \$150 million. So by paying a  
7 premium of \$50 million, what they are  
8 essentially doing is paying back to the sellers  
9 a third of the synergies they meant to capture.  
10 We don't see the benefit there of these  
11 synergies then. The other question we have is  
12 that, given the long history of the Claimants'  
13 misgivings regarding the Transantiago system,  
14 what motivated them to pay such a large premium  
15 for the remaining portion of Express?

16 Here I am going to refer to the revenues.  
17 We have already heard that Alsacia and Express  
18 were normally at the bottom of the performance  
19 indicators, and that undoubtedly had a negative  
20 impact on the passenger validations. We  
21 believe that the revenue could and probably

1 should have been higher had they been able to  
2 comply with just the minimum requirements,  
3 minimum performance requirements, and even more  
4 so if they were able to comply with the average  
5 of other operators. Despite all of these  
6 factors the revenue, year on year average, grew  
7 10.4 per cent over the full concession  
8 period -- on average.

9 So what you have here in these tables, on  
10 the left is the gross margin and on the right  
11 is EBITDA margin. Gross margin is revenue less  
12 the direct cost to operate the fleet.

13 On the right EBITDA margin you are bringing  
14 administrative expenses into the equation, and  
15 you will see between the initial concession  
16 period and the new concession period the gross  
17 margin, the percentage remained relatively  
18 stable. There is a small drop which we think  
19 is in part due to a catch-up of corrective  
20 maintenance they had to do later on. But the  
21 big drop, the big drop happens at the EBITDA

1 level, and that is obviously an increase in  
2 administrative expenses, and I think that is  
3 clearly seen on this next page.

4 This is an extraction from the third Brattle  
5 report, and it shows you these expenses. And  
6 the Claimants attribute the steep spike in 2014  
7 to one-time legal and consulting fees. Well,  
8 if they were one-time, you would expect to see  
9 a sharp decrease the next year, but that  
10 doesn't happen. They remain stable at these  
11 very high amounts -- in fact, approximately  
12 \$20 million a year of additional expenses  
13 compared to prior to the bond. A lot of these  
14 administrative expenses actually relate to  
15 consulting fees that are directly attributable  
16 to the 2011 bond issue.

17 I am going to refer briefly to the  
18 maintenance strategy. Deferring the  
19 preventative maintenance obviously contributed  
20 to Alsacia's track record of low fleet  
21 availability. I mentioned that we previously

1 worked with Alsacia and Express in 2017, and in  
2 that opportunity we had an opportunity to  
3 interview the maintenance manager of Alsacia  
4 and Express, and he gave us a couple of  
5 comments. He acknowledged that the historical  
6 maintenance was primarily based on corrective  
7 maintenance, that is to say repairs, and they  
8 actually had a saying: don't replace it until  
9 it breaks. He also said that a large number of  
10 these repairs actually occurred at the  
11 breakdown site, because they were unscheduled,  
12 and that obviously implied higher costs and  
13 recovery and repairs, but he did acknowledge  
14 that the preventative maintenance had been  
15 ramped up in the most recent years.

16 We also read a number of management reports  
17 that show a continuous struggle for Alsacia and  
18 Express to resolve their maintenance  
19 deficiencies. Now, it is easy to disregard  
20 these words, because you could say these are  
21 just comments, that is what we heard, that is

1 what we interpreted, but the table on this next  
2 page is actually built on data, on data  
3 provided by the Claimants, and in the dark side  
4 of the bar is the amount of corrective repairs  
5 maintenance, and in the top part of the bar  
6 that is preventative maintenance. And I think  
7 this is eloquent. It speaks for itself and it  
8 ratifies what the manager told us, that prior  
9 to 2013 the focus was essentially corrective  
10 maintenance -- repairs. The preventative  
11 maintenance only starts in 2013 and ramps up in  
12 the later years, especially when they do a  
13 major overhaul of gearboxes engines. But the  
14 problem with that is they do it right at the  
15 end of the concession period. So our  
16 conclusion is that the maintenance strategy is  
17 just not adequate for an ageing fleet.

18 Conclusions: Alsacia and Express's  
19 financial losses were largely self-imposed.  
20 The companies were under-capitalised right from  
21 the beginning and Claimants elected to rely

1 primarily on unhedged USD debt, and this  
2 imposed an overwhelming financial burden to  
3 service this debt and exposed the companies to  
4 foreign exchange risk. Despite the severe  
5 liquidity problems in 2011, they take on an  
6 additional \$137 million of debt and that is to  
7 acquire this 55 per cent in Express. Remember,  
8 the key driver was synergies, but they failed  
9 to deliver on their own key objective.

10 From 2012 onwards the cashflows are also  
11 severely hampered by catch-up preventative  
12 maintenance and significant recurring legal and  
13 administrative fees. This combination we  
14 consider to be financially fatal to any  
15 company.

16 Our final conclusion: Alsacia and Express's  
17 financial collapse was largely due to a series  
18 of poor internal strategic and operational  
19 decisions. With that, I thank very much for  
20 your time.

21 SEÑOR GARCÍA REPRESA: Con la venia, señora

1 presidente. Señores, muy buenas tardes.

2 Creo que han estado en la sala la mayor  
3 parte de los días de esta audiencia esta semana  
4 y la anterior, entonces ya habrán deducido que  
5 represento a los demandantes en este caso. Me  
6 corresponde hacerles algunas preguntas.

7 Mi nombre es José Manuel García Represa.  
8 Vamos a estar entregando una carpeta de  
9 documentos a los que haré referencia; ya han  
10 visto cómo funciona: cuando quiera remitirles a  
11 algún documento les daré el número de  
12 separador, diré cuál es el número de anexo y  
13 trataré de orientarles hacia la página que  
14 interesa.

15 Y si acaso para beneficio de todo el mundo,  
16 debo indicar que hay diferencias en las páginas  
17 entre la versión inglesa y española de su  
18 informe. No estoy sugiriendo que haya nada  
19 malo, un idioma es más largo que otro, pero eso  
20 puede hacer que cuando yo dé referencias a  
21 números de páginas, ustedes estén en otra

1 página distinta en el inglés si manejan los  
2 informes en inglés.

3 Entonces, lo que sugiero: en la medida de lo  
4 posible voy a dar el número de párrafo, eso sí  
5 que no debería cambiar, y más o menos debería  
6 estar en las páginas que voy a citar. Entonces,  
7 si ustedes quieren remítanse a la versión  
8 española; va a ser más fácil, creo que para  
9 todos.

10 Y voy a empezar si quieren, de hecho, con la  
11 presentación puesto que ya todos la tenemos a  
12 mano, y me gustaría que vayan a la página 18 de  
13 su presentación, por favor.

14 SEÑOR BECKER: ¿Cuál es el anexo, perdón?

15 P: Es su presentación. La que acaban de  
16 hacer ahora. Sus filmas, las que acaban de  
17 ver en pantalla.

18 SEÑOR BECKER: Perdón, no lo veo.

19 P: Bueno, ustedes lo tienen creo que en  
20 papel.

21 SEÑOR BECKER: No.

1 P: A nosotros solo nos dieron una copia, por  
2 eso no podemos entregarla. Me disculpará. La  
3 regla dice que se entregan dos, pero bueno.

4 Entonces vayan a la página 18, por favor. Y  
5 quisiera entender bien a qué se refieren  
6 ustedes. Por ejemplo, vamos a empezar por  
7 algunos ejemplos. En la página 18, si entendí  
8 bien, ustedes mencionan debajo de Panamerican  
9 Investments (Bermuda Company) tienen dos  
10 puntos, y en el segundo dicen que 44 millones  
11 de intereses nunca fueron pagados -dicen  
12 ustedes- por Panamerican a Alsacia y Express.  
13 ¿A usted le consta que el único activo de  
14 Panamerican son las acciones de Express? ¿Sí o  
15 no?

16 SEÑOR BECKER: ¿Me repite, por favor?

17 P: ¿Le consta que el único activo de  
18 Panamerican son las acciones de Express? ¿Sí o  
19 no?

20 SEÑOR BECKER: No, nunca recibimos el  
21 balance de Panamerican Investment.

1 P: Bien. Pues yo le digo -y si no, le pido  
2 que lo asuma-, que el único activo de  
3 Panamerican son las acciones de Express. Para  
4 que una empresa pueda pagar intereses tiene que  
5 recibir flujos positivos para hacer pagos  
6 luego, ¿verdad?

7 SEÑOR BECKER: No, no estamos de acuerdo.

8 P: Si Express no paga dividendos a su  
9 accionista, Panamerican no tienen dinero con  
10 qué pagar intereses a Alsacia, ¿verdad?

11 SEÑOR BECKER: No, no es verdad, y quiero  
12 darte un ejemplo. I'm sorry, and I'll be  
13 changing in English and Spanish. The owners  
14 themselves on some of the debt repayment  
15 commitments refer to that in the event of a  
16 default, they would contribute \$5 million. If  
17 they were willing to do that in Alsacia, I am  
18 sure they would also be willing to do that in  
19 Pan American Investments, so it is not just  
20 based on dividends. It could be also capital  
21 investments by the owners.

1 SEÑOR GARCÍA REPRESA: Osea que su argumento  
2 es que aunque Panamerican no recibe ningún  
3 flujo, porque no recibe ningún dividendo de  
4 Express, por todos los motivos que sabemos en  
5 este arbitraje, para usted los accionistas de  
6 Panamerican deberían haber aumentado el capital  
7 de Panamerican, de tal modo que pudiera pagar  
8 Alsacia. Ese es su argumento, ¿verdad? Diga sí  
9 o no, y luego responda lo que quiera.

10 SEÑOR BECKER: Please just repeat once again  
11 the question?

12 SEÑOR GARCÍA REPRESA: Claro, su argumento,  
13 si lo he entendido bien, es que pese a que el  
14 único activo de Panamerican son las acciones de  
15 Express, pese a que Express no ha repartido  
16 ningún dividendo por todos los motivos que  
17 nosotros sabemos en este caso, usted considera  
18 que ahí los accionistas de Panamerican tienen  
19 una responsabilidad y deberían haber aumentado  
20 el capital de Panamerican para hacer ese pago a  
21 Alsacia. ¿Ese es su testimonio?

1 SEÑOR BECKER: Not precisely. What we are  
2 trying trying to tell you is no matter why the  
3 structure was set up as it was set up, if Pan  
4 American Investments had an obligation to repay  
5 interest, it should have met its obligation.

6 P: ¿Usted sabe por qué se estructuró... se  
7 estructuraron los bonos como se estructuraron?  
8 ¿Sí o no?

9 SEÑOR BECKER: That was in our presentation.

10 P: ¿Usted sabe los motivos por los que se  
11 estructuró la emisión de bonos como se  
12 estructuró? ¿Sí o no?

13 SEÑOR BECKER: No.

14 SEÑOR GARCÍA REPRESA: Vayamos a la página  
15 23, por favor, de su presentación. Usted en la  
16 página 23 menciona, dice ahí, una entrevista  
17 con el señor Rivadalvo Rodrigues. Usted se ha  
18 referido a varias entrevistas con empleados de  
19 Alsacia y Express en sus informes, ¿verdad?

20 SEÑOR BECKER: We have referred I think to  
21 this interview and another interview, that is

1 right.

2 P: Usted en el momento de esas entrevistas  
3 era -- había sido contratado por el DTPM.  
4 ¿Verdad?

5 SEÑOR BECKER: That is correct.

6 P: ¿Usted alguna vez le dijo a algún  
7 empleado de Alsacia y Express a los que estaba  
8 entrevistando que lo que le dijeran podría ser  
9 utilizado en este arbitraje internacional que  
10 ya estaba en curso? ¿Sí o no?

11 SEÑOR BECKER: No.

12 P: Bien. Empecemos ahora.

13 PRESIDENTA KAUFMANN-KOHLER: Yes, since we  
14 have interpretation there is always a little  
15 time lag so if you can think about it and  
16 before you answer leave a few seconds and this  
17 applies also to the cross-examiner.

18 SEÑOR GARCÍA REPRESA: Intentare hacer lo  
19 mismo pese a la efusividad, discúlpeme.

20 Quisiera preguntarle: ¿Usted reconoce que el  
21 tamaño de la flota de buses, obviamente, el

1 número de plazas de los buses, las distancias  
2 de los recorridos que tienen cada bus, son  
3 factores que diferencian a Alsacia y Express de  
4 otros operadores? ¿Sí o no?

5 SEÑOR BECKER: I am not sure they  
6 differentiate but the factors that are  
7 important is there could be an advantage or a  
8 disadvantage, yes, on the type and location of  
9 your infrastructure. That is correct.

10 P: ¿Usted reconoce que estos factores, es  
11 decir, tamaño de flota, número, plazas en los  
12 buses, distancia que recorre cada ruta en  
13 particular, son factores absolutamente  
14 esenciales para la operación del servicio de  
15 transporte público y que, por lo tanto, Alsacia  
16 y Express no son comparables con los otros  
17 operadores del Transantiago? ¿Sí o no?

18 SEÑOR BECKER: On the first part of your  
19 question, I agree that they are essential to  
20 any operator, but I am not sure I agree with  
21 the second part. Could you repeat the second



1 part of your question?

2 P: Sí, la segunda parte es: dados estos  
3 escritos fundamentales, y considerando que  
4 Alsacia y Express tienen tamaños de flota  
5 distintos de los otros operadores -que tienen  
6 un número de plazas en sus buses distintos de  
7 los otros operadores, por ejemplo los buses C2  
8 articulados Volvo de 2005 tienen muchas más  
9 plazas por bus que otros-, considerando que sus  
10 recorridos son también distintos -porque son  
11 generalmente mucho más largos que los de otros  
12 operadores-, si no le parece que esos son  
13 elementos que hacen que Alsacia y Express no  
14 sean comparables con otros operadores sin  
15 realizar los ajustes correspondientes.

16 SEÑOR BECKER: They are not directly  
17 comparable to any of the other operators, but  
18 I am not sure what you are referring to about  
19 adjustments.

20 P: Pues, le voy a hacer la pregunta: usted  
21 en alguno de sus informes, cuando hace

1 comparaciones entre operadores, ¿hace ajustes  
2 para considerar la diferencia en rutas, la  
3 diferencia en flota? ¿Sí o no?

4 SEÑOR BECKER: I think this is important to  
5 hear --

6 P: Primero responda mi pregunta, por favor,  
7 y luego le dejaré que diga lo que quiera. Usted  
8 cuando hace sus comparaciones entre operadores  
9 en sus dos informes, ¿ajusta alguna vez por las  
10 características de la ruta, ajusta por el  
11 número de buses en la flota de unos u otros?  
12 ¿Sí o no?

13 SEÑOR BECKER: There were no adjustments made  
14 for the difference between operators now. We  
15 compared Alsacia and Express to the other  
16 operators as a reference point. This was never  
17 meant to be a direct comparable between each of  
18 the operators and that was never really the  
19 focus of our review. What we used this was a  
20 reference point but finally we wanted to find  
21 out if there were significant differences

1 between the operators that could explain the  
2 financial results of Alsacia and Express  
3 compared to these other operators. This was  
4 used as a reference point. The focus of our  
5 review was Alsacia and Express.

6 P: Ok, entendido.

7 Vayamos por favor a su primer informe y,  
8 como decía, estoy en la versión española; para  
9 mí es la página 127, párrafo 321. Y -- es  
10 párrafo 321, ustedes deberían tener encima de  
11 ese párrafo, dos gráficas sobre el ICF.

12 SEÑOR PÉREZ: Correcto, estamos ahí.

13 P: Veo que han cambiado. Perdón, es que no  
14 me lo esperaba. En el gráfico de la derecha  
15 ustedes comparan el ICF de Alsacia y Express  
16 combinado con el ICF de otros operadores.

17 ¿Verdad?

18 SEÑOR PÉREZ: Correcto.

19 P: Y en el párrafo 321 ustedes lo que nos  
20 dicen es que Alsacia y Express tienen una  
21 puntuación significativamente menor en el ICF

1 que el resto de los operadores. ¿Verdad?

2 SEÑOR PÉREZ: Así es.

3 P: Y nos sigue diciendo que las puntuaciones  
4 bajas en este indicador pueden indicar que un  
5 operador no tiene un sistema de control  
6 operativo adecuado o una flota insuficiente.  
7 Entonces, solo para que entienda, uno de los  
8 posibles motivos de estos indicadores más bajos  
9 es que Alsacia y Express no tuvieran una flota  
10 suficiente. ¿Correcto?

11 SEÑOR PÉREZ: Exactamente, lo que dice la  
12 frase es que podría ser ese uno de los motivos.

13 P: Y si leemos la frase siguiente, también  
14 dice que: "Se puede deber también a condiciones  
15 de tráfico irregulares". Y solo para que yo  
16 entienda, condiciones de "tráfico irregulares",  
17 entiendo que usted se está refiriendo a  
18 velocidades más bajas, o porque hay mucho  
19 tráfico, o porque la infraestructura no sirve.  
20 ¿Correcto?

21 SEÑOR PÉREZ: Sí, esas pueden ser algunas de

1 las situaciones irregulares que aquí  
2 explicamos.

3 P: Y ustedes en sus informes, cuando  
4 comparan indicadores de las empresas, ¿hacen  
5 ajustes para considerar el déficit de flota de  
6 Alsacia y Express o las diferentes velocidades  
7 de Alsacia y Express con respecto a otros  
8 operadores? ¿Sí o no?

9 SEÑOR PÉREZ: Nuestro análisis ha sido  
10 desarrollado sobre los datos reales de las  
11 compañías. No hemos entrado en hipótesis o  
12 escenarios que consideramos que corresponden al  
13 escenario but-for que está cubierto por  
14 nuestros compañeros de Versant.

15 P: Bien. Voy a reformular porque creo que no  
16 nos estamos entendiendo. Alsacia y Express en  
17 el mundo real tienen cierta velocidad de  
18 operación, vamos a llamarla X, y otro operador  
19 metropolitano va a tener una velocidad de  
20 operación, que vamos a llamar Y. ¿De acuerdo?  
21 Suponiendo que las velocidades sean

1 distintas -X distinto de Y-, ¿usted en este  
2 tipo de informes ajusta su comparación, o  
3 considera en su comparación esa diferencia  
4 entre X e Y? ¿Sí o no?

5 SEÑOR PÉREZ: No. No hemos realizado ajustes  
6 en las comparaciones de indicadores.

7 P: Vale. Ahora, esos indicadores -para que  
8 estemos claros- tienen un impacto directo en  
9 los ingresos de Alsacia y Express. ¿Verdad?

10 SEÑOR PÉREZ: Sí.

11 P: ¿Ustedes han medido el impacto de las  
12 penalidades por indicadores en los ingresos de  
13 Alsacia y Express?

14 SEÑOR PÉREZ: Sí, tenemos ese análisis  
15 incluido en nuestro informe.

16 P: Bien. Respecto -- si vamos ahora a --  
17 permítame. Mismo párrafo en el que estábamos,  
18 321. Sí. ¿Ustedes han analizado la  
19 infraestructura y las condiciones de tráfico en  
20 las operaciones de Alsacia en los corredores de  
21 Alsacia versus la infraestructura y los

1 carriles que utilizaban otros operadores? ¿Sí o  
2 no?

3 SEÑOR PÉREZ: No está esa comparación dentro  
4 del foco de nuestra revisión.

5 P: De acuerdo. Entonces si pasa por favor la  
6 página, llegamos a la página 128, donde ustedes  
7 comparan -si he entendido bien los indicadores  
8 de ICR-, y en el párrafo 323 una vez más nos  
9 dicen "promedio", "el cumplimiento del ICR por  
10 Alsacia y Express es significativamente  
11 inferior al de otros operadores". ¿Lo ve?

12 SEÑOR PÉREZ: Sí.

13 P: Y en el párrafo siguiente nos dice  
14 que -voy a leer la segunda frase-: "Las  
15 puntuaciones bajas en este indicador podrían  
16 indicar una falta de controles operativos  
17 robustos o una flota insuficiente." Entonces,  
18 yo entiendo que lo mismo que hablábamos hace un  
19 instante para el ICF, aplica por igual aquí al  
20 ICR. ¿Correcto?

21 SEÑOR PÉREZ: Correcto.

1 P: Y si seguimos pasando la página vamos a  
2 llegar al ICT. Y aquí lo que me interesa del  
3 ICT es el texto que ustedes tienen en la parte  
4 superior derecha, donde nos dicen que en  
5 promedio Alsacia y Express, el indicador ICT es  
6 constantemente inferior al del resto de  
7 operadores. Dicen que fue de 94 para Alsacia y  
8 Express, los demás del 97. Usted dice: "El 94  
9 significa que Alsacia y Express no cumplen  
10 plenamente con todos los kilómetros recorridos  
11 en su programa operativo." ¿Lo ve?

12 SEÑOR PÉREZ: Sí, eso es lo que indica la  
13 frase.

14 P: ¿Han analizado ustedes por qué Alsacia y  
15 Express no cumplen plenamente los kilómetros --  
16 todos los kilómetros? ¿Sí o no?

17 SEÑOR PÉREZ: No está dentro del foco de  
18 nuestra revisión realizar ese análisis.

19 P: Entonces, para que yo entienda, ¿Usted no  
20 me puede decir cuál es la causa de que hayan  
21 tenido peores indicadores y, por ende, menos

1 ingresos? ¿Correcto?

2 SEÑOR PÉREZ: Confirmado.

3 P: Dígame, ustedes han analizado el impacto  
4 que la evasión tuvo en los ingresos de las  
5 compañías. ¿Sí o no?

6 SEÑOR PÉREZ: Hemos incluido en nuestro  
7 informe un análisis a nivel general sobre la  
8 evasión, comparando con los demás operadores.

9 P: Bien, pero esa no era exactamente mi  
10 pregunta. Voy a volver a formularla. ¿Ustedes  
11 han analizado el impacto que la tasa de evasión  
12 o que la evasión ha tenido en los ingresos de  
13 las compañías? ¿Sí o no?

14 SEÑOR PÉREZ: No, no hemos realizado ese  
15 análisis. Nuestro análisis se realiza sobre los  
16 ingresos totales y realizamos un análisis  
17 general para entender sus componentes.

18 P: O sea que -- Pero ustedes aceptan que la  
19 evasión reduce los ingresos de las compañías.  
20 ¿Sí o no?

21 SEÑOR PÉREZ: Yo no acabo de decir eso.

1 P: No, le estoy preguntando. ¿Ustedes

2 aceptan que los ingresos de las compañías se  
3 ven afectados por mayor evasión? ¿Sí o no?

4 SEÑOR BECKER: It does affect it but that is  
5 mitigated by the adjustment factors to the  
6 tariff.

7 P: Pero no están mitigados al cien por cien.

8 SEÑOR BECKER: I do not know. We are not  
9 transportation experts. This is just a  
10 superficial analysis here. We didn't get into  
11 the details. It was not part of our scope of  
12 work.

13 P: Bien, pero es que cuando usted me dice  
14 que está mitigado por un ajuste contractual,  
15 realmente no está mitigado al cien por cien,  
16 ¿verdad?

17 SEÑOR BECKER: That is according to you.

18 P: No, le pregunto a usted: ¿está mitigado  
19 al cien por cien? ¿Sí o no?

20 SEÑOR BECKER: I would not know. As I said,  
21 it was outside the scope of our review. I can't

1 tell you. I can't comment on that.

2 P: Ok, pero usted en su primer informe sí  
3 dijo que había un ajuste del PPT que compensaba  
4 por expropiación de servicios y luego en su  
5 segundo informe dijo que ese PPT no compensaba  
6 la expropiación de servicios, ¿verdad? ¿Lo  
7 recuerda?

8 SEÑOR PÉREZ: Permítame contestar.  
9 Efectivamente, dentro del análisis general de  
10 los ingresos que estábamos conversando,  
11 nosotros tomamos un análisis del precio y la  
12 cantidad, dicho en este caso el precio como PPT  
13 IPK y la cantidad bien sea la demanda de  
14 pasajeros, bien sea el número de kilómetros  
15 recorridos por las compañías. Dentro de ese  
16 análisis es en el que se engloba el comentario  
17 que usted está indicando ahora.

18 P: Muy bien. Entonces, sí tuvieron que hacer  
19 una corrección porque ese PPT no compensaban lo  
20 que ustedes decían en el primer informe que  
21 compensaba. ¿Verdad?

1 SEÑOR PÉREZ: Los revisamos fue...

2 P: ¿Sí o no? Conteste y luego explique.  
3 Ustedes tuvieron que corregir su segundo  
4 informe porque dijeron que el PPT había  
5 corregido la expropiación de servicios cuando  
6 no lo había hecho. ¿Correcto?

7 SEÑOR PÉREZ: Lo que nosotros en concreto  
8 dijimos...

9 P: Correcto, ¿sí o no? Y luego complete, por  
10 favor. ¿Corrigieron o no su segundo informe  
11 porque en el primero consideraban que el PPT  
12 compensaba y en el segundo consideraron que no  
13 era así? ¿Correcto?

14 SEÑOR PÉREZ: Debo matizar ya que la frase  
15 que está diciendo que indicamos en nuestro  
16 primer informe no era la que dijimos. Lo que  
17 nosotros identificamos en el primer informe,  
18 identificamos que un incremento en PPT en el  
19 año de la eliminación de servicios del 10 por  
20 ciento asumimos, dado su monto, que debía ser  
21 asociado a compensar dicha eliminación de

servicios. En base a la respuesta que recibimos de los expertos de los demandantes, recibimos la respuesta de que ese 10 por ciento era adicional y que la compensación por eliminación de servicios iba a dar lugar a otro incremento de PPT en el futuro. Fue una confusión dado el monto del incremento, asumimos que efectivamente correspondía a esa compensación cuando realidad fue un incremento adicional garantizado a las compañías.

P: Muy bien. Ustedes han analizado el impacto que ha tenido el vandalismo y por ejemplo la expropiación de esos servicios en los ingresos de las compañías. ¿Sí o no?

SEÑOR PÉREZ: No.

P: Ahora, pasemos por favor al párrafo 95 de su segundo informe. Y el párrafo 95 para mí está en la página 35.

SEÑOR PÉREZ: Estamos en él.

P: Párrafo 95. Perdóneme. Sí, párrafo 95, es correcto.

COÁRBITRO GARIBALDI: ¿De qué informe?

¿Primero o segundo?

SEÑOR GARCÍA REPRESA: Del segundo. Del segundo. Y voy a leer de la versión en español. Ustedes dicen, y corrijame si digo algo que no es correcto: "Como indicamos -- como se indicó en el primer informe, los altos niveles históricos de deuda de Alsacia y Express impusieron severas restricciones a las compañías para responder a sus requerimientos de CAPEX y/o gastos operacionales". ¿Lo ve?

SEÑOR PÉREZ: Sí.

P: Dígame, si las compañías hubieran tenido más ingresos ¿seguiría usted diciendo que los altos niveles de deuda le impusieron restricciones a invertir en CAPEX y OPEX? ¿Sí o no?

SEÑOR BECKER: No, es difícil tratar de responder a tu pregunta porque usted está poniendo una hipótesis. Estamos diciendo que podría existir las situaciones - It could have

given the situation where they could have additional revenue but the debt service commitments are so vast that they weren't sufficient, so I cannot give you a firm answer either way.

P: Disculpe. Usted acepta que ceteris paribus, mayores ingresos con igual nivel de deuda, a uno le permite tener algo más de flujo libre de caja disponible para invertir en gastos de operación o gastos de capital, ¿verdad?

SEÑOR BECKER: Yes, under that hypothesis that's correct.

P: Entonces ustedes en su análisis, si lo he entendido bien antes, no han evaluado si con mayores ingresos las compañías se habrían desempeñado del mismo modo que lo han hecho en este caso. ¿Correcto?

SEÑOR BECKER: That is correct. Once again, our analysis is based on actual data, not hypothesis.

P: Pero su análisis tampoco considera cuál es la causa que ha llevado a que las empresas no generen más ingresos. ¿Verdad?

SEÑOR BECKER: That is correct. Other experts have covered that part of the work. That is right.

(Pausa)

P: Discúlpeme, señor Becker. Voy a tratar de ir un poquito más lento. Déjeme que revise si la última pregunta quedó registrada y si no se la vuelvo a formular.

Muy bien. ¿Podríamos ir, por favor -- ahora sí vamos a utilizar la carpeta que les dejé, al separador número 9? En ese separador número 9, para el expediente van a encontrar el documento BG-139. Y para que estemos claros ese anexo tiene dos documentos, están separados normalmente por una hoja de color. Y me gustaría que vaya a la última página. Vamos a hacerlo fácil. En la última página ustedes van a ver la nota que sacó Moody's en agosto de

1 2014. Voy a leer el título: "Moody's  
2 downgrades Inversiones Alsacia's rating to Caa3  
3 from Caa2".

4 SEÑOR PÉREZ: Disculpe, señor García  
5 Represa, no vemos lo que usted está  
6 mencionando.

7 P: Vaya a la última página del separador 9,  
8 por favor. Última página. Solo hay una última.  
9 La última página. Disculpe si no estaba esa  
10 página incluida. Creo que sí estaba, pero  
11 bueno.

12 Como verán, es una nota que saca Moody's en  
13 agosto de 2014. Ustedes, me imagino que han  
14 visto este documento antes. ¿Verdad?

15 SEÑOR PÉREZ: Sí, lo hemos visto.

16 P: Si se fija, hay una explicación de lo que  
17 llaman el ratings rational, y debajo de ese  
18 título me gustaría que leamos el tercer  
19 párrafo, y se lo voy a leer para ir más rápido:  
20 "Alsacia's financial deterioration is mainly  
21 due to (a), increased revenue volatility as a

1 consequence of the 2012 concession amendment,  
2 (b), lower than expected ridership, (c),  
3 absence of adequate road infrastructure to  
4 compete with other means of transportation,  
5 (d), increase in fare evasion and (e) revenue  
6 discounts related to... service quality  
7 indicators."

8 Primero, ustedes están de acuerdo con este  
9 diagnóstico de Moody's. ¿Sí o no?

10 SEÑOR BECKER: Perdón, no entiendo esta  
11 pregunta. ¿Por qué estamos de acuerdo o no de  
12 acuerdo?

13 P: No sé por qué, pero les pregunto si están  
14 de acuerdo o no de acuerdo.

15 SEÑOR BECKER: Como está de Moody's...

16 P: Pero usted está de acuerdo -- ustedes han  
17 hecho dos informes de más de cien páginas en  
18 este caso diciéndole al Tribunal lo que ustedes  
19 creen que ha pasado con Alsacia y Express.  
20 Entonces, aquí Moody's en 2014 nos dice lo que  
21 ha pasado y quisiera saber si ustedes están de

1 acuerdo o no con lo que dice Moody's.

2 SEÑOR BECKER: Hay varios aspectos de esta  
3 frase que no están abarcado - It is not covered  
4 by our scope of work. And there is another  
5 issue compared to our work that is missing, and  
6 we refer to increase in costs, which is not  
7 indicated here.

8 P: Exacto, y le agradezco porque me ha  
9 facilitado un poco la tarea. Primero, ustedes  
10 no analizan, ya me ha dicho antes, la  
11 volatilidad de los ingresos en función de las  
12 distintas fórmulas de equilibrio económico en  
13 los contratos. ¿Correcto?

14 SEÑOR BECKER: Correct.

15 P: Ustedes no analizan la bajada de demanda  
16 respecto de la demanda esperada. ¿Correcto?

17 SEÑOR PÉREZ: No entramos a ese nivel de  
18 análisis. No.

19 P: Ustedes tampoco analizaron la ausencia de  
20 infraestructura adecuada para competir con  
21 otros medios de transporte como el metro,

1 etcétera. ¿Correcto?

2 SEÑOR PÉREZ: Es la misma respuesta  
3 anterior: solo analizamos los datos reales, no  
4 entramos más allá.

5 P: Vuelvo y tenemos el mismo debate que  
6 antes, estos de Moody's son datos reales.  
7 ¿Verdad?

8 SEÑOR PÉREZ: Esto de Moody's es la opinión  
9 de Moody's por la cual están haciendo un  
10 downgrade a la nota de Alsacia en agosto de  
11 2014.

12 P: ¿Y es su testimonio que Moody's aquí se  
13 está basando en un contrafáctico o que está  
14 analizando la realidad de lo que pasa con  
15 Alsacia y Express? ¿Cuál de los dos?

16 SEÑOR PÉREZ: Entendemos que están  
17 analizando la realidad de Alsacia y Express  
18 comparada con un modelo que les fue facilitado  
19 por las compañías en los cuales realizaron una  
20 proyección de ingresos y en la cual estaban  
21 consideradas unas sinergias de 150 millones de

1 dólares, las cuales Fitch, en su nota,  
2 especifica que están tomando mucho más tiempo  
3 en realizarse de lo que deberían.

4 P: Bien. Pero eso no aparece en la lista que  
5 acabamos de ver de las principales razones.  
6 ¿Verdad?

7 SEÑOR PÉREZ: No en la de Moody's, en la de  
8 Fitch, por ejemplo, sí.

9 P: Vale. ¿Usted me está sugiriendo aquí que  
10 Moody's simplemente toma el modelo que le da  
11 una empresa sin evaluarlo, sin hacer un test de  
12 racionalidad y sus propios análisis  
13 independientes? ¿Es eso lo que me está  
14 diciendo?

15 SEÑOR PÉREZ: No, lo que estaba yo  
16 respondiendo es a que usted me indicaba si era  
17 un escenario contrafáctico. Y lo que le indico  
18 es que lo que está haciendo la agencia Moody's  
19 es potencialmente comparar el modelo financiero  
20 que hubo asociado al bono en su emisión de 2011  
21 con la evolución de los ingresos, por tanto,

1 las expectativas que estuviesen incluidas en  
2 dicho modelo financiero tienen un impacto muy  
3 significativo en la opinión de Moody's y el  
4 downgrade que está aquí incluyendo en su nota.

5 P: Bien, y su respuesta me dice que lo que  
6 hace Moody's es potencialmente. Entonces me  
7 interesa el "potencialmente". ¿Usted sabe si  
8 eso es lo que está haciendo Moody's o es su  
9 interpretación?

10 SEÑOR PÉREZ: Como puede ver, yo no trabajo  
11 en Moody's para llegar a especular qué hizo  
12 exactamente. Pero sí que conocemos la  
13 metodología de estas agencias de rating y lo  
14 que suelen basarse son en modelos financieros  
15 que son los que les permiten evaluar la calidad  
16 de riesgo crediticio de la inversión y  
17 posteriormente van comparando la realidad  
18 versus dicho modelo financiero.

19 P: Y ese modelo financiero al que se refiere  
20 usted es el que haya hecho, revisado o validado  
21 Moody's. ¿Correcto?

1 SEÑOR PÉREZ: Es el modelo financiero que  
2 Alsacia y Express en el contexto de la emisión  
3 del bono hayan compartido con Moody's o la  
4 agencia de rating correspondiente.

5 P: Revisado y validado por Moody's.  
6 ¿Correcto?

7 SEÑOR PÉREZ: No puedo responder por el  
8 trabajo que haya hecho Moody's sobre este  
9 modelo financiero.

10 P: Último punto del párrafo que veíamos de  
11 Moody's. Ellos hablan del revenue discounts  
12 related to service quality indicators. ¿Ustedes  
13 no han analizado por qué se han producido esos  
14 descuentos, verdad?

15 SEÑOR PÉREZ: Nosotros conocemos el monto de  
16 los descuentos y sabemos a qué están asociados,  
17 que es al incumplimiento de unos indicadores  
18 que están establecidos de manera contractual.

19 P: Pero ustedes no han analizado por qué se  
20 han incumplido los indicadores, ¿verdad?

21 SEÑOR PÉREZ: No hemos entrado a las causas

1 subyacentes de por qué se incumplen esos  
2 indicadores con la posterior aplicación de  
3 descuentos.

4 P: ¿Usted sabe que Su-Bus es el único otro  
5 operador colombiano en el Transantiago?

6 SEÑOR BECKER: No tenemos claro la  
7 procedencia de los accionistas de cada  
8 operador.

9 P: Entonces, cuando ustedes en su informe le  
10 ponen la bandera de Colombia a Su-Bus, eso es...  
11 ¿ustedes no saben?

12 SEÑOR BECKER: Su-bus... Sabemos que Su-Bus es  
13 es capitales de Colombia, sí.

14 P: Okay. Y cuando ustedes les ponen unas  
15 banderitas a los demás operadores, solo veo la  
16 bandera de Colombia en Su-Bus. Entonces,  
17 entiendo que en su opinión Su-Bus es el único  
18 otro operador colombiano de Transantiago, ¿sí o  
19 no?

20 SEÑOR PÉREZ: Hasta donde -- nuestro  
21 entendimiento, así es.

1 P: ¿Ustedes han revisado la declaración que  
2 ha presentado la señora Rosa Palma en este  
3 arbitraje?

4 SEÑOR PÉREZ: No, no la hemos revisado.

5 P: ¿Ustedes saben quién es?

6 SEÑOR PÉREZ: Sinceramente, no sabemos quién  
7 es.

8 P: Bueno, les digo que es accionista y  
9 directora de Su-Bus Chile, ha presentado una  
10 declaración en este caso. Ustedes saben que Su-  
11 Bus es el único otro operador, además de  
12 Alsacia y Express, que ha operado flota desde  
13 el hecho 2005. ¿Verdad?

14 SEÑOR BECKER: No sabemos de quién ha  
15 operado desde cuándo, pero...

16 P: Ya. ¿Pueden ir a su segundo informe, por  
17 favor, párrafo 8? ¿Pueden leerlo en voz alta?  
18 ¿Puede leer el párrafo 8 en voz alta, por  
19 favor?

20 SEÑOR PÉREZ: Sí. Tengo delante la versión  
21 en inglés. Si no les importa, voy a leer la

1 versión en inglés.

2 P: Por supuesto.

3 SEÑOR PÉREZ: "Together with SuBus, Alsacia  
4 and Express were the only Transantiago  
5 companies that operated fleets during the whole  
6 concession period 2005 to 2017 and that  
7 incurred net accumulated losses. All the other  
8 Transantiago operators were able to generate  
9 net profits, be it at differing levels."

10 P: Si he entendido bien, junto con  
11 Alsacia y Express, la única otra empresa que ha  
12 estado operando flota desde el año 2005 y que  
13 tiene pérdidas es Su-Bus. ¿Correcto?

14 SEÑOR PÉREZ: Está haciendo una afirmación  
15 que nosotros no hemos corroborado que es que  
16 sea la única empresa que ha estado operando el  
17 Transantiago desde 2005, pero sí que es cierto  
18 que es la única empresa, junto con Alsacia y  
19 Express, que tiene pérdidas.

20 P: Bueno, es la única empresa que operó  
21 flota durante el período íntegro de la

1 concesión, de 2005 a 2017. ¿Correcto?

2 SEÑOR PÉREZ: Eso no le puedo afirmar seguro  
3 ya que no estamos seguros de ello.

4 P: Bueno, pero ya que estoy leyendo la  
5 versión española de su párrafo 8. Entonces,  
6 usted me dice en su párrafo 8 que, junto a  
7 Alsacia y Express, Su-Bus fueron las únicas  
8 compañías Transantiago que operaron flotas  
9 durante el período íntegro de la concesión  
10 2005-2017. ¿A usted le consta eso o lo ha  
11 tomado de algún otro sitio?

12 SEÑOR PÉREZ: Sí, creo que tengo quizás un  
13 problema de las versiones, porque lo que yo  
14 tengo en la versión inglesa es the full  
15 concession period 2005 to 2017, including net  
16 accumulated losses. O sea, es clave la --  
17 Quizás no estoy entendiendo.

18 P: Me repito.

19 SEÑOR PÉREZ: Sí, por favor.

20 P: Junto con Alsacia y Express la única otra  
21 empresa que ha operado flota desde el año 2005

1 hasta 2017 y reporta pérdidas es Su-Bus.

2 ¿Correcto?

3 SEÑOR PÉREZ: Perfecto. Me faltaba la parte  
4 final "y reporta pérdidas". Estaba pensando que  
5 era la única que operaba de todos los  
6 operadores desde 2005. Perfecto, entendido.

7 P: ¿Entonces, es correcto? Me falta la  
8 respuesta.

9 SEÑOR PÉREZ: Estamos de acuerdo. De hecho,  
10 lo hemos incluido en la presentación de hoy.

11 P: ¿Ustedes han analizado por qué también  
12 Su-Bus está en pérdidas o le parece pura  
13 casualidad?

14 SEÑOR PÉREZ: Está fuera de nuestro alcance  
15 hacer un análisis tan profundo como hicimos  
16 sobre Alsacia y Express sobre otro operador de  
17 Transantiago.

18 P: Y si a usted le interesara saber cuáles  
19 son las causas de los problemas económicos de  
20 Alsacia y Express, ¿no le parece interesante  
21 haber analizado por qué la única otra empresa

1 que opera flota desde el año 2005 de capitales  
2 colombianos también tiene pérdidas? ¿No le  
3 parece relevante?

4 SEÑOR PÉREZ: Hay un número casi ilimitado  
5 de análisis que parecen relevantes, pero  
6 obviamente nuestro foco estaba en analizar en  
7 profundidad a Alsacia y Express.

8 P: Ahora, en su primer informe, para que yo  
9 entienda, usted excluyó a Su-Bus de sus  
10 análisis comparativos de ratios financieros y  
11 de deuda. ¿Correcto?

12 SEÑOR BECKER: That is correct.

13 P: Ustedes consideraron que Su-Bus era, voy  
14 a decirlo en inglés, un outlier y por lo tanto  
15 lo excluyeron de todas las comparaciones por  
16 ejemplo del valor económico financiado por  
17 deuda, del ratio de apalancamiento, del ratio  
18 de liquidez y del análisis de ratio deuda sobre  
19 sobre EBITDA. ¿Correcto?

20 SEÑOR BECKER: I am going to answer your  
21 question but I would like to give an

1 explanation.

2 P: First answer, is this correct?

3 SEÑOR BECKER: It is correct. And the reason  
4 we considered it as an outlier is that unlike  
5 Alsacia and Express -- I don't know about the  
6 other operators -- SuBus has a debt from its  
7 shareholders, a debt which is subordinated, we  
8 understand, to creditors, subordinated to bank  
9 debt, so essentially what that is is equity.  
10 It is an equity investment. So we had a  
11 problem with whether we treat that as equity,  
12 as capital, or as debt, and that was the  
13 problem. That is why we excluded it as an  
14 outlier, because it has a large amount of  
15 shareholder debt that could be considered as  
16 capital. It has characteristics of capital.

17 P: Bien bien, osea que para ustedes  
18 "shareholder debt" es como capital.

19 SEÑOR BECKER: No. The characteristics of a  
20 shareholder debt and in many cases pure  
21 shareholder debt is the same as capital, but in

1 this case we considered it to have  
2 characteristics more as capital than debt.

3 P: ¿Usted reconoce que hay distintos  
4 factores que afectan de manera negativa a  
5 Alsacia, Express y Su-Bus solamente? ¿Sí o no?

6 SEÑOR BECKER: I'm not sure what they are  
7 referring to.

8 P: Pues vamos a -- si quiere, al primer  
9 informe, por favor, párrafo 69, página 31 en  
10 español. Párrafo 69, página 31 en la versión  
11 española.

12 SEÑOR PÉREZ: Perfecto. Estamos ahí.

13 P: Muy bien. Como ve este párrafo está bajo  
14 la sección que tiene un título, "Alsacia y  
15 Express atribuyeron su deterioro financiero al  
16 Estado chileno" y el último párrafo dentro de  
17 eso dice: "Esto sugiere que existe una variedad  
18 de distintos factores que afecta de manera  
19 negativa a Alsacia, Express y Su-Bus solamente  
20 ¿Lo ve?

21 SEÑOR PÉREZ: Lo estamos viendo.

1 P: ¿Me puede decir dónde voy a encontrar en  
2 sus dos largos informes el análisis de esos  
3 factores que afectaron solamente a estas tres  
4 empresas?

5 SEÑOR PÉREZ: Bueno, la verdad es que tiene  
6 usted casi 300 páginas de informe analizando a  
7 Alsacia y Express y por qué están en la  
8 situación financiera en la que están hoy en  
9 día.

10 P: Sí, pero lamentablemente no he encontrado  
11 dónde me analizan ustedes los factores que  
12 impactaron solamente a Express, Alsacia y Su-  
13 Bus. Por eso mismo le pregunto.

14 SEÑOR PÉREZ: Como indica el título de  
15 nuestro informe y para lo que fuimos  
16 contratados es para realizar un análisis  
17 financiero sobre inversiones de Alsacia y  
18 Express de Santiago, no fuimos contratados para  
19 realizar un análisis financiero sobre Su-Bus.

20 P: Ya.

21 SECRETARIA CORDIDO-FREYTES DE KUROWSKI: Hay



1 un problema con la cabina, un problema técnico  
2 con la cabina de interpretación. Necesitan una  
3 pausa.

4 PRESIDENTA KAUFMANN-KOHLER: Entonces,  
5 tomamos una pausa hasta que se arregle. So we  
6 need to have a break to do this? Is that what  
7 you are saying? Will it be long?

8 (Pausa.)

9 PRESIDENTA KAUFMANN-KOHLER: ¿Podemos  
10 retomar? Me ruegan los intérpretes y los court  
11 reporters que por favor hablemos más despacio,  
12 porque tienen dificultad para seguir con la  
13 transcripción o con la interpretación.

14 Señor García Represa, por favor.

15 SEÑOR GARCÍA REPRESA: Con la venia, señora  
16 presidenta, y mis disculpas a los estenógrafos  
17 e intérpretes.

18 Señores: quisiera que pasemos ahora por  
19 favor a la página 83 en la versión española de  
20 su segundo informe. Es el párrafo 282 el que me  
21 interesa.

1 SEÑOR PÉREZ: Ya estamos ahí.

2 P: Muchas gracias.

3 En ese párrafo 282 ustedes dicen que los  
4 ingresos de 2017 fueron 12,2 por ciento  
5 superiores a los ingresos al inicio de los  
6 nuevos contratos. ¿Lo ve?

7 SEÑOR PÉREZ: Sí, lo veo.

8 P: Y me dice que en el mismo período los  
9 gastos operacionales se incrementaron en un 19  
10 por ciento. ¿Lo ve?

11 SEÑOR PÉREZ: Así es.

12 P: Y de ahí concluye usted que por tanto los  
13 problemas de rentabilidad de Alsacia y Express  
14 están principalmente vinculados al control de  
15 costos. ¿Correcto?

16 SEÑOR PÉREZ: Así es.

17 P: Y si entiendo bien, ustedes han tomado  
18 las cifras de ingresos y las cifras de costos  
19 de los estados financieros auditados de las  
20 compañías. ¿Verdad?

21 SEÑOR PÉREZ: Sí.

1 P: Y, si he entendido bien, lo que ustedes  
2 han hecho ha sido tomar la cifra de ingresos  
3 del año 2012 y compararlo con la cifra de  
4 ingresos del año 2017. ¿Es correcto?

5 SEÑOR PÉREZ: Esa es la comparación que  
6 realizamos. Efectivamente.

7 P: ¿Y lo mismo para costos, para  
8 simplificar?

9 SEÑOR PÉREZ: Así es.

10 P: Y usted estará de acuerdo conmigo que en  
11 los estados financieros lo que uno encuentra  
12 son cifras nominales. ¿Verdad?

13 SEÑOR PÉREZ: Así es. No están ajustadas por  
14 inflación.

15 P: Claro, entonces esta comparación de 2012  
16 a 2017 no está ajustada por inflación. ¿Verdad?

17 SEÑOR BECKER: Las cifras contables -- no  
18 entiendo la referencia. Usted está hablando de  
19 las tarifas en los ingresos o...

20 P: ...

21 SEÑOR BECKER: ...pero sí los precios, las

1 tarifas y los costos sí van incorporando  
2 inflación. Las cifras en los libros contables  
3 son cifras reales de fecha.

4 P: Claro, entonces han tomado la cifra  
5 nominal del año 2012 y la han comparado con la  
6 cifra que aparece en los estados financieros de  
7 2017, y ha entendido perfectamente a dónde voy.  
8 Esa comparación ustedes no la ajustan por  
9 inflación. ¿Verdad?

10 SEÑOR BECKER: Pero, otra vez...

11 P: Dígame. Respóndame la pregunta. Ustedes  
12 ajustan por inflación la comparación que hacen  
13 en el párrafo 282 de su segundo informe. ¿Sí o  
14 no?

15 SEÑOR BECKER: No, we don't adjust it for  
16 inflation because we don't see any need to  
17 adjust for inflation.

18 P: Okay. ¿Ustedes recuerdan la inflación  
19 acumulada desde el año 2012 a 2017 en Chile?

20 SEÑOR PÉREZ: No, no tenemos ese dato aquí  
21 adelante.

1 P: ¿Pero sí lo tienen en los anexos de  
2 Brattle? ¿Verdad?

3 SEÑOR PÉREZ: Sinceramente no -- tendría que  
4 facilitarme el anexo al que usted se refiere.

5 P: Bueno, pues no se preocupe que yo le digo  
6 que asuma, y daré las referencias para el  
7 expediente, asuma que la tasa de inflación fue  
8 del 20 por ciento, inflación acumulada  
9 2012/2017. Entonces si asumimos que es un 20  
10 por ciento, y para el expediente anexos BG-100  
11 y BG-260 -no está en la carpeta, o sea que no  
12 se preocupe, bueno quizá estén pero no hace  
13 falta ir ahí-, asumiendo que sea 20 por ciento,  
14 si los costos -- perdón, los ingresos de 2012 a  
15 2017 en términos nominales subieron un 12,2 por  
16 ciento, en términos reales bajaron un 7,8 por  
17 ciento. ¿Verdad?

18 SEÑOR PÉREZ: En primer lugar, para  
19 contestarle a esa pregunta deberíamos saber  
20 cómo está calculada esa tasa de inflación,  
21 porque no sé si está usted calculando como se

1 está realizando aquí el cálculo, que es  
2 aritméticamente tomar el año 2012 e  
3 incorporarlo con el 2017, o usted me está  
4 hablando de una tasa de crecimiento acumulada  
5 que entonces va acumulando factor exponencial  
6 cada año, acumulándose entre sí. Debería por  
7 favor clarificarnos ese 20 por ciento a qué  
8 corresponde.

9 P: Sí, yo se lo clarifico: es 20 por ciento.  
10 Entonces a partir de ahí, asumiendo que la  
11 inflación acumulada es 20 por ciento y ustedes  
12 -si quieren luego mis compañeros verificarlo  
13 les acabo de dar las referencias- asumiendo que  
14 sea un 20 por ciento estará de acuerdo conmigo  
15 en que un incremento nominal de ingresos del  
16 12,2 en términos reales es una bajada de  
17 ingresos del 7,8. ¿Verdad? ¿Sí o no?

18 SEÑOR PÉREZ: La verdad es que lamento  
19 insistir sobre la pregunta anterior, pero usted  
20 me ha vuelto a repetir el 20 por ciento cuando  
21 yo en cambio me refería a la comparabilidad.

1 ¿En qué sentido? Nosotros estamos comparando  
2 los ingresos de 2012 con los de 2017 indicando  
3 que entre ambos hay un crecimiento del 12,7 por  
4 ciento. Usted me está indicando que hay un 20  
5 por ciento de tasa de inflación en ese periodo.  
6 Mi consulta es: ¿cómo es ese incremento? ¿Es un  
7 incremento interanual o es un incremento  
8 acumulado? ¿En qué sentido acumulado? Cuando  
9 tienen varios años los crecimientos se van  
10 acumulando entre sí creando un efecto  
11 exponencial. No sé a qué 20 por ciento se  
12 refiere y por lo tanto no puedo evaluar la  
13 comparabilidad.

14 P: ¿Usted conoce el Instituto Nacional de  
15 Estadística de Chile?

16 SEÑOR PÉREZ: Sí.

17 P: Publica los datos de inflación. ¿Verdad?

18 SEÑOR PÉREZ: Así es.

19 P: Y usted no los ha considerado. ¿Verdad?

20 SEÑOR PÉREZ: Como le comentaba mi colega...

21 P: ¿Sí o no?

1 SEÑOR PÉREZ: Nuestro análisis se ha  
2 centrado en los ingresos operacionales de las  
3 compañías de acuerdo a estados financieros  
4 auditados.

5 P: Vale, que son nominales y por lo tanto no  
6 incluyen inflación cuando usted compara cifras  
7 con cinco años de diferencia. ¿Verdad? ¿Sí o  
8 no?

9 SEÑOR BECKER: No. That is what I am trying  
10 to explain. You are incorrect. You are  
11 including inflation. I think you are referring  
12 perhaps maybe to the old way Chile used to  
13 present their financial statements, by  
14 artificially inflating them for inflation.  
15 Here we are using the amounts that come out of  
16 the financial statements, and those amounts,  
17 both revenue and cost, are affected by a number  
18 of issues, including inflation.

19 P: Usted está comparando pesos chilenos de  
20 2012 con pesos chilenos de 2017. ¿Sí o no?

21 SEÑOR BECKER: Correct.

1 P: Bien. En la parte de costos. Ustedes en  
2 su párrafo 282 me dicen que los costos se  
3 incrementaron un 19 por ciento. ¿Verdad?  
4 Asumiendo que le restamos 20 por ciento de  
5 inflación, simplemente aritmética, 19 menos 20,  
6 menos 1. ¿Verdad?

7 SEÑOR PÉREZ: Obviamente en la respuesta que  
8 le vamos a dar no sabemos ese 20 por ciento  
9 exactamente qué es.

10 P: ¿Pero usted acepta que 19 menos 20 es  
11 menos 1? ¿Sí o no?

12 SEÑOR PÉREZ: Eso obviamente tengo que  
13 aceptarlo.

14 P: Muy bien, vamos mejorando. Entonces,  
15 asumiendo que en mi ejemplo los ingresos hayan  
16 bajado un 7,8 por ciento y los costos realmente  
17 hayan bajado un 1 por ciento, el problema que  
18 tienen Alsacia y Express es un problema de  
19 ingresos y no de costos, siguiendo la misma  
20 lógica que ustedes desarrollan en el párrafo  
21 282. ¿Verdad?

1 SEÑOR BECKER: Not at all. I do not see where  
2 it says that. It tells you that the revenue  
3 increased by 12 per cent whereas the costs  
4 increased by 19 per cent, so I don't know how  
5 you get to the conclusion that the problem is  
6 in revenue.

7 P: Asuma conmigo que en términos reales hay  
8 una bajada del 7,8. ¿Hasta aquí bien?

9 SEÑOR BECKER: Okay.

10 P: Y asuma conmigo que en términos reales  
11 hay una bajada de costos del 1 por ciento.  
12 ¿Verdad? Asuma. ¿Puede asumir o no?

13 SEÑOR BECKER: Okay.

14 P: En ese caso si miramos la tendencia y si  
15 hacemos la misma comparación que ustedes han  
16 hecho en el párrafo 282, deberíamos concluir  
17 que los problemas de rentabilidad de Alsacia y  
18 Express están principalmente vinculado a los  
19 ingresos. ¿Sí o no?

20 SEÑOR PÉREZ: Sinceramente, estoy haciendo  
21 mi mejor esfuerzo por seguirlo, pero el 1 por

1 ciento en costos -- o sea, es una reducción de  
2 costos o sea que en términos reales estamos  
3 diciendo que la compañía ha ido ahorrando en  
4 costos. Sin embargo, de forma en ingresos, que  
5 es lo contrario. ¿Es eso?

6 P: Si es muy sencillo. Si los ingresos bajan  
7 un 7,8 por ciento y los costos bajan un 1 por  
8 ciento hay mayor bajada de ingresos que bajada  
9 de costos relativa. ¿Verdad? ¿Sí o no?

10 SEÑOR BECKER: You are factually correcting  
11 what you are explaining. What I am trying to  
12 understand is how you are getting to the  
13 conclusion that the problem is in revenue.

14 P: Me parece perfecto y le agradezco que me  
15 diga eso porque precisamente es la pregunta que  
16 tengo yo en el párrafo 282 de su segundo  
17 informe. Porque ustedes me dicen -vuelvo a  
18 leer- que los ingresos de 2017 fueron  
19 superiores a los ingresos al inicio. En el  
20 mismo período los gastos se incrementaron un 19  
21 por ciento y concluye usted indicando por

1 tanto, o sea, que es la consecuencia, por tanto  
2 que los problemas de rentabilidad de Alsacia y  
3 Express están principalmente vinculados al  
4 control de costos.

5 Yo le pongo la hipótesis inversa: asumamos  
6 que los ingresos bajaron, asumamos que los  
7 costos -si quiere- se mantuvieron estables o  
8 incluso subieron un poquito -si es que le da  
9 igual-, ¿usted estaría de acuerdo que por tanto  
10 los problemas de rentabilidad de Alsacia y  
11 Express están principalmente vinculados a los  
12 ingresos? ¿Sí o no?

13 SEÑOR BECKER: Once again, I think you are  
14 getting into the situation of would have, could  
15 have, should have. You are telling me that if  
16 the revenue had decreased, or if the revenue  
17 had increased and costs had remained the same,  
18 then profitability would be higher. Yes, that  
19 makes sense. But we are not basing on  
20 hypotheses; we are basing on actual figures.

21 P: Ya... en las "actual" [cifras]

1 nominales comparados sobre cinco años con un  
2 país que tiene 20 por ciento de inflación en  
3 cinco años. ¿Verdad? ¿Es lo que han hecho no?

4 SEÑOR BECKER: You keep referring to nominal  
5 pesos and you keep referring to inflation of  
6 20 per cent, but I don't think that is  
7 applicable.

8 P: Estaremos de acuerdo en que cien pesos  
9 chilenos en el año 2011/2012 no valen lo mismo  
10 que cien pesos chilenos en el año 2017,  
11 ¿verdad? ¿Sí o no?

12 SEÑOR BECKER: If this was a direct  
13 comparison of cash in the bank without  
14 interest. Yes, you are correct, by the  
15 duration of the purchasing power.

16 P: Y entonces asumamos, que no es que lo  
17 tenga en el banco si no que lo tengo en un  
18 balance. Entonces estará de acuerdo que la  
19 cifra del balance de 2011, de cien pesos, no es  
20 lo mismo que la cifra del balance de cien pesos  
21 en 2017, ¿verdad?

1 SEÑOR BECKER: This is what I am trying to  
2 tell you that you are wrong, unfortunately, you  
3 are wrong. If you had 100 pesos in a bus in  
4 2012 and you had that same bus in 2017, you  
5 would still have 100 pesos in a bus. That  
6 doesn't mean you increase it by inflation.

7 P: Bien, vamos por favor ahora a su segundo  
8 informe, a la página 55. Perdona, debería ser  
9 el párrafo 177, y en este caso es la página 59.  
10 Disculpen el error.

11 Usted aquí está analizando lo que llamaba el  
12 riesgo de tipo de cambio. ¿Lo ve?

13 SEÑOR PÉREZ: Correcto.

14 P: Y Usted nos habló de ello esta mañana.  
15 Entonces quisiera que miremos el cuadro que  
16 tiene usted hacia la izquierda. Usted calcula,  
17 entiendo ahí, las pérdidas dice usted, reales  
18 incurridas durante período que los demandantes  
19 afirman haber tenido una política de cobertura  
20 efectiva. ¿Lo ve?

21 SEÑOR BECKER: Correct.

1 P: Ahora, el Concepto de pérdidas reales,  
2 como comprenderá, es un poquito confuso.  
3 Entonces, quiero que aclaremos a ver a qué se  
4 está usted refiriendo. Usted aquí una vez más,  
5 está utilizando cifras de los estados  
6 financieros auditados, ¿verdad?

7 SEÑOR BECKER: Correct.

8 P: Y para que entendamos, ustedes no han  
9 hecho un análisis de flujos de caja porque,  
10 entiendo, y lo dicen en su informe, ustedes no  
11 han tenido acceso a los flujos de caja de las  
12 compañías, ¿verdad?

13 SEÑOR BECKER: Not completely correct. We  
14 did have in the financial statements that  
15 includes a statement of cashflows.  
16 Unfortunately this is also one of the issues we  
17 had in our analysis. Some of that information  
18 is not properly disclosed, with enough  
19 information, there was a little bit of  
20 information that is erratic, but there is a  
21 statement of cashflows included in any

1 financial statements.

2 P: Claro, ¿a qué fecha?... a 31 de diciembre  
3 del año. ¿Verdad?

4 SEÑOR BECKER: It's the same period as the  
5 financial statements.

6 P: Sí, pero lo que usted tiene en el estado  
7 que me menciona, es simplemente una lista de  
8 los cash inflows y outflows que se han  
9 producido en todo el año agregados, ¿verdad?  
10 ¿Sí o no?

11 SEÑOR BECKER: I think we try to say the same  
12 thing. It should be with a little bit more  
13 detail and it was a little bit too summarised  
14 perhaps in the case of Alsacia and Express for  
15 us to be able to open up those amounts and  
16 understand them.

17 P: Entonces, para que yo entienda, ustedes  
18 no han analizado durante el período que es  
19 objeto de revisión ante este Tribunal, los  
20 flujos de caja mensuales, semanales o diarios  
21 de las compañías. ¿Correcto?

1 SEÑOR BECKER: That is correct. We didn't  
2 have that information available.

3 P: Entonces, cuando vemos que ustedes aquí  
4 me hablan de pérdidas reales por el riesgo de  
5 tipo de cambio, estos no son cash outflows.  
6 ¿Verdad?

7 SEÑOR BECKER: Wrong. Allow me to elaborate.

8 P: Déjeme que acabe entonces, sin duda, mis  
9 compañeros podrán hacerle preguntas. En las  
10 cifras que vemos aquí en su página 59 son  
11 extractos del balance, ¿verdad? De la cuenta de  
12 resultado, de la línea diferencia de cambio.  
13 ¿Verdad? Es una línea de balance. ¿Correcto?

14 SEÑOR BECKER: That is Correct. Now you just  
15 said it, it is the profit and loss, not the  
16 balance sheet.

17 P: Perdón, correcto. Esa línea se va  
18 ajustando todos los años en función del valor  
19 que se le atribuya al activo o el pasivo que  
20 esté denominado en moneda extranjera. ¿Verdad?

21 SEÑOR BECKER: Conceptually correct.

1 P: Si yo tengo un pasivo y yo soy una  
2 empresa chilena por 100 dólares en el año 1, en  
3 el año 2 si ese mismo pasivo ha sufrido la tasa  
4 de cambio una valuación, ese pasivo puede valer  
5 más o menos del monto en pesos chilenos que yo  
6 tenía en mi cuenta resultados antes y tengo que  
7 hacer un ajuste que va a esa línea de  
8 diferencia de cambio. ¿Correcto?

9 SEÑOR BECKER: Conceptually correct.

10 P: Eso no quiere decir que ese monto que yo  
11 he puesto en la línea tenga necesariamente que  
12 ser un desembolso o un embolso de fondos.  
13 ¿Correcto?

14 SEÑOR BECKER: Incorrect.

15 P: Entonces, si yo le debo a usted cien  
16 dólares hoy, y tenemos una paridad del peso  
17 chileno al dólar, pero tiene un vencimiento,  
18 vamos a decir, dentro de dos años. Yo al 31 de  
19 diciembre, según las normas contables, tengo  
20 que evaluar esa misma deuda que tengo de cien,  
21 y supongamos que el peso se ha devaluado un 10

1 por ciento. Yo entonces ahora le debo en lugar  
2 de cien pesos, le debo 110 pesos. Y yo voy a  
3 inscribir en mi cuenta de resultado que tengo  
4 una diferencia de cambio de 10 pesos.  
5 ¿Correcto?

6 SEÑOR BECKER: Correct.

7 P: ¿Yo esos diez pesos a usted no se los he  
8 pagado? ¿Verdad?

9 SEÑOR BECKER: Not yet.

10 P: Entonces, vayamos al segundo año.  
11 Resulta, que el segundo año, el peso se ha  
12 revaluado, ¿de acuerdo? Se ha revaluado 10 por  
13 ciento, vamos a hacerle con el margen para que  
14 me dé justico, ya sabe dónde voy. Vamos a decir  
15 11 y algo.

16 En ese caso, cuando llegue el vencimiento de  
17 la deuda, yo a usted le voy a volver a deber,  
18 si otra vez la tasa de cambios se ha ajustado  
19 al nivel que estaba al principio, yo a usted le  
20 voy a dar cien pesos que convertiré en ese  
21 momento en cien dólares y he cumplido mi deuda.

1 ¿Verdad?

2 SEÑOR BECKER: Conceptually correct.

3 P: Entonces, yo en el año uno esos diez que  
4 había puesto en la línea de diferencia de  
5 cambio, al final no se los he tenido que pagar.  
6 ¿Verdad?

7 SEÑOR BECKER: Once again, under your example  
8 you are correct, but however, and this is  
9 important --

10 P: Espere, déjeme que vamos a aterrizar el  
11 ejemplo a la práctica que seguramente es lo que  
12 usted quiera decir.

13 En este caso, han ustedes analizado al  
14 vencimiento de cada uno de los vencimientos del  
15 bono, cuáles han sido los -- ustedes eh, yo sé  
16 que Brattle lo ha hecho. Quiero ver si ustedes  
17 lo han hecho. ¿Ustedes han analizado en cada  
18 momento de pago del bono cuál era el impacto de  
19 la tasa de cambio aplicando los hedges  
20 correspondientes? ¿Sí o no?

21 SEÑOR BECKER: Sí.

1 P: ¿En qué parte de su primer informe voy a  
2 ver eso, señor?

3 SEÑOR BECKER: No está incluido en nuestro  
4 informe. Pero sí...

5 P: ¿Usted lo han hecho qué, en el segundo  
6 informe?

7 SEÑOR BECKER: No. Tampoco en el segundo  
8 informe.

9 P: ¿Ustedes lo han hecho en su presentación  
10 de esta mañana, verdad?

11 SEÑOR BECKER: No. Allow me also now to to  
12 elaborate. I tried to explain earlier and you  
13 keep telling me no --

14 PRESIDENTA KAUFMANN-KOHLER: The question is  
15 simple. Have you done it?

16 SEÑOR BECKER: No.

17 PRESIDENTA KAUFMANN-KOHLER: Where have you  
18 done it, if you have done it? Then you can  
19 explain.

20 SEÑOR BECKER: It is not in our report. You  
21 are correct.

1 P: Did you do it for your presentation this  
2 morning? Perdón. ¿Lo hizo usted para su  
3 presentación de esta mañana?

4 SEÑOR BECKER: I refer to it in my  
5 presentation this morning, when I referred to  
6 \$45 million of a net loss that was incurred  
7 during the period, that the Claimants claimed  
8 to have an effective hedging programme.

9 P: Entonces estamos de acuerdo que esa  
10 computación no estaba en ninguno de sus  
11 informes. ¿Correcto?

12 SEÑOR BECKER: The 45 million? Are you  
13 referring to that?

14 P: El análisis del vencimiento de cada uno  
15 de los pagos de deuda, lo que usted acaba de  
16 referir ahora, eso no estaba en sus informes,  
17 usted lo ha presentado esta mañana. ¿Verdad?

18 SEÑOR BECKER: The analysis that you are  
19 refering to was not relevant to our  
20 conclusions, that is correct.

21 P: Entonces mi pregunta es: si usted me

1 acaba de presentar cifras nuevas esta mañana,  
2 ¿le dijeron los abogados que me lo tendría que  
3 haber mandado ayer?

4 SEÑOR BECKER: The amount that we presented  
5 today has always been in our reports. If you  
6 go to the table -

7 P: Vamos a volver, el análisis del  
8 vencimiento del cupón, vamos a llamarlo así,  
9 porque va a ser más sencillo, del vencimiento  
10 del cupón, y las diferencias de tasa de cambio  
11 a la fecha de vencimiento del cupón, eso no  
12 está en sus informes. ¿Correcto?

13 SEÑOR BECKER: You are asking us if we  
14 compared the exchange rate to the coupon?

15 P: Estoy haciendo una pregunta muy  
16 sencilla. Es si realmente ustedes han evaluado  
17 en algún sitio en sus informes, si estas  
18 diferencias, esto que usted llamaba "pérdidas  
19 reales incurridas por tasa de cambio", si son  
20 realmente reales o no son realmente reales. Esa  
21 es mi pregunta. Estos son contables aquí en la

1 página 59, ¿verdad? ¿Son contables o no?

2 SEÑOR BECKER: Yes, Well, allow me then to  
3 answer. This is from the profit and loss state.  
4 That is correct.

5 P: Y vuelvo a hacerle la pregunta. En sus  
6 dos informes usted no tiene un análisis de si  
7 al momento del vencimiento de los pagos que  
8 estaban previstos según la emisión de bonos, si  
9 en ese momento ha habido en caja, en cash,  
10 diferencia cambiaria que me haya costado o me  
11 haya ahorrado dinero. ¿Verdad?

12 SEÑOR BECKER: Once again...

13 P: Bueno, me puede decir primero... le voy a  
14 dejar que lo diga, pero hasta que no me  
15 explique o no me confirme lo que yo entiendo:  
16 ¿eso está o no está en sus informes?

17 SEÑOR BECKER: I don't have the analysis that  
18 you are referring to. We have an analysis which  
19 is equivalent which I am trying to explain.

20 P: Entonces, el que yo les digo no lo han  
21 hecho solamente confírmeme eso. ¿No está en los

1 informes?

2 SEÑOR BECKER: I have not done the analysis  
3 you are asking for.

4 P: Ese informe que yo les he preguntado no  
5 está en sus informes. ¿Correcto?

6 SEÑOR BECKER: The analysis that you are  
7 asking for is not in our report.

8 P: Okay. Muy bien. No tengo más preguntas.  
9 Muchas gracias.

10 PRESIDENTA KAUFMANN-KOHLER: ¿Tienen  
11 preguntas en redirect?

12 SEÑOR DI ROSA: Yes, Madame President I'm  
13 going to speak in English for Colin's benefit.

14 Lets pick up where you left off here. You  
15 were trying to explain the analysis you did do  
16 and trying to compare it to the analysis they  
17 were asking you about. Do you care to comment  
18 on what you did do and how it compares?

19 SEÑOR BECKER: Thank you. It is important to  
20 understand that if there was an effective  
21 hedging programme, you would not have a profit

1 and loss, an effect of foreign exchange,

2 because that risk is covered. Whatever  
3 increase or decrease you might have in the USD  
4 debt is offset by the hedging programme so you  
5 would not have an impact in the profit and  
6 loss. All the amounts that go through the  
7 profit and loss are translated as cashflows.  
8 That might not be in Day 1; it might be in Day  
9 2. Now I am going to give you a simple  
10 example. In 2012 there was an instalment on  
11 the debt, in 2011/2012, of approximately  
12 \$40 million each time. If the exchange rate  
13 went up against, the USD went up against the  
14 Chilean pesos, well, that instalment cost more  
15 in Chilean pesos. There was a cash flow. The  
16 plaintiffs are asking me did we do a direct  
17 analysis between the amount in the profit and  
18 loss to the cashflows -- no, we didn't have the  
19 information to do that, but there were  
20 cash flow implications on these foreign  
21 exchange losses. They might be offset next

1 year when you have a gain but that doesn't mean  
2 all the profit and loss that goes through the  
3 P&L converts into a cash flow at some stage.

4 P: Opposing counsel spent a good proportion  
5 of their cross-examination asking you about  
6 things that you did not do: you didn't analyse  
7 this, you didn't analyse that. I think it  
8 might be helpful for the Tribunal if you  
9 actually clarify what you did do, what you set  
10 out to do, and why you didn't analyse the  
11 various issues that opposing counsel asked you  
12 about.

13 SEÑOR GARCÍA REPRESA: Objeción. Eso es  
14 expresamente el objeto de la presentación que  
15 hubo al principio y yo no he visto todavía que  
16 el campo del contrainterrogatorio sea: "Le voy  
17 a preguntar sobre cosas sobre las que no le han  
18 preguntado". Eso es precisamente el contrario  
19 de la regla del contrainterrogatorio. Entonces  
20 yo creo que tuvieron la oportunidad que  
21 tuvieron con 30 minutos, como estaba previsto.

1 No creo que eso sea una manera adecuada de  
2 hacer el reinterrogatorio.

3 SEÑOR DI ROSA: Le voy a reformular la  
4 pregunta. Do you care to comment on all the  
5 questions that Mr Garcia Represa asked you  
6 about concerning what you didn't analyse in  
7 your reports?

8 SEÑOR GARCÍA REPRESA: Objeción. Eso tampoco  
9 ha sido... En una pregunta de redirecto, que es  
10 básicamente: "Comente lo que le dé la gana...

11 SEÑOR DI ROSA: Mr. Garcia Represa I could go  
12 through each question that you asked where you  
13 said, "you didn't analyse this, did you?", "you  
14 didn't analyse that, did you?". We could do  
15 that but it would be a very tedious exercise.  
16 He is entitled to respond to my question about  
17 your questions.

18 SEÑOR GARCÍA REPRESA: Si quiere contestar  
19 sobre...

20 PRESIDENTA KAUFMANN-KOHLER: I think we can  
21 go ahead with this question. It is true that

1 we could slice it in various sub-questions but  
2 maybe you can explain generally why you haven't  
3 looked at these various aspects.

4 SEÑOR BECKER: We did do a comparative  
5 analysis between the operators. We did a  
6 financial, performance operators. The  
7 questions how they were put to us was did we do  
8 a detailed analysis on how a specific metric  
9 affected or not the revenue, but we did try and  
10 do an analysis where we compared the PPTs  
11 amongst all the operators to understand whether  
12 Alsacia and Express maybe had the lowest PPT.  
13 Maybe that was the explanation for their  
14 revenue. And that is in our report. We show  
15 in our report that they have the highest  
16 indicators. So there wasn't an issue on the  
17 tariffs. But we didn't need to do a detailed  
18 information on the traffic and vandalism to get  
19 to that. That was already there in the  
20 indicators, so that information is in the  
21 report.

1 There is also a comment that we didn't  
2 include SuBus. We didn't include SuBus in the  
3 First Report because it was considered an  
4 outlier for the reasons I have already  
5 mentioned, but we included it in the Second  
6 Report. We tried to include all the operators.

7 Now, all this work we did on the comparables  
8 with the other operators, just to give us a  
9 reference point. The focus of our review is to  
10 under why such large losses occurred in Alsacia  
11 and Express. I am not sure if I have answered  
12 your question.

13 SEÑOR DI ROSA: SEÑOR DI ROSA: Yes. Thank  
14 you.

15 You were also asked by opposing counsel  
16 about SuBus and how it was in your opinion an  
17 outlier in terms of the leverage, the ratio of  
18 the debt to equity, and in your response you  
19 referred to shareholder debt and you mentioned  
20 that it had equity-like characteristics, or  
21 something like that. Can you explain for the

1 benefit of the Tribunal what you meant by that?

2 SEÑOR BECKER: Thank you. The timing of  
3 that debt meant that that debt was subordinated  
4 to all the other claims above it, subordinated  
5 to bank debt, to operating costs, to labour  
6 costs. In fact, it had the same risk profile  
7 as an equity investment, so even though it was  
8 structured as a loan, perhaps for tax purposes,  
9 perhaps not, the essential part of that was  
10 that it was a capital injection, it was fresh  
11 cash injected into the company, and we thought  
12 it had more characteristics of equity, which  
13 Alsacia and Express did not have that kind of  
14 shareholder loans.

15 PRESIDENTA KAUFMANN-KOHLER: Yes, but why did  
16 you for this reason consider it as an outlier?  
17 I understand your point on the subordinated  
18 loans from shareholders being close to equity  
19 in terms of the nature, but why was it an  
20 outlier for that reason? Does that mean that  
21 all the other operators didn't have this type

1 of "equity"?

2 SEÑOR BECKER: That is correct. We didn't  
3 find that kind of shareholder loans in other  
4 companies.

5 PRESIDENTA KAUFMANN-KOHLER: So you have  
6 reviewed the debt-equity structure of each  
7 operator?

8 SEÑOR BECKER: The debt structure. We have  
9 got that. Yes.

10 PRESIDENTA KAUFMANN-KOHLER: Maybe I don't  
11 remember now, yes.

12 SEÑOR BECKER: I just want to emphasise that  
13 in the Second Report we did include it, we did  
14 include SuBus, and we treated that  
15 shareholders' loan as a debt, just to be  
16 prudent, because it is not disclosed as equity,  
17 so we actually showed it as debt. In our  
18 opinion is that it is more equity based than  
19 debt.

20 PRESIDENTA KAUFMANN-KOHLER: Apologies for  
21 interrupting.



1 SEÑOR DI ROSA: No problem at all,  
2 Madam President.

3 Just one final question, Mr Becker. You  
4 recall the discussion that you had about the  
5 nominal versus real figures and the inflation,  
6 and they asked you, you are comparing pesos  
7 from 2012 to pesos from 2017, and they gave you  
8 this hypothetical about the hundred pesos, and  
9 you mentioned the difference between the  
10 hundred pesos in the bank and hundred pesos  
11 invested in a bus. I wanted you to explain  
12 that and also why you said you did not adjust  
13 for inflation because you didn't feel you had  
14 to adjust for inflation in your reports.

15 SEÑOR BECKER: Thank you for that question.  
16 We know that the costs and the revenue are  
17 subject to inflationary pressures, and exchange  
18 rate differences as well. They have a fuel  
19 cost which is dollar based. That is already  
20 captured in the numbers. This numbers we are  
21 looking at already captures inflation, fuel

1 cost in dollars, and all other factors. It is  
2 not necessary to readjust it again. That would  
3 be a futile, hypothetical exercise with no  
4 objective.

5 SEÑOR DI ROSA: Thank you. No more  
6 questions, Madam President.

7 PRESIDENTA KAUFMANN-KOHLER: Do my  
8 colleagues have questions for these experts?

9 Questions by the Arbitral Tribunal  
10 COÁRBITRO STERN: In slide 6 you have  
11 Claimant elected to undercapitalise, and you  
12 have initial capital contribution 29.1. And  
13 then I remember that when Mr Carlos Rios was  
14 testifying, a figure of 70 million was put  
15 forward, and then he explained that finally it  
16 was more 40 million.

17 Now, I looked at the different references  
18 you gave in the back of the second PwC report,  
19 page 28, page 25, paragraph 97, and the third  
20 Brattle report and I find completely different  
21 figures. I would like you to really explain

1 clearly how you arrive at this figure of 29,  
2 because I think there are many, many  
3 contradictions on these initial capital  
4 contributions.

5 PRESIDENTA KAUFMANN-KOHLER: As a supplement  
6 to this question, I think we should say that  
7 Mr Rios amended his witness statement in direct  
8 examination by saying that --

9 COÁRBITRO STERN: That is what I referred  
10 to.

11 PRESIDENTA KAUFMANN-KOHLER: But just to be  
12 complete, he himself and his brother invested  
13 70 million. Before that he had said "made  
14 capital contribution", and he said out of the  
15 70 million invested, 40 were cash and the rest  
16 was shares of companies that they own.

17 COÁRBITRO STERN: And so here we have still  
18 another figure, and it doesn't correspond  
19 either to the different figures in the reports,  
20 so I would like you to explain better how you  
21 arrive at this figure.

1 SEÑOR BECKER: Thank you. I will try. We  
2 had the same challenges, because we also saw a  
3 number of amounts and we couldn't trace them,  
4 but what we did was we went to the financial  
5 statements, and in the financial statements you  
6 see what the capital is that is contributed by  
7 each shareholder, and I think part of the  
8 confusion is that part of the cash, the  
9 capital, that they invested into Express first  
10 comes into Alsacia, and then Alsacia makes an  
11 investment into Express, but it is the same  
12 cash. It is the same money that comes in to  
13 acquire Alsacia, and part of that goes out. So  
14 the table, which is more complicated than it  
15 should be, on page 29 tries to explain how the  
16 cashflows filter down into the companies.

17 On that same table you will see --

18 COÁRBITRO STERN: Which table are you now?

19 SEÑOR BECKER: On page 29 --

20 COÁRBITRO STERN: That is not the page --

21 SEÑOR BECKER: 28, I apologise. We are in a

1 different report.

2 COÁRBITRO STERN: 28 of what?

3 SEÑOR BECKER: 28 that was the page of the  
 4 Second Report. Apologies. What this figure  
 5 tries to trace is how the money moves down from  
 6 the top, from the owners, in through the  
 7 investment companies, and finally into the  
 8 operating companies, amount by amount. And  
 9 then what we do in that square at the bottom is  
 10 we add them up, what came direct into Express  
 11 or into Alsacia and was reinvested into  
 12 Express, and you will see that we add numbers,  
 13 in billions of pesos, 9 billion pesos,  
 14 5 billion pesos, and we get to a total capital  
 15 invested of 14.5 billion pesos. And that is  
 16 equivalent at the exchange rate to \$29 million.  
 17 That is how we get to the amount. And that is  
 18 all we can trace in the financial statements.

19 COÁRBITRO STERN: Okay. That clarifies,  
 20 because it was a little bit confusing.

21 SEÑOR BECKER: It was for us as well. Thank

1 you.

2 COÁRBITRO GARIBALDI: Yes, I have a question  
 3 concerning paragraph 285 of the Second Report  
 4 and following, and I think that what you are  
 5 doing here is you are trying to determine, if  
 6 I understand correctly, the evolution of the  
 7 revenues of the company, and you are  
 8 criticising Brattle for excluding revenues that  
 9 are attributable to indemnity payments related  
 10 to the termination of the initial  
 11 Concession Contracts. And so Brattle took them  
 12 out. You put them back in, if I understand  
 13 what you did. Is that correct?

14 SEÑOR PÉREZ: Sí, es correcto Profesor  
 15 Garibaldi.

16 COÁRBITRO GARIBALDI: Alright. Now, I find  
 17 it hard to understand why. I mean, I suppose  
 18 that if you are just trying to look at  
 19 cashflows cashflow then any dollar or Chilean  
 20 peso that comes in, for whatever reason, is  
 21 relevant. But if you are trying to look at the

1 evolution of demand then suddenly you would  
 2 not wouldn't want to look at the indemnity  
 3 payments because they have had nothing to do  
 4 with the number of passengers that use the  
 5 system. Am I missing something?

6 SEÑOR PÉREZ: Creo que aquí es importante  
 7 resaltar cuál es el foco de nuestro análisis,  
 8 que es diferente del de los expertos en daños.  
 9 Nosotros no estamos tratando de comparar un  
 10 escenario but-for con la realidad sino que  
 11 estamos yendo a los ingresos de las compañías y  
 12 tratamos de identificar tanto -- estamos  
 13 tomando toda la rentabilidad de las compañías,  
 14 empezamos a nivel de ingresos, bajamos a nivel  
 15 de margen bruto, nivel de EBITDA, vemos la  
 16 financiación y de esa forma conseguimos llegar  
 17 a explicar cómo el resultado neto de las  
 18 compañías -que en este caso es una gran pérdida  
 19 acumulada- se ha llegado a formar.

20 Entonces, para nosotros hacer ajustes a  
 21 ingresos para tratar de ajustar qué parte son

1 contractuales y qué partes no, no es relevante,  
 2 ya que para nosotros todos los ingresos  
 3 cuentan, igual que cuentan todos los costos.

4 Este mismo ejercicio de no ajustar ingresos  
 5 también nos sucede en los costos. Los  
 6 demandantes, y en general por su trabajo en  
 7 daños lo que realizan es ajustes one-off, todo  
 8 aquello que no es recurrente, lo excluyen,  
 9 porque obviamente para su modelación es  
 10 relevante.

11 Para nosotros todo es relevante, todo lo que  
 12 ha sucedido en el período histórico de estas  
 13 compañías es relevante. No es parte del  
 14 análisis considerar si este ingreso es  
 15 contractual o no es contractual, o si viene de  
 16 un pasajero o si viene de una indemnización. Lo  
 17 que realmente nos importa es si las compañías  
 18 efectivamente tienen ese ingreso.

19 SEÑOR BECKER: May I elaborate? I think you  
 20 are conceptually correct. If this was an  
 21 indemnity payment that had nothing to do with

1 operations, it was an indemnity payment for  
 2 terminating operations, then you are correct  
 3 and you can't consider it pure revenue. But  
 4 when we looked at this, these severance  
 5 payments are essentially to compensate for a  
 6 revenue model under the old scheme compared to  
 7 a revenue model under the new scheme. So a  
 8 part of those severance payments do incorporate  
 9 the concept of revenue.

10 COÁRBITRO GARIBALDI: Well, I understand  
 11 that but from a legal standpoint that is really  
 12 questionable.

13 We are talking about a contract that has  
 14 been terminated and that has caused damage, and  
 15 to compensate the companies for the damage they  
 16 have suffered, then there is an agreed amount  
 17 of money that the government pays to these  
 18 companies. Now, the form of payment is by  
 19 increase of the PPT, I understand that, but it  
 20 is as if it were a separate payment, a monthly  
 21 payment, or two per month payments.

1 I understand that.

2 But we have to determine whether it is true,  
 3 what you claim, that the revenues went up and  
 4 that reflects that in fact the demand  
 5 increased, so there was not a demand problem,  
 6 that the problem was an increase in the costs,  
 7 and it seems to me that by excluding -- I am  
 8 sorry, by including revenues originating from  
 9 indemnity payments, I don't understand why that  
 10 doesn't skew the analysis.

11 SEÑOR BECKER: Once again, Mr. Garibaldi, if  
 12 those severance payments implied the  
 13 termination of activities, I believe they would  
 14 have been calculated in a different formula and  
 15 they would have been different amounts. That  
 16 was never envisaged here. These were severance  
 17 payments, to terminate, and most of those  
 18 continued under the new concession, so the  
 19 essence of those is actually foregone revenue,  
 20 lost revenue under the previous model. Your  
 21 costs stay the same. These companies didn't

1 change the operation from one day to the next;  
 2 they went from the old to the new concessions.  
 3 The big difference was the revenue model. So  
 4 we considered that those indemnity payments,  
 5 the underlying reason and the calculation was  
 6 actually lost revenue more than anything else.

7 COÁRBITRO GARIBALDI: Ok, you may attribute  
 8 that conceptually to revenues or lost revenues,  
 9 but they are indemnity payments, which is  
 10 different from revenues originating from new  
 11 passengers being carried from the beginning of  
 12 the new contracts. That is different. It has  
 13 nothing to do with new demand. So if you  
 14 include them, with the consequence that it  
 15 counts as new demand, that changes -- that  
 16 gives me a distorted picture of reality, so  
 17 that is why I don't understand why you did  
 18 this. Now I understand your explanation but it  
 19 doesn't really make any sense to me.

20 SEÑOR PÉREZ: Si puedo por favor  
 21 complementar. El foco, como le comentaba antes,

1 profesor Garibaldi, el foco de nuestro trabajo  
 2 es analizar la situación financiera de las  
 3 compañías de forma de poder explicar por qué  
 4 están en la situación en que se encuentran hoy  
 5 en día. Entonces, como le comentaba antes,  
 6 nosotros tratamos de reconstruir en todos  
 7 nuestros estados de resultados en el cual vemos  
 8 abajo del todo una pérdida enorme, cómo se ha  
 9 llegado a formar esa pérdida enorme.

10 Entonces, ese análisis de la realidad no  
 11 podemos hacerlo excluyendo determinados  
 12 elementos porque sean contractuales o porque  
 13 sean elementos no recurrentes. O sea, nuestro  
 14 foco de análisis no es contractual, es entender  
 15 esas compañías por qué están hoy como están.  
 16 Entonces, el hecho de excluir ingresos por  
 17 criterios discrecionales, este porque no sea  
 18 contractual, o este porque no era esperado por  
 19 las compañías, Brattle adicionalmente también  
 20 excluía los ingresos de publicidad. ¿Por qué  
 21 deberíamos excluir esos ingresos si de verdad

1 queremos llegar a entender por qué tienen esa  
2 pérdida tan enorme ahí abajo?

3 COÁRBITRO GARIBALDI: I understand your  
4 point but I do not find it persuasive ... thank  
5 you.

6 COÁRBITRO STERN: Maybe I come back to the  
7 same question, and I must say I am getting more  
8 and more confused.

9 In the Spanish version which we looked at,  
10 you have on page 26, capital aportado,  
11 \$50 million, and I looked at the English  
12 version and here you have 53-point something.  
13 So we have at least three figures, because  
14 Mr Rios said it is 40. So where are we here?  
15 First of all, why isn't it the same in the  
16 English version and in the Spanish version?

17 SEÑOR PÉREZ: Profesora Stern: le  
18 contestamos si le parece en dos formas. El tema  
19 de las páginas, lo primero de todo, pedir  
20 disculpas al Tribunal; lo que sucede es que en  
21 español las cosas toma más largo explicarlas y

1 por eso tratamos de mantener el número de  
2 párrafo, pero sí que las páginas se nos fueron  
3 moviendo. Es por eso esa confusión.

4 COÁRBITRO STERN: Sí, pero no hablo de los  
5 párrafos, hablo de las tablas.

6 SEÑOR PÉREZ: Sí. Entonces...

7 COÁRBITRO STERN: Page 25 of the English  
8 version. We have capital contributed USD 53.2,  
9 and in the Spanish version, page 26, we have  
10 capital aportado, USD 50. And Mr Rios said 40.  
11 So...

12 SEÑOR PÉREZ: Tiene usted toda la razón,  
13 profesora Stern. Es un problema en la  
14 traducción española. Ha quedado el número  
15 redondeado, pero...

16 COÁRBITRO STERN: So, que [cual] es la buena  
17 versión, la inglés o la español o lo que dice  
18 Dr. Rios?

19 SEÑOR PÉREZ: Si quiere podemos pasar por  
20 favor a la página 30 del informe español.

21 COÁRBITRO STERN: Un momento. Página 30

1 versión español.

2 PRESIDENTA KAUFMANN-KOHLER: Could you please  
3 say the paragraph?

4 SEÑOR PÉREZ: Ah, sí. En la página -- en el  
5 párrafo 80.

6 Aquí lo que pueden identificar es por qué  
7 encuentran esos montos diferentes. Nosotros lo  
8 que tratamos de hacer a lo largo de nuestro  
9 trabajo es trazar el monto, el valor en este  
10 caso, de las acciones del payment in kind que  
11 realizó Carlos Mario Ríos Velilla en el  
12 contexto de la adquisición de Express.

13 Entonces, para trazar este valor del que  
14 nunca hemos llegado a encontrar sustento, nos  
15 encontramos en primer lugar con que los  
16 expertos de la demandante, Brattle, incluyen en  
17 su primer informe un monto de 16,8 millones de  
18 dólares. Ese monto es el que utilizamos para  
19 calcular -- mejor dicho, es el que utilizan los  
20 demandantes, en este caso Brattle, los expertos  
21 de los demandantes, para estimar el precio

1 pagado por Express. El precio pagado por  
2 Express se compone de 70,5 millones que  
3 provienen del préstamo a Panamerican Investment  
4 junto con este payment in kind que corresponde  
5 a acciones intercambiadas en los negocios de  
6 Colombia y Perú entre los -- la familia Ríos  
7 Velilla y los propietarios de Express.

8 Adicionalmente, en la primera declaración  
9 vemos que el señor Ríos Velilla indica 20  
10 millones de dólares como valor para esas  
11 acciones. Y finalmente en la segunda  
12 declaración testimonial del señor Ríos Velilla  
13 vemos que estas acciones tienen como valor 35  
14 millones. Es por eso la confusión porque  
15 tenemos tres fuentes diferentes para el valor  
16 de esas acciones que, sin embargo, nunca hemos  
17 llegado a ver ningún tipo de sustento del valor  
18 que realmente tienen.

19 COÁRBITRO STERN: So what is the correct  
20 figure?

21 SEÑOR BECKER: This is an amount,

1 Professor Stern, that refers to the  
2 contribution capital in kind.

3 COÁRBITRO STERN: Yes, but that is not the  
4 problem. I am asking you what is the correct  
5 figure of the true capital contributed? We  
6 have 3 or 4 figures. If we cannot solve  
7 this --

8 SEÑOR BECKER: Unfortunately, we didn't have  
9 the documentation, so we had to take the  
10 amounts that were informed to us. We used  
11 16.8, and when you use that 16.8, that is the  
12 value we have captured in our analysis.

13 COÁRBITRO STERN: For the non-capital  
14 contribution?

15 SEÑOR BECKER: For the offshore. That is  
16 that right.

17 COÁRBITRO STERN: I think we have to leave  
18 it here, because the more we go, the more  
19 confusing it gets.

20 SEÑOR PÉREZ: El motivo de considerar los  
21 16.8 millones es porque es el monto que

1 considera Brattle, los expertos de la  
2 demandante en su informe pericial como parte  
3 del precio pagado por Express. Entonces,  
4 consideramos que era más fiable que las  
5 declaraciones testimoniales de Carlos María  
6 Ríos Velilla que quizás estaba hablando de  
7 memoria sobre estas acciones.

8 PRESIDENTA KAUFMANN-KOHLER: Si entiendo  
9 bien, lo que hicieron ustedes es una valoración  
10 de la -- a valuation of the financial situation  
11 of the two operating companies.

12 SEÑOR BECKER: That is correct.

13 PRESIDENTA KAUFMANN-KOHLER: That is  
14 reverting to your discussion with Mr Garibaldi.

15 SEÑOR BECKER: That is correct.

16 PRESIDENTA KAUFMANN-KOHLER: You took the  
17 companies as they are, and you tried to explain  
18 why they were in this situation.

19 SEÑOR BECKER: That is correct.

20 PRESIDENTA KAUFMANN-KOHLER: Going back  
21 historically to the different events that

1 occurred and how they impacted the financials  
2 of the company.

3 SEÑOR BECKER: That is correct.

4 PRESIDENTA KAUFMANN-KOHLER: And for us this  
5 has an impact on the question of the  
6 causation -- I am speaking out loud -- between  
7 the breaches and the alleged damage, and if we  
8 get to damages, it would be relevant for the  
9 actual scenario, but you have not done the  
10 but-for because that was not within your  
11 instructions. Is that right?

12 SEÑOR BECKER: Correct, Madam President.

13 PRESIDENTA KAUFMANN-KOHLER: Thank you.

14 If you go to your First Report, paragraph 1,  
15 you said in the second sentence that a  
16 significant portion of Alsacia's current  
17 financial predicament is due to a history of  
18 poor strategical operational decisions. Is  
19 there a reason why you say only Alsacia?  
20 Because usually you mention the two, and I can  
21 see that Alsacia owns part of Express, but only

1 part, and so why are you not mentioning both?

2 SEÑOR BECKER: I think you are correct.

3 That is more of a typo error. Apologies. What  
4 we refer to is Alsacia's consolidated financial  
5 statements, so in 2017 it is the only year  
6 where they have different financial statements  
7 to the prior years. In the prior years they do  
8 not consolidate --

9 PRESIDENTA KAUFMANN-KOHLER: So they were  
10 consolidated --

11 SEÑOR BECKER: It is not completely  
12 consolidated. It is partly consolidated. But  
13 you are correct; that should have been Alsacia  
14 and Express.

15 PRESIDENTA KAUFMANN-KOHLER: In your report  
16 I can see a number of assessments that to me  
17 are more industry expert assessments, on the  
18 age of the fleet, the effect of an old fleet on  
19 income and so on. I could give you some  
20 examples. For instance -- if I take only the  
21 executive summary, of course I could go then to

1 the more extensive discussion, but if you look  
 2 at the First Report, paragraphs 35, 37, 38,  
 3 older buses imply increased maintenance  
 4 expenses -- yes, intuitively, that is correct.  
 5 I could make this statement too but then  
 6 I would not really know on what I rely. How  
 7 did you make these statements?

8 SEÑOR BECKER: You are correct,  
 9 Madam President, we are not experts on fleet  
 10 maintenance, but this is intuitive, as you say,  
 11 and this is a consideration when we look at the  
 12 financial results. Also, we try to obtain more  
 13 information about the maintenance and the cost  
 14 of maintenance and the material. We never got  
 15 that information. We didn't have access to  
 16 that information. That is internal  
 17 information.

18 What we did look at were the management  
 19 reports. We also were asked to look at the  
 20 directors' meeting minutes. Unfortunately that  
 21 was all censored; there was very little we

1 could get out of that, but in the management  
 2 reports you start seeing extracts, multiple  
 3 extracts, that corroborate this issue. They  
 4 themselves talk about the problems they had on  
 5 the maintenance, and the fleet availability and  
 6 the customers' dissatisfaction. So these are  
 7 comments based on intuitive financial analysis  
 8 but also based on comments that we extracted  
 9 from the management, and, as I said, the  
 10 interview, and above all that table of  
 11 preventative and corrective maintenance that  
 12 was sent to us. I think that speaks volumes  
 13 when you see that it is only corrective  
 14 maintenance on a fleet that is only going to  
 15 age, and that is intuitive for any financial --

16 PRESIDENTA KAUFMANN-KOHLER: I was  
 17 just -- I mean, you are doing an expert report;  
 18 you are not giving your intuitive assessments.  
 19 It is not really intuitions about things.

20 SEÑOR BECKER: There is also a bit of  
 21 experience behind that. I have looked at it

1 from a financial aspect a number of maintenance  
 2 programmes, and most of the work I do is in the  
 3 mining sector and we look at the financial  
 4 aspects of maintenance.

5 PRESIDENTA KAUFMANN-KOHLER: But have you  
 6 reviewed a transportation company as well?

7 SEÑOR BECKER: Yes, I have done  
 8 transportation companies as well.

9 PRESIDENTA KAUFMANN-KOHLER: Bus?

10 SEÑOR BECKER: Yes. Not inter-urban, sorry,  
 11 not metropolitan, but intercity.

12 PRESIDENTA KAUFMANN-KOHLER: You answered  
 13 earlier that you had included SuBus in your  
 14 Second Report. If we go, for instance, to  
 15 paragraph 105 of the Second Report, in English  
 16 page 35, do you have the tables?

17 SEÑOR BECKER: We do.

18 PRESIDENTA KAUFMANN-KOHLER: These tables  
 19 now include SuBus, is that right?

20 SEÑOR BECKER: That is correct. The bottom  
 21 table, and the top table, yes. This includes.

1 PRESIDENTA KAUFMANN-KOHLER: So in 2017 the  
 2 situation of all operators in terms of debt and  
 3 equity is much worse than Alsacia and Express.  
 4 That is due only to SuBus?

5 SEÑOR BECKER: That is due to SuBus, and  
 6 also due to us treating the shareholder loan as  
 7 a loan instead of equity. If we had treated it  
 8 as equity, which we are convinced it has  
 9 characteristics more of equity, those ratios  
 10 would have changed drastically.

11 SEÑOR PÉREZ: Madame President para  
 12 complementar la respuesta...

13 PRESIDENTA KAUFMANN-KOHLER: Sí.

14 SEÑOR PÉREZ: Su-Bus un solo indicador es el  
 15 que provoca que un ratio de 39 por ciento, que  
 16 es el que era antes de Su-Bus, si se incluye  
 17 pasa a 568 por ciento. Ese es el motivo.

18 PRESIDENTA KAUFMANN-KOHLER: Sí. Es lo que  
 19 me llama la atención. Bien, gracias.

20 No tengo más preguntas. ¿Hay preguntas en  
 21 seguimiento? Señor García Represa: por favor.

1 SEÑOR GARCÍA REPRESA: Sí, muchas gracias,  
2 señora presidenta.

3 Una pregunta, precisamente donde estábamos  
4 ahora, si quieren, en la página 37, párrafo  
5 105. Usted, en el cuadro a la izquierda con Su-  
6 Bus, me llama la atención que mezclan a Su-Bus  
7 con los demás operadores y nunca presentan las  
8 cifras individuales de Su-Bus. ¿Ustedes saben  
9 que en los primeros años de esta tabla Su-Bus  
10 tenía un porcentaje de deuda -- sobre deuda más  
11 capital superior al de Alsacia y Express?

12 SEÑOR BECKER: I cannot respond specifically  
13 to that question but however I think I do need  
14 to respond to why we used other operators as a  
15 total, if you don't mind.

16 P: Creo que mi pregunta era bastante  
17 precisa. Y es mirando a Su-Bus, ustedes aceptan  
18 que Su-Bus en los primeros años, y ustedes  
19 empiezan solo en 2008, no sé por qué motivo,  
20 pero no ponen 2005, 2006 y 2007, pero ustedes  
21 aceptan que en 2008 Su-Bus estaba por encima de

1 Alsacia y Express -- estaría, Su-Bus  
2 individualmente si ustedes lo hubieran incluido  
3 como individual aquí en este cuadro ¿habrían  
4 tenido mayores ratios que Alsacia y Express, sí  
5 o no?

6 SEÑOR BECKER: Once again, I don't have the  
7 information that is what you say, yes.

8 P: No, usted sí la tiene. Usted si tiene esa  
9 información.

10 SEÑOR BECKER: You are saying something  
11 I just don't have in front of me, so...

12 PRESIDENTA KAUFMANN-KOHLER: You must have it  
13 because otherwise you could not have done the  
14 table.

15 SEÑOR BECKER: No, I realise that. I just  
16 don't recall the amount he is referring to.

17 SEÑOR GARCÍA REPRESA: Bueno pues yo se lo  
18 digo y si quieren podemos verificarlo más  
19 adelante que efectivamente en los primeros  
20 años Su-Bus tiene más ratio que Alsacia y  
21 Express. ¿No le pareció eso llamativo para

1 investigar un poquito más y decir por qué y  
2 decir a este Tribunal que los ratios de Alsacia  
3 y Express no es que eran extraordinarios  
4 comparados con Su-Bus?

5 SEÑOR BECKER: I don't think that's the case,  
6 I think we mentioned a couple of times that we  
7 didn't refer to SuBus but in the presentation  
8 I did refer to SuBus in a certain way -- that  
9 SuBus had a higher or lower level of debt  
10 doesn't justify. That doesn't mean it is a  
11 good reason for Alsacia and Express to make  
12 their financing decision. The financing  
13 decisions are unique to each company, and they  
14 know the resilience they have towards that and  
15 they know what other sources of capital.

16 You are just referring to one item. We are  
17 not criticising SuBus or Alsacia and Express.  
18 What we are saying is Alsacia and Express got  
19 themselves into a situation, and into a worse  
20 situation in 2011--.

21 PRESIDENTA KAUFMANN-KOHLER: I think you

1 don't have to repeat. We have understood this.  
2 It is just that you are the ones doing the  
3 comparison in the table. You wanted to add  
4 something else, which is I think, before, which  
5 is why you take all the other operators  
6 together.

7 SEÑOR BECKER: Thank you. So when you try  
8 and get a reference, you try and get a  
9 representative reference, not just one company,  
10 because one company might have made specific  
11 decisions whereas the sector should have made  
12 decisions that are more or less the same. When  
13 you look at all the operators, you cover  
14 feeders and trunk operators together as a unit,  
15 and that is why we looked at the total of other  
16 operators. That gives you a better reference  
17 point. We could have got a better one if we  
18 had included ten international companies but  
19 what we decided here was the other operators as  
20 a group, and that eliminates or that mitigates  
21 the decisions that are unique to one company

1 and another company.

2 PRESIDENTA KAUFMANN-KOHLER: Good.

3 SEÑOR GARCÍA REPRESA: Si me permite, señora  
4 presidenta. Tenía dos temas. Uno lo acabamos de  
5 tratar. Y el segundo tema, usted recordará que  
6 a preguntas del Tribunal lo remitieron a la  
7 filmina número 6 de su presentación, la que  
8 tiene que ver con los aportes de capital. Y  
9 quisiera -- ojalá, me voy a arriesgar a ello --  
10 aportar un poco de claridad. Entonces, quisiera  
11 que me confirme un par de cosas. Primero, en su  
12 filmina 6, para que nos entendamos, el total  
13 que usted pone ahí según usted dice: cash  
14 inyección into Alsacia and Express. Y por ese  
15 motivo veo, por ejemplo, que usted pone a cero  
16 el capital in kind, porque entiendo yo, que si  
17 usted tiene la mitad de la empresa y yo se la  
18 quiero comprar, pues yo le pago a usted el  
19 valor de esas acciones, yo no se lo pago a la  
20 empresa. ¿Verdad?

21 SEÑOR BECKER: That is correct.

1 P: Por lo tanto, el valor que yo pago por  
2 esas acciones no es un ingreso de la empresa y  
3 no aparece en la contabilidad de la empresa.  
4 ¿Correcto?

5 SEÑOR BECKER: Yes, that is correct.

6 P: Primer punto.

7 Segundo punto, le remitieron a su segundo  
8 informe, página 25. ¿Lo recuerda? Es el  
9 cuadrado en el que ustedes muestran un  
10 incremento de 100 por cien, de 16,8 a 35  
11 millones. ¿Lo ven?

12 SEÑOR PÉREZ: Sí, lo vemos.

13 P: Entonces, para ustedes lo que no se  
14 explica ahí es que se haya doblado, bueno, 100  
15 por cien es multiplicar por dos, básicamente,  
16 que se haya doblado la cifra. ¿Verdad?

17 SEÑOR PÉREZ: Así es.

18 P: Bien. Me gustaría entonces que pasen por  
19 favor, puesto que tienen la carpeta todavía, al  
20 separador 11. El separador 11 de su carpeta,  
21 para el expediente, lo vamos a poner en

1 pantalla, es el anexo BG, es decir, por  
2 Brattle, 257. Bien. Y si vamos a la parte -- me  
3 dicen si lo tienen. ¿Lo tienen?

4 SEÑOR PÉREZ: Sí, lo tenemos delante.

5 P: ¿Pueden ir abajo de todo, por favor?

6 SEÑOR PÉREZ: ¿A los 72 millones?

7 P: Correcto. Ese es el aporte total que  
8 aparece en este documento. ¿Verdad?

9 SEÑOR PÉREZ: Así es.

10 P: Bien. Esto se acerca bastante a los 70  
11 millones que menciona el señor Carlos Ríos.  
12 ¿Verdad?

13 SEÑOR PÉREZ: Sí. Y como se compone es con  
14 los 16 millones que reportan los expertos de  
15 Brattle de los demandantes, multiplicado por  
16 dos, que es como se llega al monto de la  
17 segunda declaración de Carlos Ríos Velilla.

18 P: Exacto. Y eso mismo es lo que quisiera  
19 que veamos en pantalla. Si usted se fija, hay  
20 como varias líneas -- Y, por cierto, ¿ustedes  
21 habían visto este documento cuando hicieron sus

1 informes?

2 SEÑOR PÉREZ: Lo hemos visto con  
3 posterioridad, pero conocemos el documento.

4 P: Claro. Por eso no vamos a encontrar  
5 ninguna referencia a este documento en sus  
6 informes, ¿verdad?

7 SEÑOR PÉREZ: No hicimos ningún cambio  
8 derivado de este documento, ya que los 16  
9 millones que son los que indican los expertos  
10 de las demandantes, Brattle, están ahí  
11 considerados y está considerado también el  
12 monto reportado por Carlos Ríos Velilla en su  
13 declaración que también está en nuestro  
14 informe.

15 P: Perfecto. Y ustedes tampoco lo  
16 mencionaron esta mañana en su presentación,  
17 ¿verdad? cuando dijeron que había ciertas  
18 cifras que no sabían muy bien de dónde venían,  
19 tampoco utilizaron este documento, ¿verdad?

20 SEÑOR PÉREZ: No consideramos que cambie en  
21 absoluto las cifras que estamos reportando de



1 este documento. Nuevamente, tenemos los 16  
2 millones que reporta Brattle y tenemos una  
3 multiplicación por dos.

4 P: Muy bien. Ahora, esos 16 millones, si  
5 vamos a intentar hacer el ejercicio todos  
6 juntos, y vamos a ponerle el cargador al  
7 computador.

8 Si se fijan en el segundo, empezando por  
9 abajo, ahí el segundo bloque de texto dice:  
10 "Value of other companies tender as part of the  
11 transaction in order to obtain one hundred  
12 percent of Express" ¿Lo ve?

13 SEÑOR PÉREZ: Ahí. No le estamos siguiendo,  
14 disculpe.

15 P: No se preocupe, se lo voy a enseñar en la  
16 pantalla. Vamos a trabajar a partir del Excel,  
17 si le parece bien. Línea 35. ¿Ve el título en  
18 la pantalla?

19 SEÑOR PÉREZ: Sí.

20 P: Usted ve, línea 37, TransMilenio Bogotá  
21 esa es una de las acciones de las empresas en

1 Bogotá que aportaron los señores Ríos, ¿verdad?  
2 SEÑOR BECKER: Según ustedes sí. A nosotros  
3 no nos consta.

4 P: O sea que usted duda de lo que dice este  
5 documento; no se lo cree.

6 SEÑOR BECKER: No, no estamos dudando,  
7 estamos diciendo es que esta información que  
8 ustedes están dando a través de esta página.

9 P: Perfecto. Y es información que ustedes no  
10 han utilizado ni en sus informes ni hoy. Quiero  
11 saber por qué. Así que vamos a ir a línea 39:  
12 Bogotá, Transporte Alimentador Occidente. Esta  
13 es otra de las empresas en Colombia cuyas  
14 acciones entregaron los señores Ríos para pagar  
15 la adquisición de Express. ¿Correcto?

16 SEÑOR DI ROSA: I think we are going too far  
17 afield here from the Tribunal's questions. It  
18 is not another cross-examination.

19 PRESIDENTA KAUFMANN-KOHLER: I was actually  
20 thinking the same. We are really--.

21 SEÑOR GARCÍA REPRESA: Está en relación

1 exactamente con la página 25 que estábamos  
2 viendo. Porque, perdone, el efecto que se  
3 muestra en la página 25 sobre lo que se le  
4 preguntó es exactamente lo que les quiero  
5 mostrar, y estoy en ello.

6 PRESIDENTA KAUFMANN-KOHLER: Entiendo. Hemos  
7 visto este documento ahora, vemos las cifras.  
8 Estos expertos dicen que no trataron de revisar  
9 estas cifras.

10 SEÑOR PÉREZ: Solo -- discúlpeme, por favor.

11 PRESIDENTA KAUFMANN-KOHLER: ¿Quieren  
12 comentar esas cifras?

13 SEÑOR PÉREZ: Solo queremos resaltar, madame  
14 president, que los 16,776001, que es lo que  
15 totaliza esos tres grupos de acciones es  
16 precisamente el 16,8 que está incluido en  
17 nuestro informe como payment in kind. Es por  
18 eso que no consideramos que esto variase en  
19 nada el trabajo que estamos incluyendo en  
20 nuestro informe.

21 SEÑOR BECKER: Y concuerda con la

1 información proporcionada por Brattle. También  
2 hace mención a los mismos 16.8. Está  
3 considerado.

4 SEÑOR GARCÍA REPRESA: Si puedo -- Y lo que  
5 me interesa ahora es que vemos la línea 43, que  
6 explica ese 100 por cien que ustedes han puesto  
7 en su filmina 25 cuando dicen que hay un  
8 incremento inexplicado, y lo que quiero ver es  
9 si entendemos todos que sí hay una explicación  
10 para ese incremento. ¿Usted cuando aporta unas  
11 acciones a un negocio, las aporta...

12 SEÑOR DI ROSA: Sorry, that has nothing to do  
13 with anything really ultimately. It is a  
14 follow-on line on something they have been  
15 building on for quite a while now.

16 PRESIDENTA KAUFMANN-KOHLER: Should we not  
17 ask Brattle about this?

18 SEÑOR GARCÍA REPRESA: Bueno, este es un  
19 archivo de FTI pero es un anexo que presenta  
20 Brattle. Se le puede preguntar, sí.

21 PRESIDENTA KAUFMANN-KOHLER: Me parece, va a

1 ser más útil.

2 SEÑOR GARCÍA REPRESA: Bien, lo que pasa es  
3 que la filmina y lo que se dice en la filmina  
4 25 es de estos señores. Entonces, yo quiero  
5 entender por qué expresan sorpresa a un  
6 incremento de 108 por ciento que es lo que  
7 muestran en la página 30 en la versión española  
8 cuando expresan sorpresa a ese incremento,  
9 quiero entender si ese incremento considera --  
10 perdone, déjeme acabar. Si ese incremento  
11 considera que cuando uno aporta acciones como  
12 pago esas acciones no valen lo que vale el  
13 nominal de las acciones, vale lo que valgan las  
14 acciones. Y aquí, en este caso, lo que consta  
15 en el documento es que hubo una valoración que  
16 se hizo de esas acciones, que consideró que  
17 valían el doble del nominal. De ahí salen los  
18 33 millones, punto 5, que aparecen redondeados  
19 en la filmina 30.

20 PRESIDENTA KAUFMANN-KOHLER: Pero después  
21 depende de la calidad o la de la exactitud de

1 la valoración.

2 SEÑOR GARCÍA REPRESA: Por supuesto. Por  
3 supuesto.

4 SEÑOR BECKER: Y, además, madame president,  
5 este dice modelo, valorización, modelo,  
6 valorización, y luego se multiplica por 2 sin  
7 mucho respaldo y llega a una cifra de 33,5.  
8 Otra vez, diferente a 35. Ahora tenemos otra  
9 referencia. Podemos sumar, sumar referencias.  
10 No sabemos cuál es el válido. El punto que  
11 queremos hacer con el 16,8, si fuese 35 no  
12 importa, nada de este efectivo, nada de  
13 liquidez fue aportado a Alsacia y Express. Nada  
14 fue -- ayudó a la situación de caja de Alsacia  
15 y Express. Este es nuestro mensaje que queremos  
16 transmitir.

17 PRESIDENTA KAUFMANN-KOHLER: Sí, lo  
18 entiendo. Entiendo eso. Bien. ¿Lo podemos dejar  
19 aquí?

20 SEÑOR GARCÍA REPRESA: Sí. Muchas gracias,  
21 señores.

1 PRESIDENTA KAUFMANN-KOHLER: Señores: muchas  
2 gracias por su ayuda. Y así concluye su  
3 interrogación.

4 SEÑOR BECKER: Muchas gracias.

5 PRESIDENTA KAUFMANN-KOHLER: Vamos a tomar  
6 una pausa ahora y después empezaremos con los  
7 expertos de Brattle. Tomamos 15 minutos.

8 (Pausa para el café.)

9 INTERROGATORIO CONJUNTO A LOS PERITOS

10 JAMES DOW Y RICHARD CALDWELL

11 PRESIDENTA KAUFMANN-KOHLER: Good afternoon.  
12 For the record, you are Mr Caldwell?

13 SEÑOR CALDWELL: Yes.

14 PRESIDENTA KAUFMANN-KOHLER: And you are  
15 Mr Dow?

16 SEÑOR DOW: Yes.

17 PRESIDENTA KAUFMANN-KOHLER: So you have  
18 provided us with three reports. The first one,  
19 9 February 2018, then 24 October 2018, and at  
20 the same time you also gave a response to the  
21 PwC report, also of 24 October 2018.

1 Mr Dow, you will take the lead?

2 SEÑOR DOW: Yes.

3 PRESIDENTA KAUFMANN-KOHLER: And either  
4 respond or defer to Mr Caldwell.

5 SEÑOR DOW: Yes.

6 PRESIDENTA KAUFMANN-KOHLER: You are both  
7 heard as expert witnesses, and you know you are  
8 under a duty to make only statements in  
9 accordance with your sincere belief. Can you  
10 please confirm that this is your intention by  
11 reading the expert declaration?

12 SEÑOR DOW: I solemnly declare upon my  
13 honour and conscience that my statement will be  
14 in accordance with my sincere belief.

15 SEÑOR CALDWELL: I solemnly declare upon my  
16 honour and conscience that my statement will be  
17 in accordance with my sincere belief.

18 PRESIDENTA KAUFMANN-KOHLER: Now, you have  
19 time for your presentation, or rather your  
20 presentations. I understand there are two, and  
21 you have one hour. That was the agreed time.

1 SEÑOR DOW: Yes.

2 PRESIDENTA KAUFMANN-KOHLER: Please.  
3 Presentation.

4 SEÑOR DOW: Thank you, Madam President and  
5 members of the Tribunal. We are going to start  
6 by talking about the PwC report and then move  
7 on to the Versant report, but basically, the  
8 first part of our presentation will be what  
9 went wrong and the second part will be what are  
10 damages.

11 So Alsacia and Express's performance under  
12 the new Concession Contracts went very poorly,  
13 and did so quite soon. So on this graph you  
14 can see the EBITDA, what was expected at the  
15 time of entering, the start of the new  
16 Concession Contracts, and in the negotiations,  
17 and that is compared with what actually  
18 happened, and it even under-performed compared  
19 to a revised plan that was made in 2014 around  
20 the time of the debt re-negotiation.

21 And that caused Alsacia and Express to

1 become financially distressed. We have a  
2 credit downgrade to C in late 2013, difficulty  
3 paying debt in 2014, and then the debt was  
4 restructured and the company filed for  
5 bankruptcy and right now the equity holders  
6 don't expect to recover anything from the  
7 company.

8 Just to show you on the left the different  
9 grades of bonds, the bonds that were issued  
10 shortly prior, a couple of years prior to the  
11 new Concession Contracts, and we will return to  
12 that later, but they were issued at the double  
13 B rating, and you can see there that BB is the  
14 highest rating within the high yield category,  
15 and it is below an investment grade rating, so  
16 think of it as investment grade rated bonds are  
17 the largest and most stable companies  
18 worldwide, but there is a very big market for  
19 high yield bonds, which are typically companies  
20 that are at BB rated, or even B. There is  
21 nothing bad about those companies but they are

1 medium sized or smaller companies that don't  
2 have such a stable track record and can't get  
3 an investment grade rating.

4 The methodology we are using, I want to  
5 stress, we need to look at the capital  
6 structure of Alsacia and Express. We have  
7 heard a lot about they had too much debt or  
8 their costs went up. Here is the methodology  
9 we will be using. To identify the causes of  
10 failure, we will start by looking at their  
11 revenues and their costs. From that we will  
12 get an estimate of what value there is in the  
13 company, and if that value is enough to pay  
14 down the debt holders, there will be value left  
15 over for the equity holders; if there isn't  
16 enough value in the company, then the equity  
17 holders would get nothing. So we will start by  
18 looking at the value in the company and then we  
19 will translate that into whether it exceeded  
20 the debt that was there.

21 No one expected Alsacia and Express to fail

1 at the time the bonds were issued and at the  
2 time the new Concession Contracts started, so  
3 I want to stress what we mean by expectations.  
4 PwC said their figures are tied to an Excel  
5 spreadsheet, but they are a little more than  
6 that because in early 2011 detailed information  
7 was sent to potential lenders for the bond  
8 issue. There was a base case model, which is  
9 part of the bond indenture. That got a  
10 fairness opinion, and that was updated later  
11 on, because when the new Concession Contracts  
12 started out, the bond holders needed to satisfy  
13 themselves that they still had a good business  
14 model from their point of view. And any  
15 financial planning necessitates some modelling  
16 of what is expected. So that is quite a  
17 routine thing to be doing. It is not something  
18 we have made up but we are using those numbers  
19 from the data.

20 Why did Alsacia and Express fail? Well, our  
21 view is that it is about revenues. A bus

1 company is a business with high fixed costs and  
 2 quite low margins. You have to run the buses  
 3 anyway, according to the operating plan, so if  
 4 revenues fall, your costs are still there and  
 5 that has a drastic effect. So vandalism,  
 6 contract discounts, penalties, high levels of  
 7 fare evasion, too few buses, expropriated bus  
 8 routes and the slow speeds all contributed to  
 9 the revenues falling and that, as we will  
 10 explain, we think is the main cause of the  
 11 failure.

12 SEÑOR CALDWELL: For the next few slides we  
 13 are going to do that task, step through the  
 14 revenues and the costs to understand what  
 15 happened, and after that we will try and tie it  
 16 together.

17 So on slide 6 you see some graphics about  
 18 how the contract worked. These are found in  
 19 our reports. I am not going to explain it in  
 20 detail other than to say passenger revenues  
 21 account for 70-80 per cent of the revenues,

1 mileage revenues or how many kilometres you  
 2 travel for the remainder, and then there is the  
 3 discounts and penalties, bonuses, under the  
 4 contractual formulas too.

5 The first point to start is to notice that  
 6 under the period of the Concession Contracts,  
 7 2012 to 2017, you have here in the chart, if  
 8 you compare like for like revenues with what  
 9 was anticipated in the May 2012 base case model  
 10 that was provided to the lenders -- now like  
 11 for like touches on the question that one of  
 12 the Tribunal members asked some time ago. We  
 13 have to ensure that exceptional things, so for  
 14 example PPT additions, or changes in costs  
 15 which are then passed through the contractual  
 16 formulas, we have to ensure like for like  
 17 between the expectations, and then the outcome.  
 18 So we have to make an adjustment either way to  
 19 ensure we are comparing things on a consistent  
 20 basis. We can talk more about that if it is  
 21 interesting. But like for like revenues fell

1 by over 11 per cent relative to the  
 2 expectations in May 2012. That is principally  
 3 due to lower paying passengers, as we will  
 4 indicate in a moment. There is larger service  
 5 fulfilment discounts that the company has  
 6 experienced and then the route expropriations  
 7 in 2016.

8 Now, a significant fall in revenues has a  
 9 substantial impact on this business.

10 If we step in and look a little further at  
 11 what's happening, the chart on the left plots  
 12 the passenger validations that were anticipated  
 13 in the May 2012 model versus the reality of  
 14 what happened, and it is roughly a quarter down  
 15 relative to expectations and what the company  
 16 has experienced. The new Concession Contract  
 17 terms, there is some exposure to this fall in  
 18 passenger numbers under them. There are some  
 19 equilibrating mechanisms, so the biennial PPT  
 20 review, the annual AIPK adjustment, there were  
 21 even extraordinary reviews, but notwithstanding

1 all those things, the reduction in passenger  
 2 numbers flowed through into the substantial  
 3 reduction in revenues relative to expectations.

4 Further issues. The company has experienced  
 5 larger than expected discounts. That is in  
 6 part related to the too few buses, the  
 7 insufficient fleet, so you can see here the  
 8 93-95 per cent ICT outcome, versus what was  
 9 expected in the May 2012 model, and then we  
 10 show what has happened in 2019 to -- this is  
 11 the ICR indicator -- after the companies end up  
 12 with slightly more fleet.

13 The third thing is then the 2016 route  
 14 expropriations happen, so you can see that  
 15 roughly 4 per cent of the operating plan  
 16 kilometres were taken away. That amounted to  
 17 roughly 2 per cent of their revenues.  
 18 Compensation for that, or a PPT increase for  
 19 that has been agreed by Chile, but only two  
 20 years later, and so the loss of cash flow in  
 21 the 2016/2017 period when these companies were

1 already liquidity constrained is significant.

2 Now, that is the revenue side, so  
3 essentially significant reduction in passenger  
4 numbers.

5 On the cost side, relative to, again,  
6 the May 2012 expectations, what you see is  
7 costs were up by 14 per cent in nominal peso  
8 terms. What's happening underneath the overall  
9 number is that fuel costs were higher up to  
10 2014 but then lower due to the path of oil  
11 prices on the world market. The increases were  
12 experienced in labour, maintenance and  
13 administration. Some of those increases,  
14 remember, under the contractual formulas are  
15 passed through, through the MAC index and the  
16 one-off PPT adjustments, so this is not pure on  
17 their bottom line; some of these things are  
18 passed through.

19 Now, there is a suggestion, let's put it  
20 that way, that the company's costs were  
21 excessive, that they let labour costs get out

1 of control, for example. Well, what you  
2 actually see in the underlying data in relation  
3 to bus drivers for example is that the number  
4 of driver hours was in fact stable over the  
5 period. What has increased is the increased  
6 driver costs per hour. That is in part due to  
7 collective bargaining outcomes and a change in  
8 the social security amounts that the companies  
9 had to pay on behalf of their employees.

10 There are increases in maintenance and  
11 operational employees, as maintenance  
12 activities expanded with the overhaul programme  
13 in 2013. Road control employees, people  
14 regulating the flow of the buses, were brought  
15 in-house in 2015, and that obviously then shows  
16 up in the labour line.

17 We note what PwC indicated to the DTPM in  
18 their 2017 work was that as a share of revenues  
19 Alsacia and Express's labour costs were among  
20 the lowest of the Transantiago operators.

21 Maintenance costs went up for several

1 reasons. You see them on the diagram. There  
2 the most significant is the increased and  
3 accelerated fleet overhaul activities relating  
4 to the ageing of their bus fleet, road  
5 conditions, too few buses. The company has  
6 responded by attempting to streamline where  
7 they could in purchasing and managing their  
8 inventory, for example, and managing their  
9 maintenance activities. That is what Camden,  
10 Recticenter and Lavabus are about.

11 Finally, in administration costs you see an  
12 increase following 2014, and that is in the  
13 context of the financial distress that the  
14 companies are going through. There is  
15 consulting and legal fees, for example,  
16 incurred in 2014 and then further fees  
17 principally in 2016/2017. What were other  
18 people saying about what is happening to these  
19 companies? You see on the screen the  
20 conclusions in August 2014, when the company is  
21 rendered in default, the summary conclusions by

1 Moody's and Fitch. If you look on the left at  
2 Moody's, they are saying increased revenue  
3 volatility is part of the new  
4 Concession Contracts, lower ridership, absence  
5 of infrastructure, fare evasion discounts. So  
6 they are focused on the revenue side. Fitch  
7 are focused on the revenue side too, with the  
8 first two, and then they note that costs  
9 contributed as well.

10 So, after that whistlestop review, as it  
11 were, how do we proceed from here? We address  
12 ourselves to the question of causation.

13 What that requires is fundamentally a  
14 detailed but-for modelling of the  
15 Concession Contracts. Versant agrees with the  
16 but-for approach in its report; in fact, it  
17 adopts our detailed operating model of the  
18 Concession Contracts in full. What we are  
19 doing is we are modelling what would have  
20 happened to revenues, for example, given our  
21 model and given the inputs, the operating

1 inputs from BRT and Transconsult about  
2 passenger numbers in the context of lower fare  
3 evasion, less vandalism, and so on.

4 The chart gives the overall conclusion. The  
5 dark blue bars are what we found from the model  
6 given the input we received from the  
7 transportation experts, and we found that the  
8 but-for revenues are close to the expectations.  
9 Notice they are not built on the expectations;  
10 they are built from the transportation expert  
11 evidence on input, but the result is that the  
12 revenue line would have been close, given their  
13 inputs, close to the expectations in  
14 the May 2012 model.

15 So what is the conclusion? The conclusion  
16 is that the breaches that are alleged caused  
17 the revenue shortfall that these companies have  
18 experienced.

19 Second of all, then, on the costs side,  
20 again, taking the input from the transportation  
21 experts about how the various measures affect

1 cost, we find in conclusion that the but-for  
2 costs are similar to the actuals and higher  
3 than the forecast, so you will notice, first of  
4 all, that the but-for scenario embeds the  
5 increases in labour, maintenance and admin  
6 costs that I was highlighting earlier. It  
7 simply reverses the breaches, the effects, it  
8 allows for what costs would have been with  
9 sufficient fleet, better infrastructure,  
10 on-time negotiations and the collective  
11 bargaining and so forth.

12 What does that do overall when you put the  
13 two sides together? You find that the but-for  
14 performance, but-for cash flow generation would  
15 have been below expectations, so you see it  
16 here on the chart on the left. The dotted  
17 light blue line is what was expected in  
18 the May 2012 base case model; the dark blue is  
19 the actual; the grey line is our detailed  
20 simulation of what the contractual revenues and  
21 the cost ends up with given the input of BRT

1 and Transconsult.

2 Notice that the but-for is lower than the  
3 expectation. There are no damages here for  
4 non-breaches. Those are already embedded  
5 within the cashflows. And what we find is,  
6 even though performance would have been less  
7 than expected in the May 2012 model, yet it was  
8 sufficient to service the debt. Interest  
9 coverage would have been around 3-4 times,  
10 cashflows would have been sufficient to repay  
11 debt early, and some dividends, so the  
12 conclusion is no financial distress.

13 So if we see a further slide just to  
14 indicate what has happened, on the left you see  
15 the financial value associated with the but-for  
16 scenario and our detailed modelling of the  
17 contracts given the input from the  
18 transportation experts compared with the  
19 actual. You can see that in the but-for  
20 scenario the value exceeds the red line  
21 indicating the debt obligation, so therefore

1 the companies were solvent and could have  
2 continued.

3 In the actual scenario the value falls well  
4 below the debt line, hence the companies enter  
5 into financial distress.

6 Now, one more slide from me, and then I am  
7 going to hand back to Professor Dow. We have  
8 seen a different vision provided by PwC and  
9 Chilean Versant. It is really the bad  
10 financial and operating decisions of the  
11 company that have led to their collapse. Too  
12 much debt, poor cost control, old bus  
13 acquisitions, reactive maintenance, breakdown  
14 rates, poor performance. Those are claims that  
15 have been made. We in responding to PwC  
16 indicate that there are four fundamental  
17 problems, methodological problems, in the PwC  
18 analysis. Simplistic cross-operator  
19 comparisons. They ignore the need to analyse  
20 causation in the but-for scenario. They use  
21 hindsight to second guess decisions, ignoring

1 the expectations at the time. And, finally,  
2 there is simply some incorrect calculations and  
3 mistakes in various things.

4 And so how does PwC respond? Well, in terms  
5 of the first criticism, they recognise that  
6 there are differences but they compare cross  
7 operator anyway without making any controls.

8 In relation to the second, they say they  
9 rely on hard data and their job isn't to think  
10 about causation and but-for analysis. On the  
11 third they again say they use actual  
12 consequences, but that means there is no  
13 analysis of the decisions based on the  
14 information at the time they were made; it is  
15 just a narration of an adverse outcome. And  
16 then finally on the calculations, they claim  
17 that one of our calculations is riddled with  
18 inconsistencies. Our response is no, it is  
19 just PwC's misunderstanding of the data. With  
20 that, I am going to hand back to Professor Dow.

21 SEÑOR DOW: One of the questions that has

1 come up quite often in this hearing is was the  
2 company over-levered, was it inappropriate, did  
3 they have too much debt and not enough equity?  
4 So I want to make a couple of points. First of  
5 all, the level of debt financing is -- high  
6 levels of debt financing are quite common,  
7 standard, in this kind of project finance deal.  
8 It was originally anticipated by Chile -- and  
9 here we have reproduced a table from our  
10 report, one of our reports, which gives the  
11 anticipated leverage, the debt capacity,  
12 anticipated leverage that Chile had presented  
13 to investors while it was trying to attract  
14 investment to this project, and also we pointed  
15 out that Alsacia and Express had to invest  
16 money in building their own terminals, and also  
17 that kind of asset increases debt capacity.

18 Further, if things had gone according to  
19 plan -- and, again, I am referring here to the  
20 expectations documents we have available -- the  
21 leverage should have been manageable. So

1 looking at the definition of leverage given in  
2 the bond indenture, we have graphed there in  
3 our reports what the debt ratio would look like  
4 over time, and you can see that it was due to  
5 start out quite high but then to fall and be  
6 amortised quite quickly.

7 PwC criticise our use of a market value debt  
8 measure, they prefer a book value measure, but  
9 actually a market value measure is standard and  
10 they say that an unlisted company one can't use  
11 a market value measure but actually the bond  
12 indenture does and what you do in that case is  
13 you make a forecast of cashflows and use that  
14 as an estimate of value, which is what was done  
15 in the bond indenture.

16 Also I want to make sure that I give the  
17 impression that this is a large bond issue, we  
18 are talking about the bond issue a couple of  
19 years before the new Concession Contracts,  
20 nearly half a billion USD, and fully  
21 underwritten. It was oversubscribed; it was

1 underwritten by leading banks; and you can see  
2 that some of the world's leading investors  
3 signed up to this bond issue.

4 Bear in mind also this is post financial  
5 crisis, so arguably before the financial crisis  
6 markets were taking an arguably blasé approach  
7 of debt risk, but in this period I don't think  
8 one would argue that.

9 Is a BB rating a bad rating or a junk  
10 rating? Well, about half of the bond market  
11 globally is non investment grade. If you go  
12 back about 40 years the only bonds that were  
13 issued were investment grade bonds and they  
14 were bought by insurance companies and other  
15 regulated entities that could only buy  
16 investment grade bonds, but starting in the 90s  
17 in the US and after the year 2000 in Europe  
18 there was a big development of non investment  
19 grade bonds. BB rating is the bucket just  
20 below the threshold of investment grade, and  
21 they have relatively low default rates. If you

1 look at data on these globally you might see in  
2 some years 1 per cent roughly; sometimes a  
3 little higher than that in years when it  
4 reaches 3 or 4 per cent, but they are  
5 manageable risks as opposed to investment grade  
6 bonds where there is very, very little risk.

7 Some companies that have BB ratings, for  
8 example currently Dell, Fiat, but mostly these  
9 would be smaller companies, not so well known  
10 but normally quite solid companies. So we say  
11 there is no reason to suspect that the lenders  
12 on this bond issue were overly optimistic.

13 PwC you heard today say that these bonds  
14 added to the interest cost. At the time the  
15 bonds replaced the existing debt they fixed the  
16 interest rate. Previously it was floating.  
17 And the yield curve at that time was upward  
18 sloping. In other words, the markets were  
19 expecting that yields would go up, interest  
20 rates would go up, so there was a cost to  
21 fixing the interest rate but arguably that was

1 a prudent thing to do from the point of view of  
2 interest rate risk management. So we do  
3 calculations in our report that say that, out  
4 of that 1.5 per cent, half a per cent is  
5 explained by the interest rate fix and better  
6 foreign exchange hedging, and also correcting  
7 some figures that actually turned out to be  
8 bankruptcy fees that weren't expected, we say  
9 there wasn't an increase in interest rates, and  
10 the bond issue did have certain advantages. It  
11 facilitated the consolidation of Alsacia and  
12 Express, and simplified lender communication  
13 and the approvals process.

14 Also, PwC suggests there was a realistic  
15 choice for Alsacia and Express which was to  
16 have issued a non investment grade bond  
17 locally. That is just not realistic because  
18 the high yield market is well developed in the  
19 US and in Europe, but is just really not well  
20 developed in less developed countries, markets,  
21 shall we say, financial markets such as Chile,

1 and you can see that from the table they have  
2 provided, where all the issuers who did issue  
3 locally were Chilean companies -- sorry, they  
4 were all investment grade companies. Copec,  
5 which is the one they pick out, is not  
6 comparable because it is the largest company in  
7 Chile, and most of the amounts are much  
8 smaller. You can see there is no high yield  
9 issuer. So we say it was not realistic at all  
10 to imagine a local bond issue in pesos.

11 SEÑOR CALDWELL: So it returns to me again  
12 for some further slides. We heard in the  
13 opening and in PwC's analysis about a  
14 12 per cent revenue increase over the period  
15 versus a 26 per cent cost increase, and  
16 therefore margins collapse due to the excess of  
17 costs, and we heard an exchange with PwC  
18 earlier today discussing that.

19 Well, inflation was running cumulatively at  
20 20 per cent over the period PwC looks at. What  
21 does that mean? That means that the revenue

1 has actually decreased in real terms and  
2 inflation adjusted terms by 8 per cent over  
3 that period. Costs increased by only  
4 6 per cent in real terms over the period. The  
5 decline in real terms revenues follows the  
6 substantial drop in passenger numbers that  
7 I showed earlier on. A 6 per cent real terms  
8 increase in costs is not evidence of a total  
9 loss of cost control on the part of the  
10 companies. We conclude again, based on our  
11 detailed modelling, that the principal problem  
12 was the lack of revenue, as discussed earlier.

13 Now, PwC also says the companies had a  
14 strategy of purchasing older buses. You see  
15 their First Report where they say 34 per cent  
16 of purchases were older buses. That slightly  
17 changes in their Second Report at the bottom  
18 where you see it is 33 per cent of additions,  
19 not purchases. What they mean has changed  
20 between the First and the Second Report.

21 The true picture is this slide. This is the



1 stock of buses that the companies are using at  
 2 any given moment. You see the large blue band  
 3 on the bottom is the buses they first purchased  
 4 in 2005 and '6. Those were purchased new.  
 5 Then we have another wave of bus purchases in  
 6 2007 and 2008, a further one in 2010-2011, and  
 7 then another series of bus purchases in 2012,  
 8 the Scania leases, those are new buses again,  
 9 and some further leases in 2014. Only  
 10 3 per cent of the fleet that they are using in  
 11 2017, that little hatched red area at the top,  
 12 are used buses. So there is no used bus  
 13 strategy here. They are operating a bus fleet  
 14 that they purchased new when they bought the  
 15 buses in the beginning.

16 There are some temporary buses that come in  
 17 and out, you can see that in the hatched area  
 18 over time; those are used buses but that is not  
 19 the fundamental strategy. The fleet is a fleet  
 20 that was purchased when new.

21 The conclusion also is that the 3 per cent

1 of the fleet at the top in the hatched area  
 2 doesn't determine the maintenance cost outcome  
 3 that these companies have seen.

4 Now PwC's logic, as it were, their chain of  
 5 causation actually, is that they say  
 6 maintenance costs increase because of old bus  
 7 acquisitions and earlier neglect. We have seen  
 8 there is no old bus acquisition strategy.  
 9 97 per cent of their fleet was purchased when  
 10 new. Nor was there earlier neglect. There was  
 11 industry standard, maintenance efforts under  
 12 the original Concession Contracts. What they  
 13 have been exposed to again, and I am not going  
 14 to go through the details, is indicated by the  
 15 RO on the slide.

16 We also have an allegation of notoriously  
 17 higher breakdowns on the part of the companies.  
 18 That was in the first PwC report. It turns out  
 19 the calculation was incorrect. They  
 20 double-counted the breakdowns and ignored  
 21 cross-operator dispersion. The correct figures

1 are in the bottom slide. You can see Alsacia  
 2 is in blue around the middle. Express does  
 3 have higher breakdown rates than Alsacia and  
 4 other operators. Breakdown rates vary with  
 5 specific circumstances of each operator. The  
 6 bus types are using the vintage of the buses.  
 7 Route length, vandalism, particular corridors  
 8 such as the Alameda corridor that the Express  
 9 is operating where my understanding is they  
 10 have had problems with doors, for example, in  
 11 particular.

12 The companies did see specific issues with  
 13 particular buses, so the 2005 and 2006 vintage  
 14 Volvos deteriorated faster and required the  
 15 overhaul problem in 2013, and then with the new  
 16 buses purchased in 2011/2012, that is the  
 17 Volaris or Scania buses for feeder D which  
 18 performed worse than expectations.

19 So, our conclusion? Why did the companies  
 20 fail?

21 When we analysed each of the things put

1 forward by PwC the debt was reasonable at  
 2 issuance, no evidence of cost control, no old  
 3 bus acquisition strategy, maintenance costs are  
 4 impacted by an ageing fleet and insufficient  
 5 fleet too, and then we see particular breakdown  
 6 issues with certain types of buses. So our  
 7 conclusion is that the breaches are the  
 8 principal cause of the financial distress.

9 And I think we need to swap presentations  
 10 now. We move to damages.

11 SEÑOR DOW: Moving on to damages, and here  
 12 we are covering the territory where we overlap  
 13 with the Versant report, we are going to talk  
 14 about how to model the business, what operating  
 15 assumptions we have made, other components of  
 16 damages as real estate and lost opportunity,  
 17 and then summarise.

18 Our basic framework is an operating model  
 19 and a financial model. The operating model  
 20 takes operating and financial data from the  
 21 system we have been provided. We take

1 assumptions from the transport experts, BRT and  
2 Transconsult, and we take a real estate value,  
3 which I will come to.

4 So those are our inputs. We put them into  
5 the operating model, and we also have a  
6 financial model which is translating that  
7 operating value into value to the equity  
8 holders, and we will say that damages comprise  
9 of a historical dividends that the shareholders  
10 in Alsacia and Express should have got but  
11 didn't, plus the present value at July 2018  
12 that they should have had but didn't, plus the  
13 lost opportunity for a renewal of a concession  
14 and plus moral damages. We won't speak to  
15 moral damages because that is not part of our  
16 remit.

17 Where we disagree with the Versant report we  
18 have indicated with a cross. We don't disagree  
19 on the modelling in terms of the operating  
20 model. We used the same model. We do have a  
21 debate about dividend policy that I will

1 explain. We don't disagree on the operating  
2 and financial data but we do disagree on the  
3 assumptions from the transport experts and the  
4 real estate value, and we disagree on the lost  
5 opportunity valuation.

6 How do you get from our damages estimate to  
7 Versant's? Versant say there's no damage, and  
8 we say there is 320. We are looking at the  
9 value in the company. We need to translate  
10 that into whether there is any value for  
11 shareholders. We say there should have been  
12 762 million USD of value in the company.  
13 Considering that there is 442 of debt we are  
14 scaling everything here by the 92 per cent  
15 fractional ownership of the Claimants. That  
16 gives us 320 million. That is a way of  
17 explaining that.

18 Conceptually you can think that if the value  
19 of the company falls below the debt there is  
20 nothing left for the shareholders, so if you  
21 look at how we get down to the Versant level,

1 we have lost opportunity is 51; dividend policy  
2 in the scenario we are looking at here has a  
3 minor impact although in some other  
4 permutations it has a bigger impact; the  
5 impacts here mostly depend on the order in  
6 which you look at them because they are not  
7 standalone, so if you switch one of them off at  
8 a time in a different order you get different  
9 numbers, but then removing the time bar to  
10 operating cashflows removes 118 of damages.  
11 The operating assumptions remove 283, and that  
12 would already take us down to no equity  
13 damages, and 126 is the difference in the real  
14 estate values.

15 You may think at this point, and I think it  
16 is worth stressing, you heard a lot about the  
17 problem caused by leverage, and this is the  
18 problem we have had here. Actually it is  
19 almost the opposite because if the company had  
20 been all equity financed then the full  
21 reduction in value between the 762 that we say

1 should have been there and the actual  
2 value -- all of that reduction would have been  
3 damages, whereas, given that the company had a  
4 substantial amount of debt, it is only the  
5 excess over the red line which translates into  
6 damages. The loss below the red line is  
7 damages, if you like, or losses to bond holders  
8 and that is not the subject of this  
9 arbitration.

10 So, in fact, if we were talking about bond  
11 holder losses and that is what we were  
12 litigating, then Versant would agree there  
13 would be some significant losses to the bond  
14 holders because you can see they have 179 of  
15 value there, so lower debt would mean more  
16 damages in this case. And that is how to think  
17 about it intuitively, but we give a table in  
18 our report where we have computed what the  
19 damages would be with different financing  
20 patterns.

21 So the damages that have been claimed here

1 are not caused by the financing decision. In  
2 fact, they are reduced by that decision. And  
3 damages to bond holders importantly, or losses  
4 to bond holders, are not part of this claim.

5 Since our last report Chile has agreed a PPT  
6 increase to offset expropriations but that  
7 doesn't impact our equity damage calculations.  
8 If you look at value in the company before the  
9 PPT increase and after the PPT increase, what  
10 we see is that the actual value in the business  
11 has increased, but it is still not enough to  
12 offset the debt, and therefore the gap between  
13 the blue bar on the left -- but for value-- and  
14 the debt is still there.

15 Modelling.

16 I think we agree with Versant, it is a  
17 complex model, and that is because the contract  
18 is complex and these kinds of contracts  
19 generally are. There is a contract in London,  
20 if you have taken the Tube, there is a contract  
21 that says -- I always tell my students about

1 one clause that says the operators of the  
2 stations will hand over to the Royal Society  
3 for the Prevention of Cruelty to Animals any  
4 mammals found in the stations with the  
5 exception of rodents and humans! So it is  
6 quite hard to write a complicated contract for  
7 this sort of service.

8 We have just implemented it, though, and  
9 Versant haven't identified any material errors,  
10 so if you think it is a totally bottom-up model  
11 where we have taken the operating data and the  
12 formulas in the contract, and it does reconcile  
13 very closely with the actual financial data.  
14 You would be surprised, perhaps, that it would  
15 reconcile as well. As is shown in that table  
16 there, the total value -- the total amount of  
17 money is out by 1 out of 1122, which is a less  
18 than 0.1 per cent divergence.

19 Versant also adopts our financial model but  
20 they disagree about the appropriate dividend  
21 policy. I don't think you have heard anything

1 about dividend policy so far in this  
2 arbitration so I will just mention that.

3 We assumed in our initial modelling -- we  
4 had to make some assumptions about how much  
5 dividends would be paid out and would they pay  
6 dividends first or would they wait until later  
7 and what dividend policy they would have, so we  
8 started out with a simplification which was pay  
9 the scheduled debt, and any money left over  
10 would be paid as a dividend.

11 We also discussed another scenario which  
12 would be don't pay any dividends at all, pay  
13 down the debt as quickly as you can, and then  
14 if there is any money left over start to pay  
15 dividends. That scenario is called accelerated  
16 debt repayment, and is Versant's preference,  
17 but it is not really a realistic scenario that  
18 many companies would use. Most companies would  
19 pay out a balance of debt repayment and  
20 dividends.

21 Versant did criticise our dividend scenario

1 claiming that it violated some of the debt  
2 covenants. Well, the debt covenants are pretty  
3 complicated, it is a 30-page document, you see  
4 one of the pages there, but we have modelled  
5 the covenants and we get a value intermediate  
6 between the dividend scenario and the  
7 accelerated debt repayment. So I suppose we  
8 say that the most realistic outcome would be  
9 something between scenarios 1 and 3, but  
10 scenario 2 seems to us extreme.

11 Why didn't we model the covenants first time  
12 round? They are complex and they require you  
13 at various times in the contract to compute  
14 cover ratios and debt:equity ratios sometimes  
15 on a backward looking basis, looking at how  
16 much money was in the company in the past, but  
17 often on a forward-looking basis, that's to say  
18 make a forecast, compute what you think ratios  
19 are going to be in the future, and those  
20 forecasts are complicated, so there is a degree  
21 of subjectivity, and also recursiveness, or as

1 we describe it circularity, which is the  
 2 dividends that you pay out depend how much cash  
 3 is left to determine value later, and the value  
 4 later depends on the dividends you have to pay  
 5 out, but there is a way of taking care of that  
 6 mathematically so that is not a problem. There  
 7 is a recursive way of dealing with that.

8 So Versant I think incorrectly claims we  
 9 didn't model the forward-looking covenants, but  
 10 in fact we did.

11 The conclusion from all this? The dividend  
 12 policy does affect the outcome for damages but  
 13 we think it is a second order effect. It is  
 14 not a big issue here.

15 Operating inputs.

16 So for each breach, and they are listed  
 17 there, the Tribunal has to decide on whether  
 18 there is liability and then what would be the  
 19 impact of that breach, so there are many  
 20 combinations of those breaches, you can  
 21 imagine, many different possible liability

1 findings and therefore different damage  
 2 scenarios.

3 For the impact Versant is primarily relying  
 4 on Willumsen and Silva where we are relying on  
 5 BRT and Transconsult.

6 Individual categories of breaches are listed  
 7 here so you can see how much our total damages  
 8 figure would be reduced if you found liability  
 9 for all of the claimed breaches but not the one  
 10 in that table, so if you remove fare evasion  
 11 damages are reduced from 339 by 218. That is  
 12 the biggest and most important breach here  
 13 financially.

14 Bus fleet speeds and infrastructure are also  
 15 big. The others are significant but not as big  
 16 as that.

17 Versant and we agree -- they say they  
 18 agree -- computationally with our model, so the  
 19 disagreement is about the input, not the way  
 20 the model works.

21 Time bar. We disagree quite a lot there.

1 They say we make a conceptual error. Actually  
 2 we have different instructions. They were  
 3 instructed not to look at cashflows  
 4 before February 2014 and we have been  
 5 instructed that the time bar does not apply  
 6 here and we should be looking at cashflows  
 7 right away.

8 So our timing of improvements differs  
 9 significantly from Versant because relying on  
 10 legal instructions about the absence of a time  
 11 bar and relying on advice from the transport  
 12 experts, we have a quick response right  
 13 from February, May 2012, we have changes in the  
 14 but-for compared to what actually happened.  
 15 And Versant's -- we are going into details but  
 16 for your reference they are listed  
 17 there -- Versant's model has improvements  
 18 starting in February 2014 or later.

19 What went wrong?

20 Versant say it is not credible that  
 21 Claimants would have expected such an extremely

1 difficult outcome in the beginning of the  
 2 revised concessions in the but-for scenario,  
 3 350 actually compared to 416 in our but for,  
 4 but really what happened is the actual was very  
 5 bad. Paying passengers fell rapidly and our  
 6 but for analysis, which was computed totally  
 7 independently of the expectations, is actually  
 8 closer to the expectations.

9 To put it in context, before the new  
 10 Concession Contracts there were 285 million  
 11 validations in that year. You added feeder D  
 12 with approximately 40 million validations, and  
 13 they were expecting to get roughly 340 million  
 14 validations but they got only 301. You can see  
 15 that 301 validations is a lot less than 285  
 16 plus 40.

17 Our but-for scenario is not built on  
 18 expectations, just to say that again. We are  
 19 reversing the effect of fare evasion rises and  
 20 slow bus speeds and so on, but we are allowing  
 21 value to fall due to other factors such as cars

1 and Metro usage, so we are not including any  
2 claim for those factors in our damages  
3 estimate.

4 Different assumptions on fare evasion.

5 We are again relying on the transport  
6 experts and we have an improvement  
7 from May 2012 to a level in the region of  
8 7-10 per cent depending on the route. In the  
9 hearing a couple of days ago you heard that  
10 Chile's expectations were close to that, and  
11 Versant have improvement from August 2014 but  
12 to a worse level of fare evasion.  
13 16-22 per cent.

14 We also have different assumptions, not only  
15 on the level of fare evasion and the timing of  
16 fare evasion, but on whether the companies  
17 should be allowed a PPT credit for their work  
18 in reducing fare evasions.

19 We have an instruction to assume 50 per cent  
20 credit for their own efforts, which I will come  
21 to in a minute, and Versant have an instruction

1 to assume no credit.

2 Redbus and STP, by the way, did receive 100  
3 per cent credit in 2017 after the demand  
4 increased so, having done work to improve fare  
5 evasion, demand increased and they were given a  
6 better PPT to reward them for those expenses in  
7 reducing fare evasion.

8 So we have a legal instruction that Alsacia  
9 and Express should have received a PPT credit  
10 of 50 per cent of the costs they would have  
11 spent on reducing fare evasion. That makes  
12 sense economically insofar as collaboration  
13 would be required to combat fare evasion. It  
14 is comparable to what Chile should have spent.  
15 We do a calculation in our report of using  
16 parameters from the transport experts how much  
17 it would have cost to get fare evasion down to  
18 the appropriate levels. And also there is no  
19 dispute I think that credit should be given  
20 when demand increases, but there is an argument  
21 that maybe, if demand doesn't increase overall,

1 the improvement in demand that is nevertheless  
2 due to work on reducing fare evasion should not  
3 be compensated, so it doesn't really make sense  
4 economically to have a clause that works only  
5 in cases where demand has gone up anyway and  
6 not in cases where it happens to go down.

7 Bus fleet and infrastructure.

8 We have basically similar numbers on  
9 priority lane enforcements. Versant say that  
10 the lanes are always enforced anyway. On the  
11 infrastructure they have the same assumptions  
12 as we do but delayed for two years, resulting  
13 in faster speeds, and on the bus fleet we  
14 assume there is improved availability -- there  
15 should have been improved availability in our  
16 but for from May 2012, and Versant's  
17 analysis -- they do their analysis about when  
18 it would have been appropriate and they  
19 conclude from February 2014.

20 We also have to model in our but-for  
21 scenario what the indicators should have been,

1 so the indicators we have used are 99.7 ICT and  
2 no discounts from the ICR and the ICF, which is  
3 a legal instruction we got based on the  
4 transport expert's report, BRT and  
5 Transconsult, but in Mr Caldwell's presentation  
6 a little while ago you saw that in 2019, when  
7 there was a fleet increase, there was a very  
8 sharp improvement in those indicators, so that  
9 suggests that our hypothesis there is not  
10 unrealistic because it matches up with what  
11 happened in 2019. And those assumptions are  
12 validated or based on BRT and Transconsult for  
13 the fleet increase, the faster speeds and the  
14 vandalism, and also Quantil's point that the  
15 interval indicators, the frequency indicators,  
16 penalised Alsacia and Express because they had  
17 to maintain regular intervals, whereas other  
18 companies were allowed to have irregular  
19 intervals which had more lenient treatment  
20 using that indicator. Quantil hasn't given  
21 evidence at this hearing, but you have seen

1 their report.

2 We do a sensitivity as well of slightly  
3 different indicators, so we do sensitivities on  
4 the ICF and the ICR, which are indicated there  
5 and found in our report.

6 So that is the model, and that is where our  
7 but-for scenario derives the value that we  
8 think should have been in the company from the  
9 operating cashflows.

10 What are the other damages components?

11 There is real estate, that is to say what was  
12 the residual value of the bus terminals. If  
13 you think about how to value a bus terminal,  
14 you can do it two ways -- or two have been  
15 suggested in this case.

16 One way is just say what is the price per  
17 square metre of land in this part of the city,  
18 how many square metres do you have, and what  
19 was the building worth.

20 Another approach would to be say it is a bus  
21 terminal, its value lies in its use as a bus

1 terminal and on the fact that, by having that  
2 terminal there and not somewhere else you can  
3 have much better operations, your buses start  
4 out in the right place and they don't have to  
5 travel a long way to the beginning of their  
6 route and get stuck in even more traffic, so  
7 that approach is taken in the Binswanger  
8 valuation that we have relied on, so I have  
9 highlighted there the cost savings that  
10 Binswanger say need to be taken into account as  
11 well as the sheer land value and buildings  
12 cost.

13 And the other valuations we have seen are  
14 based on square metres and building cost.

15 We have seen that there is a signed lease  
16 contract now for those terminals, and that  
17 actually validates the Binswanger valuation  
18 very well. Let me explain how that works.

19 When you sign a lease, we talk about  
20 something called the capitalisation rate. What  
21 we mean by that is the value of the asset

1 multiplied by the capitalisation rate gives you  
2 the annual rent. The annual rent was  
3 \$11 million in this lease contract, so what is  
4 the right capitalisation rate.

5 If we took a government of Chile bond, they  
6 were yielding 5.1 per cent at the time, and a  
7 lease contract you have signed with the Chilean  
8 government is a promise from the Chilean  
9 government, so one approach would be to say  
10 that is the capitalisation rate you would use  
11 and that would imply a value for the terminals  
12 of over \$200 million. You might say that is a  
13 little bit on the high side, because a  
14 government bond is more liquid than a lease  
15 agreement, so maybe a lower capitalisation  
16 rate. The Binswanger estimate, 176 when it is  
17 brought forward to that point in time, matches  
18 up with a 6.25 capitalisation rate which you  
19 can see is a healthy amount more than the yield  
20 on the State bonds, and for reference in the  
21 logistics sector you would use a capitalisation

1 rate of 7.5 per cent, but that would not be  
2 payments that are guaranteed by the government,  
3 so one would expect a higher capitalisation  
4 rate there. But that would still give a  
5 valuation of 150.

6 And, to put it in context, the sheer amount  
7 of rent payments in that lease contract amount  
8 to over \$100 million in total, that's if you  
9 don't do any discounting, you just add them up,  
10 so that is nine times 11.1, so that is quite a  
11 lot more than Versant's claim that the  
12 terminals are worth 40.

13 We have a claim for the lost opportunity,  
14 and I can quickly guide you through that.  
15 Unlike a lot of the calculations we have done,  
16 this one is completely transparent and it's  
17 just there on that slide.

18 We've got a 15 per cent - the real question  
19 is what is the surplus you should make every  
20 year, or premium, on lost opportunity, so what  
21 we are talking about here is if everything had

gone according to plan, Alsacia and Express would probably have received a renewal of their contract. That renewal of their concession should have given them some value. How much value should it have been? Well, we have computed it as an annual return or annual premium on the amount invested. We have taken a 3 per cent annual premium. We have applied it to 387 million of investment. That amount is 212 that Alsacia and Express originally invested at the start of the concession, we haven't even adjusted for inflation there, and we have added on the value of the terminal in the Binswanger valuation, so we have said 387 million, ten year term, 3 per cent premium a year, and it is not a straight multiplication, there is a little calculation there shown in the paper, and that we have multiplied by 75 per cent to allow for the fact that this concession perhaps was not guaranteed.

The 3 per cent premium comes from an investment return that Chile advertised to investors at the start of the concessions relative to the cost of capital we have used throughout, which is about 12 per cent. Versant assumes zero value for this. They say there weren't any new tenders. A 3 per cent premium is too high; the risks have gone down over time; and also they question that 15 per cent which I mentioned. We would say there is no evidence of a decline in the risks. It is true that different contemporaneous presentations give different impressions of whether the 15 per cent was a return on assets or on equity, so there is an ambiguity there, but a 15 per cent return on equity seems implausibly low given that the cost of capital here is 12 per cent on assets, and given a target leverage of 80 per cent debt. We would expect higher equity returns.

So, to conclude, 335 million of damages that we estimate as being 98 million of dividends plus 172 of remaining value. That is in our dividend scenario No 1. In scenario No 2 the dividends would be smaller and the present value would be larger but the total would not be so different, plus 51 million of lost opportunity (which I have just explained) plus 15 of moral damages (that is not part of our analysis but I have added it on there). We have used pre judgment interest at 8 per cent, an instruction reflecting Alsacia and Express' cost of borrowing, and that, by the way, ensures that the overall result is insensitive to dividend policy, because that is the cost of debt so it cancels out.

We could do an update of damages if requested by the Tribunal, and damages are increasing over time, events have happened subsequently, there is more operating data and so on so we could do an update of those, and,

importantly, if the Tribunal finds that there is liability for some of the claimed breaches but not for others, or the Tribunal wants to model different impacts than the ones we and Versant have put together, it is relatively easy to dial in different numbers on our spreadsheets, and I think probably the two experts, if you gave us a scenario that was clear, Versant and we could probably agree on what that means in terms of the model, because we don't really differ on how the model works but more on the inputs to the model. In other cases I have worked on Tribunals have asked us to compute damages for different specification of breaches and their different impacts.

Thank you. That concludes our presentation.

PRESIDENTA KAUFMANN-KOHLER: Thank you very much. It is 6 o'clock now. Is this a good time to break before we go into other cross-examination? Would that be fine or do you want to continue? We will have to break at

1 some point in any event, right, because we will  
2 not be able to conclude the cross-examination  
3 today.

4 SEÑORA GEHRING FLORES: Did I understand  
5 that members of the Tribunal had to leave at a  
6 particular time this evening?

7 PRESIDENTA KAUFMANN-KOHLER: It may be  
8 better that we stop. We have about 15-20  
9 minutes more, so maybe that is not very useful.  
10 Possibly 6.30 but that is 25 minutes.

11 SEÑORA GEHRING FLORES: Whatever pleases the  
12 Tribunal. I am prepared to go forward for the  
13 next 15-20 minutes, if you wish, or we could  
14 break.

15 PRESIDENTA KAUFMANN-KOHLER: Maybe it is  
16 better that we break now, and we start and  
17 carry out the entire cross-examination  
18 tomorrow, and that will then lead us towards  
19 middle/late in the morning, and then we will  
20 have to hear Versant as well, where  
21 I understand that the cross-examination is a

1 little shorter, if I am not mistaken? I have  
2 noted this earlier.

3 SEÑOR GARCÍA REPRESA: I think I have about  
4 one hour left on the clock.

5 PRESIDENTA KAUFMANN-KOHLER: We also need to  
6 think about the clock, absolutely, which we  
7 will know more precisely. You had said an  
8 hour. You had said two hours for Brattle.  
9 I think we can work like this tomorrow and then  
10 maybe we have a later lunch, we will see how  
11 this goes, so you have a little break before we  
12 go into the closing statements.

13 The Tribunal has considered whether it has  
14 additional questions for you now. We think it  
15 would probably be more rational if we have an  
16 initial deliberation after this hearing, and we  
17 come back to you if we have questions with  
18 written questions, which you can deal with in  
19 the Post-Hearing Briefs rather than now adding  
20 to your agenda for tomorrow afternoon.

21 Is that all acceptable?

1 SEÑOR SILVA ROMERO: It is on Claimants'  
2 side, Madam President. Thank you.

3 SEÑORA GEHRING FLORES: And on Respondent's  
4 side. Thank you.

5 PRESIDENTA KAUFMANN-KOHLER: Are there any  
6 issues you wish to raise now before we break  
7 for today?

8 SEÑOR SILVA ROMERO: Not on our part, thank  
9 you.

10 PRESIDENTA KAUFMANN-KOHLER: On Respondent's  
11 side is there anything?

12 SEÑORA GEHRING FLORES: No, Madam President.

13 PRESIDENTA KAUFMANN-KOHLER: Then it remains  
14 for me to tell the experts, as they expect,  
15 that you cannot speak to anyone while you are  
16 being examined. You can speak between the two  
17 of you.

18 And then I wish everyone a good evening and  
19 we will see each other tomorrow at 9 o'clock.

20 SEÑORA GEHRING FLORES: Madam President, if  
21 I may, just one question of clarification with

1 respect to order tomorrow, so we expect the  
2 Brattle cross to proceed (I will try to make it  
3 as brief as possible) and then after that will  
4 be the cross of Versant?

5 PRESIDENTA KAUFMANN-KOHLER: Yes.

6 SEÑORA GEHRING FLORES: And then the plan is  
7 for each party to answer questions, and  
8 closings --

9 PRESIDENTA KAUFMANN-KOHLER: Answer  
10 questions that have already been asked, so now  
11 you know what the scope of the questions is,  
12 plus you can present whatever you wish to  
13 present us within 30 minutes, and the whole  
14 should not last more than 50 minutes for each  
15 party.

16 SEÑORA GEHRING FLORES: And there is a  
17 possibility that potentially over lunch we  
18 might get questions?

19 PRESIDENTA KAUFMANN-KOHLER: No. I don't  
20 think so. We have discussed the questions and  
21 you will get the questions once we have



1 deliberated after the hearing. This will be  
2 initial deliberations because we will not have  
3 seen your Post-Hearing Briefs but it may allow  
4 us to see whether there are areas which we  
5 would ask you to address in your Post-Hearing  
6 Briefs. But not tomorrow.

7 SEÑORA GEHRING FLORES: Thank you.

8 PRESIDENTA KAUFMANN-KOHLER: Is everything  
9 clear now?

10 SEÑORA GEHRING FLORES: Yes.

11 PRESIDENTA KAUFMANN-KOHLER: Fine. Then we  
12 wish everyone a good evening.

13 (Es la hora 18:07)

1 CERTIFICADO DEL ESTENOTIPISTA DEL TRIBUNAL  
2

3 Quien suscribe, Paul Pelissier, Taquígrafo  
4 Parlamentario, estenógrafo del Tribunal, dejo  
5 constancia por el presente de que las  
6 actuaciones precedentes fueron registradas  
7 estenográficamente por mí y luego transcritas  
8 mediante transcripción asistida por computadora  
9 bajo mi dirección y supervisión y que la  
10 transcripción precedente es un registro fiel y  
11 exacto de las actuaciones.

12 Asimismo dejo constancia de que no soy  
13 asesor letrado, empleado ni estoy vinculado a  
14 ninguna de las partes involucradas en este  
15 procedimiento, como tampoco tengo intereses  
16 financieros o de otro tipo en el resultado de la  
17 diferencia planteada entre las partes.

18  
19 \_\_\_\_\_  
20 Paul Pelissier, Taquígrafo Parlamentario  
21 D-R Esteno