Mr Commissioner as SACU we would first like to address the presentation presented by the BCX on 22 November 2018. We had some time to familiarise ourselves with the information and need to raise some material concerns that necessitate Address.

Prior to the onset of the address of said presentation Mr Commissioner, it is prudent to recall that during the meeting of the 22 November 2018, agreement was reached that Organised labour would make a formal request for disclosure of additional information from the company. The company agreed and undertook to provide this information.

SACU made a formal request for the information, and then entrenched this request by following up with correspondence to the company, in which, it was made clear in concise and unambiguous terms, that the requisite information, having been clearly outlined and identified, was an essential perquisite for the enablement of organised labour to meaningfully consult and engage with the company. Indeed, Mr. Commissioner, we will do well to remember that you were specifically included in the address list.

Regrettably Mr. Commissioner, despite our bona fide and concreted efforts in this regard, SACU sits here today, significantly barren and informatively malnourished – functioning solely on the company's diet of frugality! This is as a consequence of what appears to be the company's historical practice of ignoring our formal request.

Alas, as a direct result of failing to honour the agreement concluded, and providing the disclosure of the required information, SACU sits here today prejudiced, on the back foot, and unable to participate meaningfully in this joint consensus-seeking exercise. Such conscious failure or refusal on the company's part can but lead to one inference, and one inference only – an abuse of process – the company's sole intention is to run the clock down and hold out for the 60-day final whistle, where after, it will unilaterally affect the dismissals. Such an approach undeniably acts as a bulwark that denies SACU entrance into the joint consensus-seeking arena mandated by the Act.

Section 189 of the Labour Relations Act is applicable and prescribes a joint consensus seeking process in an attempt to reach consensus on appropriate measures (section 189(2)) -

- to avoid the dismissals;
- to minimise the number of dismissals;
- to change the timing of the dismissals; and
- to mitigate the adverse effects of the dismissals;
- the method for selecting the employees to be dismissed; and

- the severance pay for dismissed employees.

During the company's presentation on page 27 par 10 the company presented as follows: *"As for the number… Here is a summary of the changes to the total number of Employees impacted. We have a total number of 8 047 Employees in scope. We have 139 new roles for people to consider and we have 790 Employees that are likely to be affected. "*

Safe to say therefore that the scope, or put simply the impacted group of employees is 8047 for this section 189 process…having said this BCX is misrepresenting the facts and their notice served on the unions is flawed in that the affected number as define in their presentation is as follows:

- BCX – 6189 permanent employees, 1549 fixed term employees,
- African Arete – 25 permanent employees, 207 fixed term employees
- NGA – 87 permanent employees, 17 fixed term employees

When requesting this information the company decided to inform the parties that African Arete and NGA is out of scope.

It is safe to say that a fixed term contract will have an end date that was agreed to, if the intention is to terminate this before the time a different process will have to be embarked on.

The above makes the notice given to the unions flawed, as the number in scope is misrepresented by the employer.

The method for selecting the employees to be dismissed:

The employer further indicated in the same paragraph that 790 employees like to be affected, and over subscription.

Again section 189 (2) states "the method for selecting the employees to be dismissed",

The employer selection process, page 28, par 10 states as follows "*The following is the proposed method of selection when we now order? The new organisation: We will look at qualifications, certification and professional registration, as required in the job description. We will look at experience as per the job requirement and as stipulated in the job description. We will determine skills in a structured competency based interview process, including psychometric assessments. "*

The employer then continues suggesting the principle of appointment, as page 28 par 20 reads as follows: "*We propose the following principles with regards to appointment: Following the consultation sessions the proposed structures and job profiles will be made available on the intranet so that Employees can easily view all the available opportunities. On the structures the jobs are kind? Of programmed as follows: Blue indicates changed role content or number of positions downsized?? Green indicates a new position. Red in unaffected role. Black border is location change*."
The employer then continues stating," *Unaffected employees, those that are occupying the red colour coded blocks with unchanged jobs will receive letters confirming them in their jobs.* "The employer then continues indicating all the affected employees can apply for the blue, green and black border jobs will then be made available to the affected employees.

As per page 27, par 10 "*790 Employees that are likely to be affected.* "This is therefore the affected number of employees or put differently the employees to be dismissed. If the consulting parties should engage on the method for selecting the affected employees, who identified the 790 employees as it is should have been 790 positions.

The employer goes further indicating the **"RED"** positions is unaffected, again who decided this as all their staff (8047) is within scope according to their notice to labour as well as their presentation made to labour during the first consultation session on 22 November 2018.

It is important to pause here and note, the agreed upon fair selection procedure is to identified the employees to be dismissed, and not to place the already identified 790 employees in the 139 green vacant position as the employer want to do.

The information on the 790 affected employees was requested formally, this information is pertinent as we need to understand how the employer identified the 790 employees in the absence of an agreed upon selection process.

Page 29, par 05, which is stating the following; *"As a note, unaffected Employees, the ones that are occupying red colour coded jobs and appointed employees may not participate in any stage of this appointment process."*

Again the process is flawed in we are expected to rubber stamp this exercise. It is glaringly obvious that the employer using the section 189 process to rid themselves of certain employees in the run up to their restructuring process.

As SACU we implore the company to withdraw this section 189 notice and finish their restructuring as it is obvious they not even sure if the new structure will be implemented yet they discussing dismissing the surplus staff not in the structure.

Page 25, par 20 *“The newly designed organisational structures will, if implemented result in the reduction of the number of positions required to operate the business with a view to reducing employment costs and associated costs in general. It is for the above reasons that the company is contemplating the dismissal of some of the Employees.”*

END