

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

29 OCTOBER 2020

DAY 294



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the foregoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

29 OCTOBER 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 29 OCTOBER 2020

CHAIRPERSON: Good morning Mr Kennedy, good morning everybody.

ADV KENNEDY SC: Morning Chair.

CHAIRPERSON: Are you ready?

ADV KENNEDY SC: We are thank you Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Chair may we – may we indicate that today we plan subject to your directions to be calling three
10 witnesses. The first will be Mr Martin Drevin from DLS. The second will be Mr Hendrik Van Den Heever also from DLS. And the third witness will be a Ms Carene Geldenhuys who was at the relevant time at DLS and they will all deal with aspects of the procurement process relating to some of the relevant contracts.

CHAIRPERSON: Okay.

ADV KENNEDY SC: May we then – may we then with your leave ask to call Mr Martin Drevin.

CHAIRPERSON: Yes.

20 **ADV KENNEDY SC:** D-r-e-v-i-n and Chair all of these affidavits are to be found for today are to be found in the same Denel Bundle 04.

CHAIRPERSON: Thank you.

ADV KENNEDY SC: And Mr Drevin's affidavit is Exhibit W16.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: May I then ask leave to call him and to have him sworn in?

CHAIRPERSON: Yes thank you. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR DREVIN: My full name Martin Johan Drevin.

ADV KENNEDY SC: Do you have any objections to taking the prescribed oath?

10 **MR DREVIN:** No I do not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR DREVIN: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

MR DREVIN: So help me God.

CHAIRPERSON: Thank you; you may proceed.

20 **ADV KENNEDY SC:** Thank you Chair. Mr Drevin you have in front of you a file with a section open already for you against marker W16 and if you can look at the page number at the top left hand corner the last few digits 237 you see that?

MR DREVIN: Yes.

ADV KENNEDY SC: Am I correct that this is the first page of your statement/affidavit?

MR DREVIN: That is correct.

ADV KENNEDY SC: If I may take you now to page 251.

MR DREVIN: Got it.

ADV KENNEDY SC: Do you see near the top there is signature above the typed name Mr Martin Drevin. Is that your signature?

MR DREVIN: That is my signature.

10 **ADV KENNEDY SC:** And is it correct that you signed this in front of Commissioner of Oaths?

MR DREVIN: That is correct.

ADV KENNEDY SC: With taking the oath or the affirmation?

MR DREVIN: That is correct.

ADV KENNEDY SC: Right thank you. Have you been through this document and its annexures and can you confirm for the Chair please that you are satisfied with its contents and that those contents are true and correct?

20 **MR DREVIN:** I have been through it and I am satisfied Chair. Correct.

ADV KENNEDY SC: Thank you. Chair we would then ask formally for your leave to admit the affidavit with its annexures starting at page 257 that is Denel Bundle 04 Exhibit W16.

CHAIRPERSON: The statement/affidavit of Mr Martin Drevin starting at page 237 is admitted as Exhibit W16.

ADV KENNEDY SC: Thank you Chair. With your leave may I lead the witness on what I believe is uncontroversial.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Issues relating to his background etcetera?

CHAIRPERSON: Yes, yes.

ADV KENNEDY SC: Thank you. Mr Drevin you currently
10 employed at DLS is that correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: And what is your job title?

MR DREVIN: My job title is Program Manager Hoefyster Phase 2.

ADV KENNEDY SC: Hoefyster Phase 2?

MR DREVIN: Phase 2.

ADV KENNEDY SC: Right. You are an engineer by background?

MR DREVIN: Yes I am.

20 **ADV KENNEDY SC:** Right. A senior engineer. You joined as a senior engineer in 2008, is that correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: Were you involved in relation to the Hoefyster Project Phase 1?

MR DREVIN: I was involved in the Project Phase 1 as a

Systems Engineer.

ADV KENNEDY SC: Right. Now you then refer to in paragraph 13 to your being involved in – in relation to the contract variation order. What did that involve?

MR DREVIN: The contract for Hoefyster actually right from the start included Phase 1 and Phase 2 the development and the industrialisation and production. But with – before Phase 2 started off there were further negotiations that changed the contract.

10 **ADV KENNEDY SC:** Right and then you...

CHAIRPERSON: Mr Drevin. I am going to ask you to raise your voice please. Thank you.

ADV KENNEDY SC: Thank you Mr Drevin. You then refer to your being moved in October 2011 to a newly created department in Infantry Systems. Did this – did this mean that you were carrying on dealing with issues relating to Hoefyster or were you removed from that?

MR DREVIN: That means that I was – I was still involved in Hoefyster.

20 **ADV KENNEDY SC:** Still involved. And then there was a further change in your job functions in 1.5 where you were now tasked to concentrate only on Hoefyster.

MR DREVIN: That is correct.

ADV KENNEDY SC: During the design and manufacture etcetera. And then you refer to DLS being awarded the

Hoefyster Phase 2 order and you then became responsible for the execution of the order and that was around October 2013.

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. And then you set out your previous work background. Then you refer also once you became Program Manager for Hoefyster Phase 2 your responsibilities in 1.7. Is that correct?

MR DREVIN: That is correct.

10 **ADV KENNEDY SC:** Alright thank you. Now let us get to the – the meat of your affidavit. If you can turn please to paragraph 2 that starts on page 240.

MR DREVIN: I have got it.

ADV KENNEDY SC: Right. Now here you are dealing with the platform hull request for quotation abbreviated as RFQ, is that right?

MR DREVIN: That is right.

ADV KENNEDY SC: And so there was a request for quotations issued in 2012 and if you then look ahead to
20 paragraph 3 there was a request for quotations issued in 2014. Were there two different separate RFO's the one in 2012 and the other in 2014 for the same thing?

MR DREVIN: The one in 2014 was a request for update.

ADV KENNEDY SC: Was for what?

MR DREVIN: A request for update.

ADV KENNEDY SC: For updates. I see so it related to the same ...

MR DREVIN: The same.

ADV KENNEDY SC: The same subject matter. Right. Now you refer to the RFQ in 2014 I am in paragraph 3.2 being synced out as an updated request by Mr Henk Van Den Heever. He will be the witness that follows you. And then you refer to the specification. You were not involved in it?

MR DREVIN: No the specification is actually comes from
10 Patria the platform supplier.

ADV KENNEDY SC: Yes. Who in fact had to draw up the RFQ?

MR DREVIN: That was Supply Chain.

ADV KENNEDY SC: Supply Chain. Right. And you are on the technical side rather than the Supply Chain side, am I right?

MR DREVIN: Correct. That is correct.

ADV KENNEDY SC: Okay. Alright and then you refer to input also from a quality assurance department.

20 **MR DREVIN:** Yes.

ADV KENNEDY SC: And ...

MR DREVIN: The RFQ has got this different annexures.

ADV KENNEDY SC: Yes.

MR DREVIN: And different annexures were the responsibility of different departments.

ADV KENNEDY SC: Right. Can I just please ask you again to try and speak a bit more clearly and a bit more loud so we can all hear and the recording can pick it up. Thank you. Now you then refer in paragraph 3.6 to the updated request for proposals. May I take you in the same bundle to one of the annexures – page 252?

MR DREVIN: I have got the page.

ADV KENNEDY SC: Right. Now 252 is one of the letters that you refer to with the name and signature of Mr Van
10 Den Heever the Procurement Officer for DLS, correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: And 252 is a letter sent to LMT. 253 is also a letter to LMT a longer letter. And – and that is accompanied by certain emails. Then I can take you please to 259 that is a letter from Mr Van Den Heever to VR Laser.

MR DREVIN: I found it.

ADV KENNEDY SC: Another one at 260, is that correct?

MR DREVIN: That is correct.

20 **ADV KENNEDY SC:** And then a further letter – a series of letters to DCD from page 264.

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. Now so these were three entities LMT, VR Laser and DCD.

MR DREVIN: Yes.

ADV KENNEDY SC: What was the purpose of this letter as you understood it?

MR DREVIN: This was the request to update their offers of 2012.

ADV KENNEDY SC: Their offers. So had they – had each of these three entities submitted proposals previously which were now being asked to be updated?

MR DREVIN: Yes before the – or during the negotiations for Phase 2 we priced some of the more expensive
10 components we went out for RFQ to ensure that our price basis was still in line.

ADV KENNEDY SC: But if they – my question is simply this. If they are being asked to update proposals presumably they submitted original proposals prior to being asked to be updated.

MR DREVIN: Yes.

ADV KENNEDY SC: And when did they do that? Was that in response to the 2012 request or the 2014 request? The original proposal.

20 **MR DREVIN:** 2012 request.

ADV KENNEDY SC: 2012. Now in that process in 2012 had it been submitted – had it been advertised generally to the marketplace resulting in only three people responding or had they been specifically invited in 2012 to submit proposals just those three?

MR DREVIN: They were specifically invited.

ADV KENNEDY SC: Invited. Why was it not put out as it were on open tender in 2012? Are you able to answer that?

MR DREVIN: No.

ADV KENNEDY SC: Okay. Alright. Now if I can take you back please to your affidavit. Paragraph 3.6 and we here now at page 241. You refer to a request for the updates to contain a breakdown of prices, what were they being asked
10 for now was the price for the armour hull – the armour hull excluding mine protection. Then a price for mine protection only. And then prices to exclude all jigs and fixtures as Patria was responsible for the supply of these. And then further – yes. Now why were you as Denel Land Services wanting to have a split of the prices – a breakdown in the prices?

MR DREVIN: There was a thought that the work could be dished out to different suppliers and that we could give the contract for the mine protection to one company and a
20 contract for the armour hull to a different company.

ADV KENNEDY SC: Alright then. Thank you. Now you then refer to responses having been received from these three entities, correct?

MR DREVIN: Ja it is correct.

ADV KENNEDY SC: May I just have a moment Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: If I may take you now please Mr Drevin to...

CHAIRPERSON: Mr Drevin are you drinking tea? It is not right that you should be drinking tea while you are giving evidence there. I am going to adjourn for five minutes to allow you to finish your tea so that when we continue we – you will be done. You can drink water but not tea or eat.

MR DREVIN: Okay.

10 **CHAIRPERSON:** I will adjourn for five minutes.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: We adjourn.

CHAIRPERSON: All rise.

HEARING RESUMES

CHAIRPERSON: The legal team and other people must just make sure witnesses do not bring tea or food to drink or eat while they are giving evidence. There is time for tea when we will all take a break and have tea. Water they can have while they give evidence. Okay let us continue.

20 **ADV KENNEDY SC:** Thank you Chair I must apologise I had not noticed I have got bad eyesight and I am at an angle.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Where I had not noticed so I apologise otherwise I would have dealt with it but we will

bear that in mind for future witnesses.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Thank you – thank you Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Now the – if I can take you please to page 268. Is this the revised proposal or response that you refer to in your affidavit as having been received from LMT?

MR DREVIN: That is correct.

10 **ADV KENNEDY SC:** And if I can ask you to turn now to page 274 is this the response that was received from VR Laser?

MR DREVIN: That is correct.

ADV KENNEDY SC: And from page 282 is this the response you referred to in your affidavit as having been received from DCD?

MR DREVIN: That is correct.

ADV KENNEDY SC: Now you refer in your affidavit to a bid evaluation committee in 2014 a cross-functional team.

20 Were you involved in that?

MR DREVIN: I was involved in that yes.

ADV KENNEDY SC: In what way?

MR DREVIN: I was a member of the bid committee.

ADV KENNEDY SC: Right. And your affidavit sets out the various other members. We do not need to go through

those. They include though your name as well as Ms Malahlela the Supply Chain Department Head from DLS together with her colleagues.

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. And then there are various other people with technical and business roles. Now you have referred in your affidavit to the three suppliers attending feedback sessions at DLS's premises in its Eagle board room and these were seen individually for the
10 feedback session VR Laser, DCD and LMT. They were seen at different times that you have set out in your affidavit. Did you take part in those feedback sessions?

MR DREVIN: I signed one of the registers so yes I did.

ADV KENNEDY SC: I am sorry just speak clearly.

MR DREVIN: I signed one of the registers so I would have been there.

ADV KENNEDY SC: You would have been there? Okay yes you have referred to the attendance register and then if I can take you please to page 389. It is Annexure MD10.
20 It is headed Meeting with VR Laser. And then there are a number of questions that are put and responses that are filled in in the last column. What is this document please?

MR DREVIN: There was a questionnaire that was drawn up for each of the suppliers and this was a record of their responses in this clarification meeting.

ADV KENNEDY SC: Right. And so was this the questionnaire with the responses that were given during the feedback session with the relevant respective supplier in this case it was VR Laser?

MR DREVIN: That is correct.

ADV KENNEDY SC: And was the same process followed in relation to the other two?

MR DREVIN: That is correct.

ADV KENNEDY SC: DCD and LMT and you refer to that in
10 your affidavit and you have attached the – the list of questions and the answers in your further annexures, is that right?

MR DREVIN: That is correct.

ADV KENNEDY SC: May I just ask before we proceed to the next item in your affidavit did it strike you as significant that each of them was dealt with separately in private question and answer feedback sessions rather than them all being in the same room at the same time?

MR DREVIN: No it did not strike me as unusual. The
20 questions were different for the different suppliers.

ADV KENNEDY SC: Now – and the process to be followed from a Supply Chain Management process that was not your responsibility – am I right?

MR DREVIN: That was not my responsibility no.

ADV KENNEDY SC: Okay. Alright thank you. And then

you refer in your affidavit to something that happened after these feedback meetings. They were given an opportunity to submit revised proposals based on the issues during the meetings. Now they had already submitted proposals in 2012 which they were then asked to update in 2014. Is this now a further opportunity for them to update their proposals again?

MR DREVIN: That was a further opportunity.

ADV KENNEDY SC: Yes. Who decided on that? Was that
10 the cross-functional team of which you were a member?

MR DREVIN: No it was Supply Chain.

ADV KENNEDY SC: Was that Supply Chain itself?

MR DREVIN: Yes.

ADV KENNEDY SC: Was it unusual in your experience for Supply Chain to be asking parties who have submitted proposals and then revised proposals to be given a further opportunity to revise their proposals further?

MR DREVIN: No it was not but this was the first time I was involved in such a process.

20 **ADV KENNEDY SC:** Okay. Now were further revised proposals then received from these three interested parties?

MR DREVIN: Yes.

ADV KENNEDY SC: Can I take you please to page 422. Sorry may I just have a moment I am sure that is a correct

...[mumbling]. Apologies Chair.

CHAIRPERSON: This is going to be quite difficult to read?

422 you said?

ADV KENNEDY SC: I am sorry Chair?

CHAIRPERSON: Did you say 422?

ADV KENNEDY SC: Ja I said if you can just hold on I think that that is – that is in fact a wrong reference.

CHAIRPERSON: Oh.

ADV KENNEDY SC: I apologise.

10 **CHAIRPERSON**: Oh okay.

ADV KENNEDY SC: Yes may I take you rather to page 393? You have that?

MR DREVIN: I have got that – I found it.

ADV KENNEDY SC: Now you refer to that in your affidavit as being the further revised proposal received by LMT in response to that invitation. Is that correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: And then at 401 is that the further revised proposal from VR Laser?

20 **MR DREVIN**: That is correct.

ADV KENNEDY SC: And then 40 – 410 is that the further revised proposal from DCD?

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. Now you have referred in your affidavit for the Chair's assistance it is paragraph 4.16 of

the affidavit to the bid evaluation committee reconvening to do final scoring. Was that part – or were you part of that process?

MR DREVIN: I was part of that process yes.

ADV KENNEDY SC: And what specifically were you required to assist in for scoring?

MR DREVIN: We did the scoring for the technical component of the bid evaluation.

ADV KENNEDY SC: Right. Can I take you back in your
10 affidavit to page 245? You refer in paragraph 4.20 to a consolidated evaluation sheet which we are going to look at in a moment. There was a weight allocated to each category of items. Price was 25%, Functionality 45% and BBBEE 30%. Now you were looking at the technical side.

MR DREVIN: The functionality.

ADV KENNEDY SC: I am sorry.

MR DREVIN: The functionality.

ADV KENNEDY SC: The functionality yes. So it was the functionality with a 45% weighting for the scoring?

20 **MR DREVIN:** That is correct.

ADV KENNEDY SC: We – you were not involved in looking at price and what score to give to each – each of the bidders in their revised proposals, is that correct?

MR DREVIN: That is correct we did not look at the price or the BBBEE score that was populated by Supply Chain.

ADV KENNEDY SC: Okay thank you. And then if we can just for completeness look at the document you referred to. Can I take you to page 422? Is that the evaluation...

CHAIRPERSON: That is the one that I think...

ADV KENNEDY SC: Yes that is...

CHAIRPERSON: I cannot read.

ADV KENNEDY SC: That is where I was confused earlier.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Thank you Chair. 422 this time is the
10 correct reference Mr Drevin as I understand it but I would like you to confirm. Is that the consolidated evaluation sheet that is referred to as being the one that was populated through the scoring that was given by the team of which you formed part?

MR DREVIN: That is correct.

ADV KENNEDY SC: Okay and you – you were presumably responsible for advising on what score would be appropriate for the functionality element when you compared the one – the one bidder with the others?

20 **MR DREVIN:** That is correct.

ADV KENNEDY SC: Right.

CHAIRPERSON: Are you able to read what is written there Mr Drevin? Oh is there a better copy somewhere or can it be made or can this be enlarged?

ADV KENNEDY SC: It can be enlarged Chair. We will...

CHAIRPERSON: It can be enlarged.

ADV KENNEDY SC: Make sure that that is done.

CHAIRPERSON: Okay alright. Would you struggle to read it Mr Drevin?

MR DREVIN: That is...

CHAIRPERSON: As it is?

MR DREVIN: This is correct yes.

CHAIRPERSON: Yes. Okay no that is fine.

MR DREVIN: I can recognise it.

10 **CHAIRPERSON:** Yes. If it can be enlarged then this can be replaced with the one that is enlarged.

ADV KENNEDY SC: Thank you we will...

CHAIRPERSON: Ja.

ADV KENNEDY SC: We will attend to that. Thank you Chair.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: I am afraid some of the annexures in some of these affidavits do suffer from the same problem.

CHAIRPERSON: Yes. Yes well..

20 **ADV KENNEDY SC:** But I do not believe that I need to take the witness through it subject to your guidance as to the different components of the contents of this particular page.

CHAIRPERSON: No, no that is fine as long as we will have an enlarged one.

ADV KENNEDY SC: We will certainly attend to this.

CHAIRPERSON: In due course. I had said last year or even the year before to the legal team that they need make sure that they identify beforehand copies that are not legible and take steps to get legible ones or ...

ADV KENNEDY SC: Indeed.

CHAIRPERSON: Get them – get them enlarged but I think it does not always happen.

ADV KENNEDY SC: I am afraid not.

10 **CHAIRPERSON:** But at least if they can attend to that even after then that will be better.

ADV KENNEDY SC: As you please Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Thank you. Now may I take you back to page 246?

MR DREVIN: I am there.

ADV KENNEDY SC: You refer to the scoring that was then done and in 425 you refer to the scoring that shows that LMT came second in line by receiving an overall score of
20 64.78% which was 0.76% less than VR Laser but in relation to the price I am here now reading from your paragraph 4.25.2:

“LMT’s financial offer was R165.6 odd million making it the cheapest out of the three suppliers.”

MR DREVIN: That is correct.

ADV KENNEDY SC: If we compare that with VR Laser you deal with that in 4.23 and we see there in 4.23.1 that their price was in fact R262.4 odd million which is almost R100 million more than the LMT offer.

MR DREVIN: That is correct.

ADV KENNEDY SC: Despite that VR Laser was able because of the weighting presumably of the factors to beat LMT in terms of scoring by 0.76%. Now you then deal in 4.26 - 4.26 with BBEE credentials and scoring. Was that
10 part of your duties and responsibilities?

MR DREVIN: No it was not.

ADV KENNEDY SC: Okay. And we have heard evidence from previous witnesses dealing with this. Now you refer in the next paragraph to a supplier audit having been done for the platform hull previously by Patria. Were you aware of that at the time and what did this involve?

MR DREVIN: The supplier audit was part of the tasks that Patria were contracted to and I know about – I knew about the report.

20 **ADV KENNEDY SC:** And was this an issue that related to your interest in functionality?

MR DREVIN: No I did not take that into account.

ADV KENNEDY SC: Okay. Now there was then a recommendation made 4.28 – made after the consolidated – consolidated evaluation template was done that we have

looked at. There was a submission to EXCO of DLS recommending that VR Laser should be awarded this Hoefyster contract for the platform hulls because it was the highest scoring bidder. Were you part of that – of that process making that recommendation? Was that part of the cross-functional team that you were a member of?

MR DREVIN: No our work stopped at finishing the evaluation.

ADV KENNEDY SC: The evaluation – right.

10 **CHAIRPERSON:** Mr Drevin can I ask the question what is your recollection of how big the gap was in terms of functionality between LMT and VR Laser in terms of scores?

MR DREVIN: I am sorry Chair can you just repeat?

CHAIRPERSON: What is your recollection of the gap between the points you gave to LMT and the points you gave to VR Laser in terms of functionality? How big was that gap in terms of scoring them?

MR DREVIN: It was quite a significant gap.

20 **CHAIRPERSON:** It was quite a significant gap okay alright. Thank you.

ADV KENNEDY SC: In favour of VR Laser?

MR DREVIN: In favour of VR Laser.

ADV KENNEDY SC: And can you just give very briefly a summary of why you scored them higher – VR Laser?

MR DREVIN: We had different questions to answer in the evaluation sheet each which had its own score and going through that process of answering each of these points that was the end result.

CHAIRPERSON: And in terms of scoring functionality a bidder's experience would not count would it? In other words if LMT had done this quite – this type of job for some time and had experience but VR Laser did not have any such experience but maybe in terms of its responses in
10 regard to functionality questions on functionality you might be satisfied that it should get higher scoring compared to LMT who might have some experience but maybe have not responded to questions on functionality in a certain way?

MR DREVIN: Yes.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Thank you.

ADV KENNEDY SC: Mr Drevin your affidavit then goes on to – in paragraph 431 to refer to your becoming aware of press articles referring to links with the Gupta's and that
20 you raised..

CHAIRPERSON: I am sorry – I am sorry Mr Kennedy. Mr Drevin you might not be able to answer this but you will tell me. One would have thought that experience should count for something in this type of competition. You do not know whether it counted for anything not necessarily on

functionality but on everything that was supposed to be taken into account.

MR DREVIN: No as far as I remember when we did the scoring it was not known that VR Laser had a link.

CHAIRPERSON: Yes but what I am asking is would you not agree that experience in doing a particular job should count for something when bidders compete to do a job you know. Somebody who has never done the job that should be something to take into account compared to somebody
10 who may have a track record of doing the job in a certain way whether good or bad.

MR DREVIN: It would depend on if those resources were still available that had built that had experience.

CHAIRPERSON: Sorry.

MR DREVIN: It would depend on if the resources were still available the knowledge was still – most of the knowledge is imbedded in the people.

CHAIRPERSON: No, no I am just speaking now in general. I am just saying I see that in terms of scoring here there is
20 no reference to experience you know. There is just the price, functionality and you said that functionality here did not include history or experience you know. So I am just wondering why there would not be a factor or some points that should go to experience. But as I say it might be something you are not able to answer. I am just thinking if

somebody says I have experience of driving a bus for the past fifteen years without any accidents and somebody says I just got my licence to drive a bus yesterday that it should count for something when you say who do you give this job to and it looks like here that there was no room for that.

MR DREVIN: There was no question for that in the evaluation.

CHAIRPERSON: Yes. I just find it strange. Okay alright.

10 Thank you.

ADV KENNEDY SC: Thank you Chair. If I might just pursue this for a moment?

CHAIRPERSON: Yes.

ADV KENNEDY SC: Mr Drevin did you not find it strange that if – that there was no question or scoring attached to the experience of a particular perspective contractor relating to its experience? Because as the Chair points out is that not a relevant issue that you should consider when evaluating bids to see not only is for example do they
20 have a factory and do they have technicians and so forth. But do they actually have experience not just skills on paper or resources on paper but actually a track record? Did you not find it strange that that was not being looked at?

MR DREVIN: There were certain aspects of that covered

in the questions.

ADV KENNEDY SC: That covered in the questions.

MR DREVIN: Ja certain aspects.

ADV KENNEDY SC: Was that...

MR DREVIN: That we could – that would cover that indirectly.

ADV KENNEDY SC: But – indirectly? But would it – would it be taken into account when you actually determining the scoring? Because it is the scoring that ultimately is what
10 gave VR Laser by a marginal difference a superior score to that of the others?

MR DREVIN: The – I think the relevant question in that regard was one about the capability – the current capability and the current...

CHAIRPERSON: Ja but capability is not the same as what Mr Kennedy is asking. If you produce a driver's licence that says you are permitted to drive a bus and you got it yesterday and I produce a driver's licence that says I am permitted to drive a bus but I got it a long time ago. I have
20 been driving for a long time. We are not on the same basis I have – if I – if my experience as being – I have doing that job well that should count for something when I am compared to you who has no track record. Even though we both have the ability to drive a bus and we are permitted to. You understand?

MR DREVIN: Ja I understand.

CHAIRPERSON: But now when you look at the scoring here it says you score for price, you score for functionality, you score for BBEE and so I asked you earlier on whether when you score functionality the question of experience or track record comes in you said no. And I could understand that. But then obviously it cannot come under price and it cannot come under BBEE. So it means it seems to me that no provision was made for giving points to experience
10 or a good track record of doing this job. That is how it seems to me. Does that accord with your understanding of what it was at the time?

MR DREVIN: The questions on the – on the bid evaluation did not specifically cover experience but indirectly it covered the capabilities.

CHAIRPERSON: Yes.

MR DREVIN: Current capabilities.

CHAIRPERSON: Yes then Mr Kennedy's question arises is he was asking whether you did not find that strange that
20 there was no provision to give points in relation to experience or check records?

MR DREVIN: No it felt like all the aspects were covered by the questions in the bid evaluation.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you. I think I have taken it as

far as I can on this – on this aspect.

CHAIRPERSON: Yes.

ADV KENNEDY SC: If I may proceed then Chair?

CHAIRPERSON: Hm.

ADV KENNEDY SC: Mr Drevin may I then take you please to page 476?

MR DREVIN: I found it.

ADV KENNEDY SC: Right now at the top of that page we see an email from you addressed to Ms Avishkar Govender
10 who was she?

MR DREVIN: He was the ...

ADV KENNEDY SC: Is it he I am sorry.

MR DREVIN: It is a he. He was responsible for the overall program management on Hoefyster both phase 1 and phase 2.

ADV KENNEDY SC: Right we are going to look at in a moment at what you said in the email that you refer in that email to something that appears below. There is an email below from Mr Govender and then below that he appears to
20 be forwarding what appears at the foot of the page which is an email that originated from Heyns Van Der Merwe addressed to Mr Steyn, Mr Cartwright, Mr Kok, Mr Lubbe, Mr Klapper, Mr Govender and Mr Van Den Heever. Did you come into possession of this email? Were you aware of this one at the bottom that refers to a media article?

MR DREVIN: I received it – my superior Mr Govender cc's it to me. If you look at the middle of the page.

ADV KENNEDY SC: Yes.

MR DREVIN: I am part of the PCPO group.

ADV KENNEDY SC: That is if you look at the email from Mr Govender on the 7 July. It is addressed to Infantry Systems Management PCPO and Celia Malahlela. So you are part of PCPO?

MR DREVIN: That is correct.

10 **ADV KENNEDY SC:** Right. Now we can read for ourselves the media article and the heading is – appears in bold at the foot of page 476. It says: Gupta's and Duduzane Zuma are hidden stakeholders in a strategic locomotive sub-contracting company bought well the main tender process was on-going. And then it refers in the text under the photograph of the chairperson of Transnet's board Tender Committee Mr Iqbal Sharma. But then in the text of the article refers to the VR Laser Services company and connections with the Mr Rajesh Gupta and Mr Duduzane
20 Zuma. Now is this the article - was that the reason that jolted into sending your sending your email at the top of page 476?

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. And may I just read of the brief text that you set out in our email. You say:

“I have this fear that if we go with VR...”

Now that is VR Laser, is that correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: Yes.

“...that at the end, we will still be forced by Denel to change the LMT possible after the TOT has happened.”

What does TOT mean?

MR DREVIN: Transfer of Technology.

10 **ADV KENNEDY SC**: Transfer of...?

MR DREVIN: Technology.

ADV KENNEDY SC: Technology. Thank you.

“...has happened which will make it even worse.”

Now when you say: If we go with VR Laser. Are you referring to what we have just been discussing about the scoring of the proposals received in relation to the Platform Hull Contract for Hoefyster?

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. Then your emails says that:

20 “The below input...”

Is that the emails and the press article that we see below?

MR DREVIN: That is correct.

ADV KENNEDY SC: Yes.

“...that the below input and the low price LMT

quoted...”

We have dealt with that earlier. Was that the 162...
R 160 odd million compared with VR Laser almost a hundred
million higher? Is that what you were referring to?

MR DREVIN: That is correct.

ADV KENNEDY SC: Yes, let us continue.

“...brings me to a point where I get the feeling that
we go with LMT.”

Were you suggesting that rather the decision should be
10 taken by the senior management and instead awarding it to
VR Laser it should go to LMT?

MR DREVIN: That is correct.

ADV KENNEDY SC: Okay. You were not in your job vested
with the power to make that decision but this was a
recommendation, was it to your colleague, Mr Govender, that
it should be reconsidered the award to VR Laser?

MR DREVIN: No, it was not within my power.

ADV KENNEDY SC: It was what?

MR DREVIN: It was not within my power to ...[intervenes]

20 **ADV KENNEDY SC:** It was not within your power. But you
could still express your views, correct?

MR DREVIN: Yes.

ADV KENNEDY SC: And that is what you were doing here?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: Is that right?

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. And then you say apart from...

“...that we go with LMT, avoid fallout from Denel.

Avoid possible fallout from this potential debacle...”

What debacle were you referring to there?

MR DREVIN: The one that is the Transnet transaction.

ADV KENNEDY SC: Right.

“...and spend the difference in price to get LMT up

to standard with sufficient space facilities and

10 resources to handle the Platform Hulle
manufacturing.”

This last part, what were you referring to there? Just
expand on that, please?

MR DREVIN: LMT at that stage did not have sufficient
space. They had moved to a smaller facility. So they would
have needed to get more space to be able to manufacture
the Platform Hull and then outfitted so that it then becomes a
facility.

ADV KENNEDY SC: Right. And you were suggesting that
20 the difference in price be used to help LMT get up to
standard. Was that the difference in price between VR Laser
at R 260 odd million compared with LMT, about a hundred
million less than that?

MR DREVIN: That is correct.

ADV KENNEDY SC: Okay. And then you just conclude:

“Just a thought.”

Now was there any response to that from Mr Govender or anybody else in management?

MR DREVIN: We discussed it in the corridor and asked the question that should the whole process go ahead because at that time, the contract was not yet awarded. It took a long time for the contract to be awarded.

ADV KENNEDY SC: Yes.

MR DREVIN: And what came out of those discussion was
10 that we cannot just take them out of the equation without then being blacklisted.

ADV KENNEDY SC: Sorry? Without them being...?

MR DREVIN: Blacklisted.

ADV KENNEDY SC: Blacklisted. I see. Alright thank you. Now I would like to proceed to the next topic that you deal with in your affidavit and that deals with a different contract. We have already dealt with the Platform Hull contract for the vehicles.

Now we are going to move to the single source supplier
20 appointment to provide for turret FCM's and related armour steel components. Now you have referred in your affidavit to an instruction you received from Mr Teubes.

It is Reenen Teubes who prepared a motivation. Mr Teubes – how did he fit into the organisation compared with you?

MR DREVIN: Mr Teubes was the – if I remember correctly – the COO at the time and he was Avishkar Govender's superior.

ADV KENNEDY SC: Right. And mister... So and he was the COO, Chief Operating Officer, correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: Of which entity? Would that be still Denel Land Systems, DLS?

MR DREVIN: That would be.

10 **ADV KENNEDY SC:** Not the corporate head office but DLS as the division?

MR DREVIN: DLS.

ADV KENNEDY SC: Okay. And what was his instruction to you?

MR DREVIN: That I should prepare a justification for the single source supplier of this limited basket of critical components where the interfaces are very critical and problematic.

20 **ADV KENNEDY SC:** Were these components something in addition to what was dealt with in the Platform Hull contract, it was separate from that?

MR DREVIN: It was separate from that.

ADV KENNEDY SC: Okay thank you. Now can I take you please to page 484?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: 484 and following. Could you please tell us what these documents are?

MR DREVIN: Page 484, that is my email to Celia with the draft of the motivation.

ADV KENNEDY SC: Yes. The text of your email run about the middle of the page 484 reads:

“Hi Celia. Find attached the motivation for single source supplier of Hoefyster Turret Farmer Steel Fabrications and Components.”

10 And you referred to a signed copy being sent and delivered. And so was this what you prepared in response to the instruction that you got from Mr Teubes?

MR DREVIN: That is correct.

ADV KENNEDY SC: Were you aware of how it came about that he gave you that instruction and why it was now being considered appropriate that a single source supplier should be appointed?

MR DREVIN: No, I was unaware of the processes behind the screens.

20 **ADV KENNEDY SC:** Right. Now I need to take you back please to your affidavit where you summarised your reasons for the motivation. If I can take you to page 248?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: Paragraph 5.2. Do you have that?

MR DREVIN: Yes.

ADV KENNEDY SC: You say:

“I have prepared the motivation, emailed it to Ms Celia Malahlela. Those can be noted from the attachment, the justification for the single source supplier included the following.”

And then you refer to a number of technical aspects and features of the components and why there was a recommendation. Do you confirm these were your reasons?

MR DREVIN: These were my reasons.

10 **ADV KENNEDY SC:** Alright. And then you say, 5.2.2. As one of the reasons, you referred to certain processes being specialised and you recommended that the supplier to be chosen should have all of these processes in-house. Is that correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: And then your further recommendation in 5.2.3 was that:

20 “The chosen supplier has an in-house machining facility or a close relationship with a supplier of such services as DOS has in the past experienced lengthy delays and result in schedule overruns because of the lack thereof.”

Were you referring to a particular supplier or suppliers in recording your concern about bad experiences in the past?

MR DREVIN: These were the first of the engineering

development models where there was a delay from finishing the welded structure in having that machine.

ADV KENNEDY SC: Right. Was LMT involved in that?

MR DREVIN: LMT was involved in that.

ADV KENNEDY SC: Right. And then you say 5.2.4.

“It was highly recommended that a supplier be chosen with a proven track record of manufacturing armour steel structures e.g. hulls, delivering on time to the required quality standards.”

10 Now were the reasons that you were putting forward here, especially the last two, were you in any way suggesting that LMT should be eliminated and that VR Laser should be favoured?

MR DREVIN: No, I specifically wrote the motivations so that the supplier that as open ended.

ADV KENNEDY SC: Had you been asked by Mr Teubes or anybody else to write the motivation in a way that favoured one supplier rather than another?

MR DREVIN: No, these were my reasons.

20 **ADV KENNEDY SC:** Now you then deal in 5.3 with particular aspects being focussed on only addressing the interfacing components and you give the explanation but I think we can move rather to 5.4 where you say that:

“The motivation was limited to the real technical risks of which you had real concerns about

beforehand.”

Just explain to the Chair what your real concerns were? Was it the concerns about the capacity and experience and track record and so forth that you already dealt with or is there... was it a different point?

MR DREVIN: The main concern was that these components fit together in a proper way. Being all welded structures, the pollens is a big problem ...[intervenes]

ADV KENNEDY SC: Right.

10 **MR DREVIN**: ...to maintain between these assemblies. And in the past with other types of assemblies where this was a factor. If something does not fit then it is always a question of who is responsible.

ADV KENNEDY SC: Right.

MR DREVIN: Which takes quite a time to sort out. So if you have it at one place then that one supplier is responsible no matter what.

ADV KENNEDY SC: Right. Now you continue then to say this:

20 “The motivation did not recommend the appointment of a specific supplier to attend to the work, more specifically, the appointment of VR Laser and with written such that to the best of my knowledge did not exclude the use of another supplier.”

Why do you mention here that you were avoiding VR

supply and rather trying to keep it open for any potential supplier? Had VR Supplier's name come up in relation to the single source project?

MR DREVIN: No.

ADV KENNEDY SC: No. So why is it that you mention it here?

MR DREVIN: This was just my motivation behind writing the motivation. It was not. I specifically wrote it not to specify the supplier.

10 **ADV KENNEDY SC**: Yes.

MR DREVIN: Because I did not feel comfortable in specifying a supplier.

ADV KENNEDY SC: Right. And in fact, you continue:

"I felt uncomfortable in recommending a specific supplier. I did not have direct first-hand experience with such as quality of supply to date of applicable suppliers, et cetera. This was echoed by the then Supply Chain Executive, Ms Malahlela who is of the opinion that the requirement goes out on tender."

20 And did you think that was a good idea going out on tender?

MR DREVIN: Yes.

ADV KENNEDY SC: Yes. And then you explain 5.5 how it came about that you have identified specific technicalities. But we then come in 5.6 to your later learning that the

motivation that you had prepared – that is the document that we had just been looking at, correct?

MR DREVIN: That is correct.

ADV KENNEDY SC: That that became used as a basis to conclude a memorandum of agreement between DLS and VR Laser Services where it was appointed in May 2015 as a single source supply for the provision of all fabricated steel services and goods such as fabrication of hulls, turrets, FCM's and fabricated armour steel structures.

10 Now there are a couple of issues I need to question you on that. You refer to VR Laser Services being appointed on the strength of your motivation. Correct? That was used that your... Your motivation that you used by others to justify the appointment of VR Laser.

MR DREVIN: Yes, it was part of the motivation.

ADV KENNEDY SC: You just told the Chair thought that in your motivation you specifically did not recommend anybody whether VR Laser Services or anybody else.

MR DREVIN: That is correct.

20 **ADV KENNEDY SC:** And you raised some concerns with Ms Malahlela that we have already dealt with. And she then as the head of Supply Chain Management within DLS felt that it should go out to tender.

MR DREVIN: That is correct.

ADV KENNEDY SC: Do you know whether it went out to

tender?

MR DREVIN: I do not know but I doubt it.

ADV KENNEDY SC: You doubt it?

MR DREVIN: Yes.

ADV KENNEDY SC: She has given evidence in relation to that. The Chair has already heard. Were you... How did you feel? Did you feel surprised? Was this something you accepted that VR Laser was appointed, apparently, on the strength of your motivation?

10 **MR DREVIN:** I was especially surprised that the... to the extent of the MOU.

ADV KENNEDY SC: MOA or MOU?

MR DREVIN: MOU and/or MOA.

ADV KENNEDY SC: MO...

MR DREVIN: Because I was just focused on just specific components.

ADV KENNEDY SC: Right. Now if the contract had in fact been put out to open tender as Ms Malahlela had suggested would be done, would you have been involved in evaluation
20 of the tender once they came in, at least, from the technical side?

MR DREVIN: I do not know.

ADV KENNEDY SC: You do not know?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: It could have involved others.

MR DREVIN: [No audible reply]

ADV KENNEDY SC: Now the other point that I would like to look at here is, that you refer in this paragraph 5.6 to what VR Laser Services was appointed to do as a single source supplier. It would provide all fabricated steel services and goods such as the fabrication of hulls, turrets, FCM's. Just remind us what FCM mean?

MR DREVIN: The FCM is the Fighting Compartment Module but it is a term that also refers to sometimes what we call the
10 turret hull and I think you would have run across another term, Trunnion(?) machining. That is basically the same component.

ADV KENNEDY SC: Trunnion machine?

MR DREVIN: Yes.

ADV KENNEDY SC: Yes. Thank you. And then the other example that you give is fabricated armour steel structures. Now was this the same scope of different components that was the subject of your motivation, the written motivation that we looked at earlier?

20 **MR DREVIN:** In terms of armour steel components, yes.

ADV KENNEDY SC: Did i... Was it exactly the same as the range of components or products that you dealt with in your motivation? Was it less than or more than?

MR DREVIN: It was more than.

ADV KENNEDY SC: More than?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: So you saying then... Are you saying that VR Laser Services was given the contract for single source supply of components that went further than the components that you had looked at in your motivation?

MR DREVIN: That is correct.

ADV KENNEDY SC: Okay. Do you know how that came about?

MR DREVIN: Well, unfortunately, I listened to the testimony
10 of Celia ...[intervenes]

ADV KENNEDY SC: Yes.

MR DREVIN: ...on Monday. So, then I became
...[intervenes]

ADV KENNEDY SC: You became aware of her evidence?

MR DREVIN: Yes.

ADV KENNEDY SC: Yes. But you do not have your own knowledge as to what others may have done, why they used your motivation to dealt with products, A, B and C that then was used as a basis to award VR Laser, a contract for sole
20 supplier of A, B, C, D, E and F as well?

MR DREVIN: No, not before Monday.

ADV KENNEDY SC: Not before Monday. Thank you. And were you ever consulted by Mr Teubes or anybody else to say: Mr Drevin, I want you to analyse and motivate by way of an additional motivation document for the additional

products?

MR DREVIN: No.

ADV KENNEDY SC: Did they ever come back to you?

MR DREVIN: No, I was not.

ADV KENNEDY SC: Are you aware whether they asked anybody else to do that?

MR DREVIN: I am not aware of anybody else ...[intervenes]

ADV KENNEDY SC: Do you believe that... I am sorry?

MR DREVIN: I am not aware of anybody else being asked.

10 **ADV KENNEDY SC:** Being asked. Would there have been anybody else who could potentially be asked or were you the only man in the or the only person in the organisation who would have been appropriate to ask?

MR DREVIN: There is a slight possibility that the programme manager on the other programme AV8 could have contribute.

ADV KENNEDY SC: Okay. But you would have expected because you have done the motivation for the first lot of products, that you would have been approached to deal with
20 the second or the further products as well, the additional items?

MR DREVIN: Yes, I would have.

ADV KENNEDY SC: Okay. Now thank you. Still on your affidavit. Page 250, paragraph 6. Sorry, before. I should have just asked this final question on the last topic Chair. If

I may just go back to that?

CHAIRPERSON: Yes.

ADV KENNEDY SC: Are you able to tell the Commission to what extent the additional items made a difference? In other words, was it just a couple of very minor items in addition to those items that you have dealt with in your written motivation or was it a substantial, a major or a minor add-on, as it were, to the original items you dealt with?

MR DREVIN: The value of the separate components was
10 minor.

ADV KENNEDY SC: Yes. Was minor.

MR DREVIN: But the whole basket would have added up to quite a bit.

ADV KENNEDY SC: Quite a lot.

MR DREVIN: Ja,

ADV KENNEDY SC: Right. Thank you. Now we come to the value of the orders placed on the VR Laser from 2014 to date under the Hoefyster contract. Now which contract are you referring to, the Single Source Supplier contract or the
20 earlier one for the Platform Hulls?

MR DREVIN: Under the breakdown of the orders that VR Laser received before the... our contract was placed, the Platform Hull contract and then in the interim from the Platform Hull contract up to the MOU and then after the MOU.

ADV KENNEDY SC: So it says in fact the entire range, is it?

MR DREVIN: It is for the entire range.

ADV KENNEDY SC: Right. Thank you. May I ask you please to turn to page 538?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: Again, Chair. I am afraid, for those of us with eyesight problems, the printing is a bit small. I think one can make it out.

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: It is not ideal. If you like us to replace these pages with enlarged copies?

CHAIRPERSON: Ja, enlarged.

MR DREVIN: Okay I found it.

ADV KENNEDY SC: We do not need to go in the detail of this but these are pages that go on for many, many pages in the bundle. It runs from 538 to 599 and there are tables that have in pretty small print various columns, amounts, items and so forth. Can you just tell us in broad outline Mr Drevin
20 what is this document?

MR DREVIN: This is a financial report from the VL System.

ADV KENNEDY SC: And what does it tell us? What is the purpose of the report?

MR DREVIN: This was the report from which I extracted the information.

ADV KENNEDY SC: And what information were you able to extract?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: What does it tell us? Was this for purposes of responding to a request from the Commission to give a value as to the business that was given to VR Laser Services in relation to these contracts from 2014 to date?

MR DREVIN: That is correct.

ADV KENNEDY SC: Right. And are you able to tell us what
10 the total is? It appears, if I am right, to be set out at page 598.

MR DREVIN: [No audible reply]

ADV KENNEDY SC: For that particular schedule there. There are separate schedules that set out the various prices but can you just give us the totals on page 598?

MR DREVIN: [No audible reply]

ADV KENNEDY SC: Are you able to see that?

MR DREVIN: Not clearly.

ADV KENNEDY SC: No, I am afraid it is difficult for me.
20 And you have not spelt out in your affidavit what the total is. But Chair, may I give you the reference that we will provide a legible copy of that.

CHAIRPERSON: Yes.

ADV KENNEDY SC: As soon as possible.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Thank you. May I just have a moment?

CHAIRPERSON: Yes.

ADV KENNEDY SC: My learned colleague, Ms Molefe, has drawn to my attention a point in the papers that relates to the question that was posed by the Chair earlier about experience.

CHAIRPERSON: Yes.

ADV KENNEDY SC: May I take you please Mr Drevin to page 392?

10 **MR DREVIN:** [No audible reply]

CHAIRPERSON: Yes.

ADV KENNEDY SC: Mr Drevin, are you there?

MR DREVIN: Yes.

ADV KENNEDY SC: In fact, this appears to be the questionnaire relating to questions raised with LMT. Am I right?

MR DREVIN: That is correct.

ADV KENNEDY SC: Okay. And if I may direct your attention to paragraph 4? It is 9.1.

20 “Taking LMT track record into consideration, what has LMT done to improve?”

And then the response is.

“The Patria data pack is fixed and will not have any reason to cause delay as for the previous DLS contracts.”

Did you receive that response from them as recorded or summarised in that column?

MR DREVIN: That is correct.

ADV KENNEDY SC: And what does this relate to? Just explain, please? What did you understand this to be?

MR DREVIN: With previous order that was placed on LMT and I take this to be the AV8 turret hull order. There were changes from Denel's side as well as reasons from LMT side why the project overran its schedule.

10 **ADV KENNEDY SC:** Right. Were you satisfied with that answer?

MR DREVIN: Yes.

ADV KENNEDY SC: Did you believe that they gave a proper explanation that reassured you, that explains the previous... that the previous problems already expense would not recur would not happen again if they were to get the new business?

MR DREVIN: That is correct.

ADV KENNEDY SC: And of course, we have already seen
20 ...[intervenes]

CHAIRPERSON: I am sorry. Was that answer no or was it yes?

ADV KENNEDY SC: Yes said yes.

CHAIRPERSON: Oh, okay.

ADV KENNEDY SC: Is that correct Mr Drevin? You said

yes?

MR DREVIN: Yes.

ADV KENNEDY SC: Right. And I took you earlier to your email where you commented about the allegations that have been made in the media article.

You remember your email to Mr Govender and you had then suggested that LMT should in fact be awarded that contract because although they had previous issues.

And they now had moved to smaller premises, you could
10 perhaps do a deal with LMT where, at least, using the difference in price between VR Laser and LMT that that could perhaps be used.

You could perhaps increase their price to allow them to expand their operations, et cetera.

MR DREVIN: Yes.

ADV KENNEDY SC: Okay. Thank you. Chair, those are the questions from the team for this witness. Thank you.

CHAIRPERSON: Thank you. Just to complete the issue that we talked about earlier Mr Drevin. Am I right to say, on
20 the one hand there were three factors which was supposed to be scored, price, functionality, BBBEE? But the questions that were asked seemed to have gone much wider than those factors. And it seems to me that if you got a certain answer on a question that did not relate to price or functionality or BBBEE, whether you were satisfied or not satisfied with it.

In the end, it would not count for any points that you would allocate because you are only allowed to allocate points for the three, namely price, functionality and BBBEE. And in your case, your concern was functionality and nothing else. Is my understanding right?

MR DREVIN: Yes.

CHAIRPERSON: Okay thank you. Thank you very much Mr Drevin for coming to assist the Commission. We appreciate it very much. If we need you, we will ask you to
10 come back again. Okay.

MR DREVIN: [No audible reply]

CHAIRPERSON: Okay thank you.

ADV KENNEDY SC: Would this be a convenient time to take a short adjournment if that...

CHAIRPERSON: Yes, we will take the tea adjournment. It might not be as short as it usually is. It might be extended a little bit because there is something I need to attend to.

ADV KENNEDY SC: As it pleases Chair.

CHAIRPERSON: So we might be 25-minutes or so.

20 **ADV KENNEDY SC:** Thank you, Chair.

CHAIRPERSON: But if I get ready before that, you will be told.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Ja. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I have taken much longer than I thought I would but are you ready, Mr Kennedy?

ADV KENNEDY SC: Yes, we are ready, thank you, Chair.

CHAIRPERSON: Okay, let us continue.

ADV KENNEDY SC: Chair, I know that you have issues later in the day as you have indicated previously, other commitments. May we just indicate we will be as quick as we can and we are still optimistic we can finish by five.

10 **CHAIRPERSON:** Okay, well I can tell you that I think if need be we can over five, maybe half past five.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Ja. Okay, alright.

ADV KENNEDY SC: Thank you, Chair. This witness will take some time but I hope not too long.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And then the next witness should actually be fairly quick.

CHAIRPERSON: Okay. No, that is fine.

20 **ADV KENNEDY SC:** Thank you.

CHAIRPERSON: Okay.

ADV KENNEDY SC: So with your leave, Chair, may we then ask leave to call our next witness, Mr Hendrik Johannes Christoffel van den Heever?

CHAIRPERSON: Yes, thank you. Please administer the

oath/affirmation. Just place on the record that the interpreter has been sworn in.

REGISTRAR: Please state your full names for the record?

HENDRIK JOHANNES CHRISTOFFEL VAN DEN HEEVER:

Hendrik Johannes Christoffel van den Heever. (through interpreter)

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR VAN DEN HEEVER: No.

10 **REGISTRAR**: Do you consider the oath to be binding on your conscience?

MR VAN DEN HEEVER: Yes.

CHAIRPERSON: I am sorry, we will have to start afresh. Mr van den Heever, do you need the oath to be interpreted or you can understand English sufficiently?

MR VAN DEN HEEVER: I can...

CHAIRPERSON: In terms of the oath because it is very important, we cannot take a chance that later on you might say you did not understand parts of the oath.

20 **MNR VAN DEN HEEVER**: Ek verstaan, ja.

REGISTRAR: Please state your full names for the record?

MR VAN DEN HEEVER: Hendrik Johannes Christoffel van den Heever.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR VAN DEN HEEVER: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR VAN DEN HEEVER: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth the whole truth and nothing else but the truth. If so, please raise your right hand and say so help me God.

HENDRIK JOHANNES CHRISTOFFEL VAN DEN HEEVER:

10 So help me God.

CHAIRPERSON: Thank you very much. Mr Kennedy, do you want to just place on record what is going to happen about the interpreter and so on?

ADV KENNEDY SC: Yes, may we do so?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Thank you, Chair. May I then place on record that we had a consultation with Mr van den Heever a week or so ago. It was conducted in English, virtually over Zoom or Teams and we are aware that Mr van
20 den Heever does not have English as his first language, Afrikaans is his first language and we are aware that sometimes he has to be a bit careful with understanding the English but overall he has, if I may say so, Mr van den Heever, a pretty good workable command of English and you were helpful to us and we appreciate that. At one

stage, Chair, it was indicated to us that Mr van den Heever would prefer an interpreter to be present to interpret and we engaged in discussions with his legal team, particularly Mr Pillay of the attorneys firm who represents Mr van den Heever, who are actually present, Mr Pillay and Ms Wilsnagh, and we reached an agreement, as I understand it, that the interpreter will be here not to interpret every word of every question or every word of every answer but the interpreter can be used if Mr van den Heever does not
10 understand anything in particular that is put to him in English. He will also, as far as he is able to, answer the questions in English but if he struggles he will call on the interpreter and so that is what we have arranged with Mr van den Heever with his attorneys' assistance. And may I just place on record our appreciation to the attorneys who have played a professional role in this and in all other regards. Thank you, Chair. If that is acceptable to you we would like to proceed.

CHAIRPERSON: No, that is fine with me, maybe his legal
20 representatives should place themselves on record and then confirm that arrangement? Ja, you can do so from where you are, if you just switch on the mic.

MR PILLAY: Good morning, Chair.

CHAIRPERSON: Good morning.

MR PILLAY: I confirm what Adv Kennedy has conveyed to

you this morning.

CHAIRPERSON: Yes, okay, thank you.

MR PILLAY: Thank you.

CHAIRPERSON: And you represent Mr van den Heever.

MR PILLAY: Mr van den Heever, that is correct.

CHAIRPERSON: Yes, thank you.

MR PILLAY: Thank you, Chair.

CHAIRPERSON: Okay, alright.

ADV KENNEDY SC: Thank you, Chair, and we appreciate

10 ...[intervenes]

CHAIRPERSON: And, Mr van den Heever, you confirm as well that you understand the arrangement?

MR VAN DEN HEEVER: Hundred percent, Chair.

CHAIRPERSON: Okay, thank you. If you struggle, you have a problem, just say so and the interpreter is available, will assist, but if you are able to understand and you are able to answer in English it is fine.

MR VAN DEN HEEVER: Thank you, I will do so, Chair. Thank you.

20 **CHAIRPERSON:** Okay, alright. Thank you, Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. May I add something to the Chair's points to you now, Mr van den Heever? I will try to be careful and clear in everything that I put to you but if you do not understand anything either because you did not hear or your mind was racing ahead

with something else or you did not understand the English, please just immediately say can you repeat it, can you explain it and I will then try and explain it and if that is not possible then Ms Oosthuizen, the interpreter is here to assist. So please take comfort from both reassurances. Okay? Thank you.

MR VAN DEN HEEVER: Thank you.

ADV KENNEDY SC: Mr van den Heever, do you confirm you did in fact consult with the legal team that I am part of
10 with my learned colleagues behind a week or a couple of weeks ago?

MR VAN DEN HEEVER: Yes.

ADV KENNEDY SC: And is it correct that we consulted with you in respect of two affidavits that you have helpfully provided to the Commission?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And that was after you were asked questions by the investigator's team of this Commission.

MR VAN DEN HEEVER: That is correct, yes.

20 **ADV KENNEDY SC:** Right. Before you you should have a file. Yes, I see you do. And your two affidavits appear in the file but I am going to ask you to confirm that in a moment. Can you please – Chair, may I just place on record we are now referring again to Denel bundle 04.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And here we are going to deal with EXHIBIT W14 and W14, Chair, we will take the witness to this in a moment, includes two affidavits. The one appears - Mr van den Heever, will you just follow with me on this sheet, just look on the top left hand side, there are numbers, I am going to just refer to the last digit.

MR VAN DEN HEEVER: Yes.

ADV KENNEDY SC: Number 5, page 5, that is your one affidavit, is that correct?

10 **MR VAN DEN HEEVER:** That is correct, yes.

ADV KENNEDY SC: That is in divider A and then if you turn to page 83 you will find your other affidavit, is that correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Now may I take you in the first affidavit to where you signed it and if I can take you please to page 23?

MR VAN DEN HEEVER: Yes, I am there.

20 **ADV KENNEDY SC:** Is that your signature at the foot of the page?

MR VAN DEN HEEVER: That is my signature, yes.

ADV KENNEDY SC: You signed it in front of a Commissioner of Oaths, we see that on page 24. Do you confirm that?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Now before we ask you to confirm that the affidavit that we have just looked at is correct, may I just ask you, is it correct that during the consultation you alerted us to I am sorry, may I just have a moment? Is it correct that you in the consultation that we recently had you alerted us to some errors that you have picked up that you wanted to place on record?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right. Sorry, M'Lord, may I just –
10 Chair, may I just have a moment? Yes, it is at page 14, do you have that?

MR VAN DEN HEEVER: I have got it, ja.

ADV KENNEDY SC: Paragraph 24.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Just to get our thoughts on this, you say:

20 “I submit it was obvious during this time that DLS was in negotiations with LMT on providing financial assistance to LMT. I say so because in some of the email trails appeared discussions pertaining to the financial challenges they sought to eliminate through the prepayment. It was apparent that DLS was to provide the financial assistance through a prepayment that I had to structure under the trunnion machining contract.”

Now do you recall you raised a problem with this and you asked us to note a correction? Do you remember what the correction was that you asked us to do?

MR VAN DEN HEEVER: Yes.

ADV KENNEDY SC: Just tell the Chair please?

MR VAN DEN HEEVER: I would like to change that to state that the prepayment had to be structured and not I had to structure it.

CHAIRPERSON: Oh, okay.

10 **MR VAN DEN HEEVER:** So you want to delete the word “I” and you want to insert the word “be” before structure and you want to amend the word “structure” to read “structured.” So this line will read:

“Payment that had to be structured under the trunnion machining contract.”

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right, thank you.

CHAIRPERSON: And then, Mr Kennedy, just a small supplementary affidavit can we done to say – to effect the
20 corrections because ...[intervenes]

ADV KENNEDY SC: We can do that, Chair.

CHAIRPERSON: Because one cannot amend an affidavit.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: We will attend to that.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Thank you. Mr van den Heever, I do not recall that in this affidavit – I am not talking about the other affidavit. As I do not recall any other corrections that you felt needed to be made are you able to tell the Chair is there anything else in this affidavit you feel the need to raise for correction?

MR VAN DEN HEEVER: Currently not, thank you.

ADV KENNEDY SC: Do you confirm that you have gone
10 through this affidavit? You know what is in it and you confirm that it sets out the facts as you know them.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Thank you. Chair, we will then ask for this affidavit formally to be admitted. We will deal with the other affidavit in a moment but may we ask then for the formal admission of this affidavit? It is in bundle Denel 04, EXHIBIT W14 from page 5.

CHAIRPERSON: We will have to have a different exhibit number of the other one so we must consider whether we
20 should make this one EXHIBIT W14.1 or W14 and the other one W15.

ADV KENNEDY SC: Yes, W15 has already been allocated by those responsible.

CHAIRPERSON: So we should make this one 14.1, the other one 14.2.

ADV KENNEDY SC: As you please, Chair.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: The statement/affidavit by Mr Hendrik Johannes Christoffel van der Heever starting at page 5 is admitted and will be marked as EXHIBIT W14.1.

**STATEMENT/AFFIDAVIT OF MR VAN DEN HEEVER
STARTING FROM PAGE 5 HANDED IN AS EXHIBIT 14.1**

ADV KENNEDY SC: Thank you, Chair. Now, Mr van den
10 Heever, the other affidavit should be found at the marker
B. If your file has a marker B and you will find it at page
83.

MR VAN DEN HEEVER: I have got it.

ADV KENNEDY SC: Right. Am I right in understanding
this is the second affidavit, the front page bearing your
name?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And turn please to page 113.

MR VAN DEN HEEVER: I am there.

20 **ADV KENNEDY SC:** Is that your signature again at the
top of the page?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And again you signed in front of
Commissioner of Oaths?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And is it correct that you have raised both in our consultation and since a few issues that you want to correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: If I can ask you please to turn to page 101? Is it correct that you alerted me to an error that you had picked up in paragraph 55.5?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: 55, just to give the context, is you
10 gave a list here in your affidavit of the people who formed the BEC, the bid evaluation committee, correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And you alerted us, as the legal team, to an error in paragraph 55.5.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Is it Mr or Ms Khoza?

MR VAN DEN HEEVER: It is Mr Khoza.

ADV KENNEDY SC: And what was the error?

MR VAN DEN HEEVER: It states that he was from
20 infantry systems department but he is actually from finance department.

ADV KENNEDY SC: Right, thank you. And then on the following page, 102, is it correct that you alerted us to a spelling error in 55.8? It should read Mr Rakadukwe. With a k before the w. His name appears in other documents.

MR VAN DEN HEEVER: I am not sure if it is Rakadukwe or Rakaduwe. I think it is Rakaduwe, I am not...

ADV KENNEDY SC: Okay, thank you. And then if I can ask you to turn to page 111.

MR VAN DEN HEEVER: Yes.

ADV KENNEDY SC: In paragraph 93 you say the following:

10 “Attached hereto as annexure HVD036 is a spreadsheet containing the list of purchase orders that I, as a buyer within the supply chain department of DLS had issued in favour of VR Laser from the years 2009 until 2018. Total value of orders placed on VR Laser for this period was R345 849 877.82.”

That is what your affidavit says.

MR VAN DEN HEEVER: That is correct.

20 **ADV KENNEDY SC:** Is it correct that we, as the legal team, have been alerted by your – through the kind assistance of your attorneys to the fact that you wanted to correct that by way of a supplementary affidavit?

MR VAN DEN HEEVER: Ja, I was requested to amend the spreadsheet to indicate the value up to the end of March.

ADV KENNEDY SC: March of which year?

MR VAN DEN HEEVER: 2014.

ADV KENNEDY SC: 2014?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: So in fact that came at the request from who?

MR VAN DEN HEEVER: I think was Carole, if I am not mistaken.

ADV KENNEDY SC: Right, by members of the legal team. Thank you. And is it correct that you have provided a supplementary statement.

MR VAN DEN HEEVER: I have, yes.

10 **ADV KENNEDY SC:** And we are going to deal with that a little later, if we may, Chair. That is not currently before you in the file.

CHAIRPERSON: Okay.

ADV KENNEDY SC: That only came to us this morning and it has not taken a form of a commissioned affidavit.

CHAIRPERSON: Okay.

ADV KENNEDY SC: There were some problems in that regard.

CHAIRPERSON: Okay.

20 **ADV KENNEDY SC:** I have to burden you with other problems that have burdened us, Chair, but we hope we can deal with them. May we just indicate ...[intervenes]

CHAIRPERSON: Well, we shall share the burden.

ADV KENNEDY SC: I am sorry?

CHAIRPERSON: Well, we shall share the burden.

ADV KENNEDY SC: Thank you, Chair. Unfortunately, it emerged only yesterday from the bundle that has been provided and handed to you, Chair, that some of the annexures in the photocopying process or the packaging of these bundles, for some reason, we are not sure, there was a slip up ...[intervenes]

CHAIRPERSON: They were left out or something.

ADV KENNEDY SC: And they did not find their way into the bundle.

10 **CHAIRPERSON:** Oh, okay.

ADV KENNEDY SC: Chair, there are two ways that we proposed dealing with it. We do not believe that it should pertain us in asking questions of this witness because only certain annexures are going to be referred to in the questions at least as I am anticipating and the annexures that I would have liked to have taken to Mr van den Heever to comment on happened to be annexures to the affidavit of Mr Drevin, the witness who you just heard who deals with some issues that overlap with that of Mr van den
20 Heever. Those happily are to be found in the same file. So with your leave may we then refer to those pages?

CHAIRPERSON: Yes. No, that is fine.

ADV KENNEDY SC: Where it is relevant.

CHAIRPERSON: Ja.

ADV KENNEDY SC: But the second solution that we

propose is this, that a complete copy of the affidavit as provided by Mr van den Heever with all of the correct annexures will be provided by the secretariat. In fact I believe that they are dealing with that now but we do not want to detain your further in this regard.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: So we apologise on behalf of our team and the secretariat.

CHAIRPERSON: Yes.

10 **ADV KENNEDY SC:** But, with your leave, may we continue on that rather complicated basis?

CHAIRPERSON: Ja, that is fine, let us continue on that basis.

ADV KENNEDY SC: Thank you very much. I would like – so I think I just need to ask you, Chair, I do believe I have ...[intervenes]

CHAIRPERSON: Do I need this affidavit?

ADV KENNEDY SC: Yes if you would accept the second of Mr van den Heever's affidavit from page 83 of bundle
20 Denel 04 which should be admitted, we would suggest, as EXHIBIT W14.2.

CHAIRPERSON: Point 2, ja. The statement/affidavit of Mr Hendrik Johannes Christoffel van der Heever starting at page 83 is admitted and will be marked as EXHIBIT W14.2.

STATEMENT/AFFIDAVIT OF MR VAN DEN HEEVER

STARTING FROM PAGE 83 HANDED IN AS EXHIBIT 14.2

ADV KENNEDY SC: Thank you, Chair. And then I have mentioned the supplementary statement that is not in the form of an affidavit, we are going to deal with its contents a little later, if we may, and then ask for at least the statement to be handed in provisionally to you but we will do that at that stage. I am told by our learned friends who appear for Mr van den Heever that apparently there was some logistical problems but they have given an
10 undertaking that they will ensure that that is transformed into a commissioned affidavit as soon as possible and that will then be introduced into your own bundle, Chair.

CHAIRPERSON: Ja.

ADV KENNEDY SC: But we do not believe that – if we should have a difficulty subject to your decision in taking him through what is currently an unattested statement.

CHAIRPERSON: Ja. No, that is ...[intervenes]

ADV KENNEDY SC: It can then be confirmed in due course.

20 **CHAIRPERSON:** Ja, that will be fine after all he will be testifying under oath.

ADV KENNEDY SC: Exactly.

CHAIRPERSON: But just for convenience it would be good to have that commissioned.

ADV KENNEDY SC: Thank you, Chair, that will be done.

CHAIRPERSON: Okay, alright.

ADV KENNEDY SC: And may we propose that that, when that is included in the bundle, should – in an attested form, would included as EXHIBIT 14.3?

CHAIRPERSON: Yes, it will be admitted as 14.3.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Actually, EXHIBIT W14.3.

ADV KENNEDY SC: Thank you very much.

CHAIRPERSON: Okay, alright.

10 **ADV KENNEDY SC:** Alright. Now, Chair, with your leave may we then ask questions of this witness, first with his second statement that appears in the bundle? It just seems to flow nicely from some of the earlier evidence that you have heard.

CHAIRPERSON: Yes. Okay, that is fine.

ADV KENNEDY SC: Thank you. Mr van den Heever, may we take you first to your affidavit? It starts at page 83.

MR VAN DEN HEEVER: I am there.

20 **CHAIRPERSON:** Maybe I should say, Mr Govender – I am sorry, I am terribly sorry, Mr Kennedy, it is quarter to one now. Maybe we can proceed up to quarter past one.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: So we have about 30 minutes.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Before we take the lunch break.

ADV KENNEDY SC: That would help, thank you, Chair.

CHAIRPERSON: Ja. Okay, alright, thank you.

ADV KENNEDY SC: Alright, Mr van den Heever, this affidavit deals mainly with the platform hulls contract which was given to VR Laser, is that right?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Okay. Now your current employer is Denel, the division DLS, is that right?

MR VAN DEN HEEVER: That is correct.

10 **ADV KENNEDY SC:** When did you start at Denel?

MR VAN DEN HEEVER: January 1982.

ADV KENNEDY SC: Before it was even called Denel. What was it called then?

MR VAN DEN HEEVER: It was called Lyttelton Engineering Works at that stage.

ADV KENNEDY SC: Right. And what was your job title when you started in 1982?

20 **MR VAN DEN HEEVER:** I started as an artisan – ag, firstly as an appie trainer and then as artisan and worked my way up.

ADV KENNEDY SC: Right. And then you moved up the ranks in Denel, is that right?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: You refer in paragraph 5, page 84, to working in the planning office at one stage?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And then you moved to the supply chain management department as a buyer where you had 22 years experience as a buyer.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Or a senior buyer and then other titles, commodities specialist and procurement officer. What is your current title?

MR VAN DEN HEEVER: I am currently with production
10 planning, I have moved on back to production planning again.

ADV KENNEDY SC: Alright, so you left supply chain management after 22 years and now you are in production.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Thank you. Now you referred to your training on page 85, is that correct?

MR VAN DEN HEEVER: Correct, yes.

ADV KENNEDY SC: Paragraph 7 and then you set out in paragraph 8 your duties in supply chain.

20 **MR VAN DEN HEEVER:** That is correct.

ADV KENNEDY SC: Because your affidavit is dealing with issues relating to the Hoefyster contract for platform hulls given to VR Laser at the time that you were in supply chain.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Is that right? Thank you. Now may I take you to page 86? After setting out the purpose of this statement which was to respond to specific issues raised by the Commission's investigators, you then set out in paragraph 10 the standard procurement procedure at DLS at the time, is that right?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And were you in fact running the process from the day-to-day point of view for procurement
10 in relation to the contract that we have just mentioned?

MR VAN DEN HEEVER: Can you just explain that to me?

ADV KENNEDY SC: What was your involvement particularly in the supply chain management department dealing with the Hoefyster project?

MR VAN DEN HEEVER: I was just responsible for placing the order according to the procedures, prescribed procedures and stuff.

ADV KENNEDY SC: And did that include the Hoefyster contract that was awarded to VR Laser for platform hulls?

20 **MR VAN DEN HEEVER:** That is correct, yes.

ADV KENNEDY SC: Alright. Now if we can turn to page 89, your paragraph 12 deals with the delegation of authority and this was a delegation of authority applicable you say in paragraph 12 at DLS after 27 November 2012.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Alright. And it gives the range of different prices that the value of particular contracts within specific ranges. There were have to be specific levels of authority and 12.5 you say:

“All purchase orders above R5 million threshold required approval by the Exco procurement committee.”

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Right. Now we have heard evidence
10 that DLS was a division along with other within Denel Group, correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And is it correct that Denel Group had its own procurement policy?

MR VAN DEN HEEVER: Ja, but I think ours was derived from it, I am no hundred percent sure.

ADV KENNEDY SC: Yes, yes. In fact we have heard evidence that it was based on that and that the Denel Group Policy imposed a requirement that above a certain
20 value contracts had to be approved by certain levels and are you aware that the Denel Group policy required that a contract over the value of 200 million would require approval by the Denel Corporate Board?

MR VAN DEN HEEVER: It became known to me.

ADV KENNEDY SC: Right. So what you are referring to

in 12.5 is simply that within the division a contract for a purchase order for more than R5 million would require Exco procurement committee's approval.

MR VAN DEN HEEVER: That is correct, ja.

ADV KENNEDY SC: But you became aware that in addition to that the board would also have to approve a contract above 200 million.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right. Okay, in the next section of
10 your affidavit and with your leave, Chair, I am going to go through it very selectively.

CHAIRPERSON: Ja.

ADV KENNEDY SC: So we do not waste time because you have a fair bit of evidence about the background.

CHAIRPERSON: Yes, I have heard a lot of evidence.

ADV KENNEDY SC: Thank you. You refer to Armscor awarding DLS a contract for the 217 hulls, correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And then you explain the process the
20 rest of the page and then you refer at the top of your next page 91 in paragraph 17 to a situation in 2011 when DLS sought to contract a supplier to manufacture and deliver the platform hulls, the platform hulls contract. So this was one element of what needed to be provided by Denel to Armscor, is that right?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Okay. Now you then refer to LMT and LMT had - a majority shareholding was bought by DLS in LMT at a certain stage. What was your understanding as to what LMT - which would participate in work such as this in general, before we get to the specific contract. LMT was now a majority owned and controlled by Denel, correct?

MR VAN DEN HEEVER: Ja, I think it was still in process
10 at that stage, it was not – I am not sure if they were already part of this.

ADV KENNEDY SC: Okay, was there any need from what you understood to give LMT this work for the 2017 Platform Hulls?

MR VAN DEN HEEVER: The fact that he is part of Denel I felt that the money is kept in Denel if it was given to them.

ADV KENNEDY SC: Right.

MR VAN DEN HEEVER: But the going out on the three quotations that we did as we will see later on changed the
20 route of what was happening.

ADV KENNEDY SC: Okay we will get to why that route was followed and where it led you to. You refer in this paragraph to this you say:

“LMT had been acquired to make it a more complete manufacture of an armoured vehicle. However due

to various factors such as concerns was the quality of services rendered by LMT, DLS management decided to do something.”

We will deal with what they decided in a moment. Were you aware that there were concerns about quality on the part of LMT?

MR VAN DEN HEEVER: I was aware of issues, yes.

ADV KENNEDY SC: Am I right in understanding that you are not a technical person in the sense of for example
10 being an engineer who would know the ins and outs of quality issues?

MR VAN DEN HEEVER: No, I disagree.

ADV KENNEDY SC: I beg your pardon, tell us?

MR VAN DEN HEEVER: I am a trained artisan so quality and the fact that I have been with Supply Chain for 22 years going out – and I was responsible for half of that time for the quality myself I knew what the standard was for the quality that we required.

ADV KENNEDY SC: Right, thank you for correcting me.
20 So you in fact did have knowledge in this. So the quality issues that were raised about LMT were those that you personally had identified or did other people in other departments raise that with you?

MR VAN DEN HEEVER: No the quality department did raise it but I also had the “ondervinding”.

CHAIRPERSON: Experience.

MR VAN DEN HEEVER: The experience that is correct, ja.

ADV KENNEDY SC: Alright thank you and then we now get to what DLS management decided. You say here:

10 “That they decided that a normal procurement process be followed to secure a supplier nevertheless LMT was still considered a potential supplier even though it did not enjoy any preference by DLS.”

Now as I understand your evidence and correct me if I am wrong what you’re saying here is that it might have been a good idea to get the work done by LMT but there were some concerns about quality. It would have been a good idea because it was within the Denel stable or group, correct?

MR VAN DEN HEEVER: That is correct.

20 **ADV KENNEDY SC:** You would have kept the money within the group, was the point you made earlier but instead of doing that it was decided no let us go out on an open procurement process because we have some concerns about LMT’s quality.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: But LMT would still be in the race, it would still be a horse in the race it could tender if it

wished to do so.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right. Now you then set out in paragraph 19 and 20 variance of the particular combat vehicle, correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Then you deal specifically at page 92, just remember the page numbers is top left from paragraph 21 was the process that was followed by the
10 procurement of the Hoefyster Platform Hulls supplier. Now you referred to a three quotation basis and you mentioned a moment ago to the Chair three quotations were in fact received. This was not an openly advertised public tender where everybody out in the marketplace could tender. Is that right?

MR VAN DEN HEEVER: Ja, we have been working on three quotes all our lives, tenders only started coming in since I think 2014/2015 they started talking about tender processes.

20 **ADV KENNEDY SC:** Right.

MR VAN DEN HEEVER: But we have been using three quotes system basically my whole 20/22 years that I was there.

ADV KENNEDY SC: Right and this was around 2011 that this started you say in paragraph 22 for the Hoefyster

Platform Hulls.

MR VAN DEN HEEVER: That is correct, ja.

ADV KENNEDY SC: Right, now you mentioned a budgeted price per hull of being R950 000,00 per hull exclusive of VAT and the total budget would then have been in the region of R206million.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Now then you refer to the fact that there was no previous supplier or last purchase price
10 information. Why was that?

MR VAN DEN HEEVER: That is well basically because we have not bought any hulls on previously and only after stuff has been bought then you start get the system use to on the system which give you a last purchases prices and all that kind of information.

ADV KENNEDY SC: Right, and then you explain why – how you went about choosing who to send the request for proposals to, just explain to the Chair briefly what that involve?

20 **MR VAN DEN HEEVER:** Ja, basically we had a supplier database and with the experience and backing that I had plus my colleagues could determine which supplier is currently in the database has got the ability and capability to manufacture these heavy structured hulls and working through that and getting the inputs it was decided on four

suppliers which was then LMT, VR laser, BA Systems and DCD-Dorbyl.

ADV KENNEDY SC: Those are the entities you refer to in paragraph 27?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Okay, and then you deal with their background how they had been dealing with DLS or Mechem, is Mechem or Mechen?

MR VAN DEN HEEVER: Mechem.

10 **ADV KENNEDY SC:** Mechem, what is Mechem?

MR VAN DEN HEEVER: They were doing landmine lifting and clearing, the landmine clearing department and dog training.

ADV KENNEDY SC: Right, now may we turn to page 94 paragraph 30. You referred to an RFO, a request for office specifically for the hull manufacturing on the Hoefyster Project or contract. Did you then send out the RFO?

MR VAN DEN HEEVER: I did.

20 **ADV KENNEDY SC:** Was that your personal action to send it out?

MR VAN DEN HEEVER: No, I got an email from Mr Riaan Badenhorst with the attached RFO that I was supposed to send to the three suppliers.

ADV KENNEDY SC: And did you in fact send it to them?

MR VAN DEN HEEVER: I did, yes.

ADV KENNEDY SC: Was it to the four suppliers that have been mentioned or to three?

MR VAN DEN HEEVER: Only to three as BA Land Systems at that stage was sort of competition for part two and they requested us not to give them their IP. So they were removed from the list.

ADV KENNEDY SC: Right, so it was sent to LMT, VR Laser and DCD, am I right?

MR VAN DEN HEEVER: That is correct.

10 **ADV KENNEDY SC:** And then you refer to their responses that each of those entities sent in a response in response to the RFO, is that right?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And you give the dates in paragraph 32 to 35 and you attach them as annexures and we apologise to you for some of the annexures being missing from the file in front of you due to the slip up in a photocopying process but that will be fixed but we thank you for providing all of those documents so they will be
20 provided as you have heard in due course to the Chair in the way that we have discussed it.

MR VAN DEN HEEVER: Okay.

ADV KENNEDY SC: Now can we deal on page of 95 with a visit by Patria to the suppliers just briefly what is this relating?

MR VAN DEN HEEVER: Okay that as far as my knowledge on that is that Patria came to visit – the identified suppliers in South Africa that DLS has identified and to give us there input due to their background and the fact that they have manufactured so many of them already of who will be according to them will be the best supplier and with the best capabilities...[intervene]

ADV KENNEDY SC: Right.

MR VAN DEN HEEVER: To manufacture the hull.

10 **ADV KENNEDY SC:** Now on page 96 the next heading is updated request for office. Now you referred to an email from Ms Malahlela who was the Head of Supply Chain at DLS, is that correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Did you report to her?

MR VAN DEN HEEVER: I had a line manager between me and her.

ADV KENNEDY SC: And who was the line manager?

MR VAN DEN HEEVER: At that stage 2014 I think it was
20 either Mr Dupree or Cindy Minnaar I am not sure which of the two.

ADV KENNEDY SC: Right.

MR VAN DEN HEEVER: But there were a line manager between me and Celia.

ADV KENNEDY SC: And then there is reference to a

request made to LMT to update their proposal. Did you attend to that request made to LMT?

MR VAN DEN HEEVER: Just explain by attending to it?

ADV KENNEDY SC: Well let me get straight to the letter. Chair this is an example of where the annexure that Mr Van Den Heever helpfully attached to his affidavit has not come in the photocopy but fortunately we have another copy of the same letter elsewhere in the same bundle. So Mr Van Den Heever if I can take you to page 253 in attached to Mr
10 Drevin's affidavit. We do not need to look at his affidavit, if I can just ask you to look at page 253 to five. So Chair again this is just for the record it is in Bundle Denel 04 on page 253.

MR VAN DEN HEEVER: Yes, that is correct.

ADV KENNEDY SC: This is a letter that bears your name on page 255 as the procurement officer DLS Mechem, is that right?

MR VAN DEN HEEVER: That is correct that is actually the RFQ but, ja.

20 **ADV KENNEDY SC:** Is that the RFQ itself?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: I am sorry I had the wrong page number given, so is that the actual RFQ the request for updated proposals.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Okay, thank you. It appears my note was wrong it is apparently 252 is the one that I should have drawn your attention to.

MR VAN DEN HEEVER: Ja, now this 252 is the letter from Celia.

ADV KENNEDY SC: Yes, thank you so this was the request for an update of LMT's proposal.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Now why were they being requested
10 to update?

MR VAN DEN HEEVER: Because the previous quote that we received was I think in 2012 and then in 2014 the request came through to update their quotations.

ADV KENNEDY SC: Yes.

MR VAN DEN HEEVER: So after two years you would expect a change in price so that is why we request the update.

ADV KENNEDY SC: And then in the letter the ticks to the letter you say:

20 "Denel Land Systems, DLS, hereby request LMT to submit an urgent update of your proposal number received on."

And here is the answers to your point earlier about when it was received 2012 that is confirmed, 9th of February 2012.

"We do however require you to amend the quotation

as follows when updating armour hull breakdown a price for armour hull excluding mine protection. B, price for mine protection only and C, prices should exclude all jigs and fixtures CFI which will be contracted separately.”

And then you refer to a tender representative visiting Patria in Finland etcetera. So as I understand it when they were updating their proposals they were expected to break it down into various elements, is that right?

10 **MR VAN DEN HEEVER:** That is correct, yes.

ADV KENNEDY SC: Okay thank you. Now this letter was sent to LMT was there similar letters sent requesting an update to the other two that you had received proposals from that is VR Laser and DCD?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right, and did they in fact respond all these three potential suppliers?

MR VAN DEN HEEVER: Yes, they did just one thing is we first sent the updated request to LMT and then a week later
20 we got confirmation from Patria of which we were waiting for to say that we can continue with the rest of the suppliers in South Africa that we have identified and we received those letters, that letter on the 6th of I think it was June 2014 and then we sent exactly the same RFQ's to all three of the suppliers and informing LMT that there

response date is also extended to the same as the other two suppliers.

ADV KENNEDY SC: Right, and the Patria point is mentioned in your affidavit paragraph 45 page 96, is that correct?

MR VAN DEN HEEVER: Ja.

ADV KENNEDY SC: Top left paragraph 45.

MR VAN DEN HEEVER: That is correct, ja.

ADV KENNEDY SC: Now why did Patria have to give you
10 the go ahead for parties other than LMT?

MR VAN DEN HEEVER: That was like where we identified the four suppliers and where they came back and they said sorry if OMC is not acceptable or if BA Land Systems is not an acceptable supplier.

ADV KENNEDY SC: Yes.

MR VAN DEN HEEVER: And we just had to confirm with them that this is now the three suppliers that we going to and get confirmation from them that we can go to them. So we got the letter back from them that said that they happy
20 with the suppliers.

ADV KENNEDY SC: The Commission has already heard evidence that Patria was the original manufacture of this type of equipment.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: That had some intellectual property,

they had patent rights.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And is that why they were saying we are not happy if you do business with BAE because then they could get our intellectual property and you had to check with them that the rest of the list was acceptable.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right.

ADV KENNEDY SC: Have they already approved LMT?

10 **MR VAN DEN HEEVER:** Ja, because LMT was part of Denel they had no problem with them.

ADV KENNEDY SC: Right, now if we can turn to the next page 97 paragraph 50 you referred to the revised proposals or their responses that you received is that in response to the request for an update?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Okay and that you set them out in paragraph 50.1 to 50.3.

MR VAN DEN HEEVER: That is correct.

20 **ADV KENNEDY SC:** You have referred to the relevant attachments. Then you deal with paragraph, in paragraph 51 with the pricing that you received in terms of these updated responses, is that correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And then just to get to the sort of

bottom line or the points that you have highlighted in bold print in LMT 51.1.3 there total price that LMT quoted was R159million plus a few thousand.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right, and the VR Laser their bottom line the total price 51.2.2 was R262million and some thousands.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: So they were more than a
10 R100million more expensive than LMT, correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And DCD you have set out a schedule and their total price for the contract we see at the top of page 101 was R301million and some thousands.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: So it ranges from the cheapest was LMT R159million, VRL R262million and DCD R301million.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Right, then you refer on page 101 to
20 the bid evaluation committee which was also known as the cross-functional team and is it correct that Ms Malahlela as the Head of the DLS Supply Chain Management Department organised for a BEC a, bid evaluation committee or cross-functional team to be appointed?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And you were one of those members.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And those members are set out in paragraph 55.1 to 55.10, is that right?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And you are the person mentioned in 55.10 and you have already made the correction of 55.5 and we have dealt with Mr Rakadukwe's spelling issue. Right, now you mention in your affidavit that the committee
10 was Chaired by Ms Malahlela, correct?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And its purpose was to evaluate the responses from the three suppliers, is that right?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And these responses were not simply the responses you had received in 2012 they were as updated in 2014.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right, with the total cost that we
20 have seen already from 159 to over R300million.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right, now Mr Van Den Heever you then deal in paragraph 57 with a feedback session on the 26th of June and you refer to an attendance register which was signed for VR Laser's feedback session but you say in

paragraph 58:

“We neglected to have it signed when DCD and LMT appeared before the committee.”

I do not think anything would turn on the register not being signed. What I am interested in Mr Van Den Heever is this was there a single feedback session for all three to attend or was there a separate feedback session for each of them separately?

MR VAN DEN HEEVER: Ja, there was a separate
10 feedback on the same day different slots.

ADV KENNEDY SC: Right, if I might just have a moment. Yes, can I take you to page 387 Chair again just to explain this is an annexure that we find attached to Mr Drevin’s affidavit for the same reason discussed earlier. Page 387, do you have it?

CHAIRPERSON: No that is fine.

ADV KENNEDY SC: Thank you Chair.

MR VAN DEN HEEVER: Yes, I have got it.

ADV KENNEDY SC: And this is the one for VR Laser and
20 you see the names and signatures of the various people including Ms Malahlela at the top there.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And is that your name if you look at the handwritten portion the 6th person to write and sign appears to be your name and is that your signature?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Okay thank you and then what follows is a list of a number of people from VR Laser.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Right, now what was the purpose of this feedback session?

MR VAN DEN HEEVER: Okay, the process like I said it was something near to us on the 25th when we received the quotations the BEC got together and they worked through
10 all the quotations and as they work through it they were looking at some stuff that needed clarity they had questions about it was painting included. So there was various questions working through the quotes and working through them we drew up a list of questions that we need to ask the suppliers just to clarify on their quotations.

So the next day on the 26th they were invited to come and give clarification on their quotation. So each supplier came in at a certain time and we asked them the questions that came up in there quotes and they gave us
20 the answers and they were each then asked to update their quotes with that latest information, with that explanation for that, ja.

CHAIRPERSON: Okay alright.

MR VAN DEN HEEVER: I hope that makes sense?

ADV KENNEDY SC: Thank you it certainly does Mr Van

Den Heever. May I just ask one further question before we take the adjournment that you proposed for one, fifteen, Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Thank you, may I take you again as an annexure to Mr Drevin's affidavit although it should have been attached to yours as well because of the problem in house here. Can I take you to page 389.

MR VAN DEN HEEVER: Yes.

10 **ADV KENNEDY SC:** What is that?

MR VAN DEN HEEVER: That was the list – this specific list on 389 was the questions that was raised with VR Laser regarding clarification required on their quotation.

ADV KENNEDY SC: And then at the following page 390, is that a similar questionnaire?

MR VAN DEN HEEVER: Similar questionnaire but on top you will see that is for DCD.

ADV KENNEDY SC: Yes, so it is different questions specific to your queries about their proposal.

20 **MR VAN DEN HEEVER:** That is it and it indicate what time they were supposed to be in.

ADV KENNEDY SC: Yes, thank you Chair would this be a convenient time to take the adjournment?

CHAIRPERSON: Yes, it will be I think I must just say I agree with you Mr Kennedy that Mr Van Den Heever's

command of English is very good so...[intervene]

ADV KENNEDY SC: It is.

CHAIRPERSON: So I think it is good that he agreed to testify in English there are no glitches and we understand him very well.

ADV KENNEDY SC: So can I fire her?

CHAIRPERSON: We will not complain.

ADV KENNEDY SC: But may we as the legal team just express our thanks to Mr Van Den Heever for his attitude
10 on the day and everything else.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And his attorney, thank you.

CHAIRPERSON: And his attorneys, ja thank you. Okay we will take the lunch adjournment we will resume at quarter past two, we adjourn.

ADV KENNEDY SC: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

20 **ADV KENNEDY SC:** Thank you Chair. May we give you an update on the solution to the problem about missing annexures.

CHAIRPERSON: Yes.

ADV KENNEDY SC: The Secretariat has very helpfully sorted out the problem.

CHAIRPERSON: Okay.

ADV KENNEDY SC: By copying the missing annexures and slotting them into my file that is the witness and we have taken the liberty after first checking with – with your – with the Chair's associate.

CHAIRPERSON: Yes.

ADV KENNEDY SC: To uplift your file.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Chair and all of those annexures have
10 now been slotted in in their appropriate places.

CHAIRPERSON: Okay no that is fine.

ADV KENNEDY SC: So it is now comprehensive and we must thank the Secretariat for fixing up the problem that arose yesterday.

CHAIRPERSON: Yes. Okay.

ADV KENNEDY SC: We apologise to you Chair for the difficulties.

CHAIRPERSON: No, no that is fine. That is fine. Thank you.

20 **ADV KENNEDY SC:** Thank you. Mr Van Den Heever let us let us deal if we may with the last few sections of your – of this particular contract that is the – that is the platform hulls' contract procurement. You have already taken us to the – you already explained what happened and why at the sessions – the feedback sessions. And then your affidavit

refers to a further request that was then made by DLS to revise prices – revise their proposals. You indicate in your affidavit based on issues raised during the meetings. Now can you tell us what that relates to?

MR VAN DEN HEEVER: Which page are we on now?

ADV KENNEDY SC: On page 103 that is your affidavit.

CHAIRPERSON: Ja okay the changes that we requested was according to the clarification questions we had like for instance LNT did not include paint in their price that they
10 quoted so they had to add the painting cost to the quotation. But there was various like according to the questions that we asked that we needed clarity on they had to amend their quotations that they sent to us with the new information and then resend it.

ADV KENNEDY SC: And then on page 104 most of that page is devoted to the information contained in the revised proposals of 27 oh sorry 27 June 2014 can be summarised as follows. That is a reference to their response to your request for further revised proposals?

20 **MR VAN DEN HEEVER:** That is correct yes.

ADV KENNEDY SC: As I understand it LMT tried to explain its pricing did they actually make any change to the pricing?

MR VAN DEN HEEVER: Yes their price changed from 736 534 to 763 191. That was due to the paint included.

ADV KENNEDY SC: Right. And then DCD made no

changes.

MR VAN DEN HEEVER: Ja they just confirmed I think there was a bond – the bond – raising a bond – performance bond – the cost of it.

ADV KENNEDY SC: And VR Laser sent in a response but there they did not revise their pricing either.

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: Okay. Now you then deal page 105 with the evaluation sheets and the bid scoring. May I just
10 check were you part of the process – were you involved in the process of actually scoring the bids in question?

MR VAN DEN HEEVER: Yes I was part of the bid BEC they did the scoring but I was not involved in the final consolidation of everything.

ADV KENNEDY SC: Just explain to us please why you were involved in part but not the final part? What actually happened?

MR VAN DEN HEEVER: I cannot give you the reason but after the BEC got their – did the evaluations and the
20 scorings and stuff all the documentation was collected and then taken by Rolland Rakhaduwe and I do not know who helped him or who was involved in it but they did the final reconciliation and consolidation and everything and then I just received the final results at the end.

ADV KENNEDY SC: You what? Just repeat the last bit.

MR VAN DEN HEEVER: I just received the final result at the end.

ADV KENNEDY SC: Right thank you. Did they change any of the scoring that you had agreed to in the bid evaluation committee when they did that process?

MR VAN DEN HEEVER: Not – not that I am aware of anything.

ADV KENNEDY SC: Not to your knowledge right. If I can please take you to page 132.39 and just to explain for the
10 record the reason why the point 39 appears is that this is a document that was missing earlier and has now been inserted as it should. So in order not to disturb the overall pagination that is why it has been done Chair.

MR VAN DEN HEEVER: What page again 132?

ADV KENNEDY SC: 132.39.

MR VAN DEN HEEVER: I am there.

ADV KENNEDY SC: Now admittedly we saw the same document in a different annexure to Mr Drevin's affidavit earlier when he gave evidence. But – and as the Chair
20 pointed out there are two as here I am afraid Chair the – the photocopying is meant that is very small letters printing but can you confirm is that your name and hand – your name and your signature with the date 27 June 2014?

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: And what is this document? At least we

can read consolidated evaluation sheet. What does it tell us?

MR VAN DEN HEEVER: This one is where they – where the consolidation...his one is where they – where the consolidation...

CHAIRPERSON: I am sorry Mr Kennedy. I am sorry. Is this the one that is supposed to be better?

ADV KENNEDY SC: Supposed to be?

CHAIRPERSON: Is this the one that is supposed to be better? This is the one which is supposed to be legible?

ADV KENNEDY SC: No, no. We are not suggesting that.

CHAIRPERSON: Oh.

ADV KENNEDY SC: As I was saying earlier it is has got the same problem as the one we looked at earlier for Mr Drevin.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So that has not been done yet.

CHAIRPERSON: Oh we have not got a larger one or a clearer copy?

ADV KENNEDY SC: Not yet so far we have only achieved a resolution to the one problem is that it is present. It is now not absent.

CHAIRPERSON: Oh okay.

ADV KENNEDY SC: But now we need a bigger copy.

CHAIRPERSON: Oh just that – then I am relieved because I was thinking if this is the better copy then ...

ADV KENNEDY SC: I am sorry – I am sorry to disappoint you.

CHAIRPERSON: We are in trouble.

ADV KENNEDY SC: It was the first problem not the second that we have thus far been able to remedy with the assistance of the Secretariat thank you.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: But – but does this reflect the scoring that was done in the evaluation of the bids?

10 **MR VAN DEN HEEVER:** That is correct yes.

ADV KENNEDY SC: Okay. Then to go back to your affidavit because there at least the font is big and the copying is clear you deal with the evaluation back at page 105 paragraph 65 you refer to the – split the price points for technical and BBBEE the percentage for each of those and then you refer to how there was discussion within your committee about how the weighting would be – would be dealt with. Is that right?

MR VAN DEN HEEVER: That is correct yes.

20 **ADV KENNEDY SC:** And there was agreement by the committee as to how the scoring would be done.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Then you deal at page 106 with the topic we need to spend a few minutes on and that is the BBBEE requirement. Now at page 106 you mention that

there was a problem in relation – that you had – that – that was due to an error on your part. You did not include a requirement in the original invitation. Tell the Chair please what – what did you erroneously omit?

MR VAN DEN HEEVER: Okay when I sent out the RFQ I did not request each supplier to submit a BBEE certificate or a valid BBEE certificate but that was requested during our clarification session that we had with each supplier and we asked them to submit the certificates for us.

10 **ADV KENNEDY SC:** Now you refer there to the – this is apparent in the RFQ invitation – you refer to the annexure number HVD28 and now fortunately it has been now located and put in the bundle. If I can turn – ask you to turn please to page 132.102.

MR VAN DEN HEEVER: Okay I am there.

ADV KENNEDY SC: In fact the doc – the first documents at the previous page 132.101 that is the update request and then 132.102 is that the original request for offer

MR VAN DEN HEEVER: That is correct yes.

20 **ADV KENNEDY SC:** Now is this the document where you – where you should have put in a request for a BBEE certificate?

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: And you say that that was omitted – why was that? How did that come about?

MR VAN DEN HEEVER: I just – well during that stage it was almost standard for a supplier to submit a BBBEE certificate and a tax certificate with their quotations that they submit to us. And I just forgot to request that or put it in the request.

ADV KENNEDY SC: Right. But the – but the certificate was important was it?

MR VAN DEN HEEVER: Well that was a standard I could not place any orders without BBBEE certificate and a tax certificate – tax clearance certificate.

10 **ADV KENNEDY SC:** Right. Now then to go back – you – did you then request suppliers to submit their BBBEE certificates?

MR VAN DEN HEEVER: That is it during that clarification meeting we had with each supplier on the 26th June.

ADV KENNEDY SC: The feedback – sorry the clarification meetings that you held separately with the three on that day?

MR VAN DEN HEEVER: That is correct each supplier was asked to submit the BBBEE cert.

20 **ADV KENNEDY SC:** Right. Did they then supply them?

MR VAN DEN HEEVER: Yes I think they were given fourteen days to submit if I could remember correctly.

ADV KENNEDY SC: Right. If we can – if I can take you please to – sorry Chair if I can just have a moment you would indulge me? Right now you refer in your affidavit to

expiry of LMT certificate. Just explain what in fact was – was there a problem and why?

MR VAN DEN HEEVER: We were in June 2014 at that stage and their expiry date on their certificate was 20 May 2014 which was just over a month expired.

ADV KENNEDY SC: If I can take you please to page 132.113.

MR VAN DEN HEEVER: I am there.

ADV KENNEDY SC: And what is that...

10 **CHAIRPERSON:** 132?

ADV KENNEDY SC: 132.113.

CHAIRPERSON: Okay.

MR VAN DEN HEEVER: That is a letter received from Empower Logic stating that LMT is in the process to do their BE verification and that it will be done within four to six weeks. It will take till six weeks to complete.

ADV KENNEDY SC: So this letter refers to Empower Logic having been engaged by LMT to perform their BBEE verification and they indicated that process was still
20 underway but the verification would take another four to six weeks.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Did – did you in the BEC or did anybody else give a score to LMT in relation to BBEE?

MR VAN DEN HEEVER: No that was not part of the scoring

process done by them – by the group.

ADV KENNEDY SC: Right.

MR VAN DEN HEEVER: That information was done on the next level where Mr Rakhaduwe collected all the documentation and did the finalisation.

ADV KENNEDY SC: Right. Thank you. Let us move if we may for a moment to – yes page – page 109 of your affidavit.

MR VAN DEN HEEVER: I am there.

ADV KENNEDY SC: You refer to a consolidated evaluation
10 sheet and that you refer to as being Annexure HVD031. Just turn for a moment to page 134.

MR VAN DEN HEEVER: Ja.

ADV KENNEDY SC: Is that the evaluation sheet that you referring to?

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: Here I must point out to the Chair although it will be perfectly obvious to him but I am afraid the print is even smaller here and that will be remedied to.

CHAIRPERSON: I am still trying to get there. Did you say
20 134?

ADV KENNEDY SC: 134 Chair yes.

CHAIRPERSON: Okay. Let me just get there. You know when you see 132 you can think you are close to 134.

ADV KENNEDY SC: That is right.

CHAIRPERSON: Because of...

ADV KENNEDY SC: Logic is changing Chair.

CHAIRPERSON: You find yourself travelling a long distance before you get to 134. Yes I have got 134.

MR VAN DEN HEEVER: Can I just say that I receive – at that stage I received a whole file with all the evaluations and final scorings and consolidations in one file given to me in my office telling me there is the results or the VR Laser is the winning bidder and we are going to place the order on VR Laser.

- 10 **ADV KENNEDY SC:** Yes. And the way in which it was done when you were just presented with that as a – as a result did you find that normal? Did you find that acceptable in terms of process or did you find it unusual and disturbing?

MR VAN DEN HEEVER: Well as mentioned in my affidavit is that we have never done this BBE or this scoring and I was not sure how it worked and what the – where the percentages and stuff came from so I had no background on it, no training. The whole team had no training it was a first for all so I could not find any fault in what was happening.

- 20 **ADV KENNEDY SC:** Right thank you. Now although at that page we have just looked at the print is very small you have helpfully in clear print on your – in your affidavit on page 109 set out the important features. And here you refer to VR Laser receiving the highest score – received a total of 65.54% and then you give the breakdown. 10.39% for price,

50.15 for functionality or technical and 5% for BBBEE. And you have referred here to the price of VR Laser in 81.1 of being R262 406 000.00 etcetera.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And which was – which is of the same order as the previous – previously submitted quote, correct?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Then you refer to LMT coming second it received an overall score of 64.78%. That is very slightly
10 less – in fact less than 1% it is 0.76% less than the VR Laser score in percentage terms, is that correct?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And their financial offer was R165 612 000.00 odd. So still there was a difference of not quite but almost R100million between LMT and VR Laser.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And then DCD came third their price was still over R300 million. Correct?

MR VAN DEN HEEVER: That is correct yes.

20 **ADV KENNEDY SC**: Now then you refer to your preparing a submission to EXCO to be reviewed and signed off by Ms Malahlela. Now if I can ask you please in the bundle to go to the document page 136.

MR VAN DEN HEEVER: I am there.

ADV KENNEDY SC: That appears to be an email from you

to Ms Malahlela saying hope I have captured most of the points required this morning and was it – was there attached to that email the document that then follows at 137.

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: And following. And what is this document?

MR VAN DEN HEEVER: That is the executive – Chief Executive Supply Chain submission requesting the approval of the order.

10 **ADV KENNEDY SC**: Right. And so we see at page 141 paragraph 7 a recommendation. Correct?

MR VAN DEN HEEVER: Yes.

ADV KENNEDY SC: Now this is what you have said – you prepared this document is that right?

MR VAN DEN HEEVER: As you can see from my mail that I have sent to Celia where I said I hope I have captured most of the points required this morning. She basically told me what to put in the document.

ADV KENNEDY SC: Okay. Now what the document says in
20 7 is the following:

“The following is hereby recommended 711
that a contract can be negotiated and an
order placed on VR Laser Services for Phase
2 presumably of the Hoefyster contract with a
total value of R262 million and some

thousands of rands.”

7.1 sorry that is the price that had been tendered in terms of the further revised proposal received from VR Laser. Correct?

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: Right. But then the document continues 712 this is a ceiling amount as further negotiations with VR Laser Services will take place to obtain a price below DLS budget. Now you referred us earlier in your
10 evidence to DLS having a budget – what was that budget amount?

MR VAN DEN HEEVER: If I remember correctly it was I think R206 million or R209 million I am not sure.

ADV KENNEDY SC: And what was here being recommended was a contract to be placed on VR Laser for a value of R262 million which clearly is considerably above the maximum – the budget maximum amount that is available.

MR VAN DEN HEEVER: If I cannot remember correctly but this was – I was told by Celia to put this in with the
20 negotiations – putting in the ceiling amount for further negotiations I think she said there was some sort of a – a mandate that we had for R1million and 50 or R1 million or R1 million and 50 per vehicle that we need to negotiate so that is – I think that is why this was put in.

ADV KENNEDY SC: Yes. So – but – so this point about it is

going to be for R262 million but if that is the ceiling amount it would be subject to negotiation to try and bring that down.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: To bring it within the budget maximum.

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: And...

CHAIRPERSON: What – what – sorry – what did it mean to say it was going to be a ceiling amount? It did not mean that there will be – there would be negotiations to try and bring it
10 – VR Laser down on the price but if there was no agree – if they did not agree then that would stay as the price. The ceiling amount would remain as the price?

MR VAN DEN HEEVER: Well that is basically what it is saying.

CHAIRPERSON: Yes.

MR VAN DEN HEEVER: Ja that is the ceiling amount that will not go above that.

CHAIRPERSON: Ja.

MR VAN DEN HEEVER: It could stay the same.

20 **CHAIRPERSON**: Yes.

MR VAN DEN HEEVER: But ...

CHAIRPERSON: But – but

MR VAN DEN HEEVER: But its idea was to negotiate it down ja.

CHAIRPERSON: But what does this reference to a ceiling

amount add to the meaning of this thing because if there is an agreement that your price is R262 million obviously that cannot be increased without agreement? So what is this whole thing about it is – saying it is a ceiling amount? Is it just to mislead people to think there is some value it will not increase? So they must find comfort in that.

MR VAN DEN HEEVER: Ja it basically comes down to you can approve this it will not go higher than that but it can lower. So that is what it is basically saying ja.

10 **CHAIRPERSON:** Okay alright. But what it represented is they accepted this price but just said we will try and negotiate them down. But obviously if they do not agree to go down this will remain as the price.

MR VAN DEN HEEVER: Ja at this stage it was on management level for their decision.

CHAIRPERSON: Ja.

MR VAN DEN HEEVER: Of what could happen and what the plans will be.

CHAIRPERSON: Okay.

20 **ADV KENNEDY SC:** Thank you Chair and just arising from those questions Mr Van Den Heever. If VR Laser was approached to negotiate a reduction below the R262 million and they would not agree to any reduction it would stay at 262 you have said that to the Chair but then that would still be above the budget – what would the result of that be?

That they would get the contract for 262 even though you were way exceeding your budget or that the contract would not be awarded to them? What was your understanding?

MR VAN DEN HEEVER: Well if you look at the document if they approve that amount of 262 you have got the mandate to go and place the order for that but you still need to prove that you tried to negotiate the price down.

ADV KENNEDY SC: Right and then if I can take you at page 137 the first page of this document. It is addressed to
10 EXCO. Would that be EXCO of – of DLS.

MR VAN DEN HEEVER: DLS yes.

ADV KENNEDY SC: Not head office?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Not the Group EXCO?

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: Right. This does not indicate unless I have missed it. Anything is to who should approve it outside DLS. If I can take you to page 142 there is provision for various signatures.

20 **MR VAN DEN HEEVER**: Ja you see the process that we normally follow there is a DLS Supply Chain Committee that we take this to them. They sort of approve or recommend it and then it goes to EXCO. Then once EXCO sees it and recommends it then to DCO. That is the process that we follow.

ADV KENNEDY SC: Right. So this was – this was simply for the first – it was for the approval within

MR VAN DEN HEEVER: DLS.

ADV KENNEDY SC: DLS and if approve – was approval required outside DLS? In other words at head office level.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: As far as you are aware.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Okay and that would then be dealt with
10 in a separate document presumably?

MR VAN DEN HEEVER: That is it ja.

ADV KENNEDY SC: Right. You were not involved in the preparation of any document for them?

MR VAN DEN HEEVER: No. It gets done on EXCO level.

ADV KENNEDY SC: Right. Now Mr Van Den Heever you refer in your affidavit to disciplinary proceedings happening against you. If I can take you back to 110.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: But as I understand your affidavit that
20 does not relate to the procurement process of scoring and awarding the contract to VR Laser or does it?

MR VAN DEN HEEVER: No but it was during that process that a communication with the suppliers that I made LMT aware of that there was other suppliers also in the running for the contract.

ADV KENNEDY SC: And were you disciplined for alerting VR Laser – sorry alerting LMT to the fact that VR Laser was also bidding for this contract?

MR VAN DEN HEEVER: That is correct yes.

ADV KENNEDY SC: And it appears that you were suspended, is that right?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And subjected to a disciplinary hearing that lasted five weeks.

10 **MR VAN DEN HEEVER:** That is correct.

ADV KENNEDY SC: And you do not say whether you were found guilty or not guilty but a sanction was imposed so I assume that you were found guilty?

MR VAN DEN HEEVER: Ja and a final written warning was given.

ADV KENNEDY SC: Yes. Alright. Now finally in your affidavit I would like to take you to page 111. Purchase orders issued to VR Laser and here we come to paragraph 93. Now here you – we as mentioned earlier but we did not
20 go into – into a full detail of it. I mentioned earlier to the Chair that you have at the request of the team updated certain figures and you have prepared a supplementary statement that is the one that I mentioned earlier Chair that is with - well, that you have indicated earlier to be filed as Exhibit 14. Sorry.

CHAIRPERSON: W.

ADV KENNEDY SC: W14.1.

CHAIRPERSON: 14.3.

ADV KENNEDY SC: Point 3. I beg your pardon. Yes.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Chair, again, we have had some logistical constraints but with your leave, may I hand up the signed supplementary statement as indicated to you earlier Chair?

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: This has not been yet attested but that will be attended to.

CHAIRPERSON: Yes, okay. That is fine.

ADV KENNEDY SC: May I, with your leave, then hand up to you Chair, subject to the arrangements that will be put in your file in due course, properly marked and then replaced by the affidavit.

CHAIRPERSON: Ja, that is fine.

ADV KENNEDY SC: I am afraid we have not had enough
20 copies for everybody to be made.

CHAIRPERSON: Oh, okay.

ADV KENNEDY SC: I think perhaps... Unfortunately, the witness does not have the supplementary statement in front of him. Perhaps my copy should just be made available with your leave.

And I would just put a few questions to Mr Van den Heever as to what the effect of the amendment is. May I ...[intervenes]

CHAIRPERSON: Well, it looks like that maybe today is one of those days when there is always going to be something that is goes on somewhere. Well, it is signed by him but not by the commissioner or oaths.

ADV KENNEDY SC: That is right. There is just a logistical...[intervenes]

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: ...yesterday.

CHAIRPERSON: Yes. [laughing] No, that is fine. I am sure it will be fixed. I was just saying, you know, sometimes just everything goes wrong. [laughing]

ADV KENNEDY SC: I am afraid this particular body of the evidence has had all these hiccups.

CHAIRPERSON: Ja.

ADV KENNEDY SC: But hopefully been able to get to the end of it.

20 **CHAIRPERSON:** Okay. No, that is fine.

ADV KENNEDY SC: With that sorted.

CHAIRPERSON: Ja.

ADV KENNEDY SC: So we apologise for all these issues
Chair.

CHAIRPERSON: Okay. Are you going to be asking

questions on that one now?

ADV KENNEDY SC: Just if I may then ask the witness to explain why it was done and what was done.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And what the outcome of it is.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Mr Van den Heever, would you help us with that? You have indicated earlier to the Chair that you were requested by my colleague, Ms Sibiya, to update the
10 figures. Is that correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And those are the figures that appear in your paragraph 93. Now what are the figures show? This is a spreadsheet but you have now given the updated spreadsheet, correct?

MR VAN DEN HEEVER: That is it.

ADV KENNEDY SC: And what does it show? Does this reflect payment or value of purchase orders?

MR VAN DEN HEEVER: Ja, it is the value of orders placed
20 by me on VL Laser for a period from August 2008 to the requested date of 30 or 31 March 2014 with the reasoning that that was when VR Laser ownership changed to the ownership.

ADV KENNEDY SC: Alright. Thank you. Then to return to your affidavit that we have been looking at 111, page 111,

paragraph 94. It says you confirm from the period 12 August 2009 until the signature of the memorandum of agreement with VR Laser Services in 2015. I issued purchase orders to the value of R 232 959 000,00, et cetera on VR Laser.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Alright. Now does that relate to orders placed under the hull contract?

MR VAN DEN HEEVER: That is hull contract, everything or
10 armour plate work that VL is required. It was plate based on VR Laser by me. It comes to that version for that period.

ADV KENNEDY SC: Right.

MR VAN DEN HEEVER: I am not sure. I think... Ja, the whole price could be included in... No, the whole price was not included in this one. I cannot remember but we will have to have a look on the spreadsheet.

ADV KENNEDY SC: Okay. And then at page 112, you refer to the facts that is common cause that all the other witnesses have confirmed that there has been a
20 memorandum of agreement signed between VR Laser and DLS on the 16th of April.

That is where VR Laser was appointed as DLS's single source supplier of all fabricated steel services and goods. And were you involved in the procurement for that contract?

MR VAN DEN HEEVER: Which are you referring to here?

ADV KENNEDY SC: Single source supplier.

MR VAN DEN HEEVER: No, I was not involved in that at all.

ADV KENNEDY SC: Alright. So your affidavit does not deal with that process but your affidavit does deal with the rest of this page 112 for certain figures that relates to payments. Oh, sorry not payments but the total value of orders in R 97, R 102, R 112.8 million.

MR VAN DEN HEEVER: H'm.

10 **ADV KENNEDY SC:** Now that relates to the single source supply contract.

MR VAN DEN HEEVER: Yes.

ADV KENNEDY SC: Okay thank you. And then you refer to the outstanding order lines, at the time was closed. There was a directive that all outstanding order lines be closed. Why was that necessary? Do you know?

MR VAN DEN HEEVER: The directive that was issued by Denel SOC stated that all business relationship with VR Laser must be separate(?) on 1 June 2018. And that was
20 due... Well, when the State Capture or investigation. All work with VR Laser was ended.

ADV KENNEDY SC: I see. What was the R 56.1 million represent? Is that orders that have been placed that were then put on hold?

MR VAN DEN HEEVER: Ja, what I am saying. The

R 56 million... Okay, the periods run from R 112 million was the amount that was placed based on the MOA.

ADV KENNEDY SC: Yes?

MR VAN DEN HEEVER: And after that directive, open lines was closed which telling us that R 56 million, of that R 112 million was already delivered and completed.

ADV KENNEDY SC: Right. And then you explain that in the next paragraph. Right. Thank you. Alright. Thank you. May I just have a moment to confer with my team Chair?

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: Sorry, Chair. May I just...

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: May I just ask that the file be returned to us for just a moment?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: Thank you. May I return the file, please Chair? Sorry about the interruption.

CHAIRPERSON: Okay.

20 **ADV KENNEDY SC:** That is my team just giving me valuable input.

CHAIRPERSON: H'm.

ADV KENNEDY SC: Now the amount we are referring here Chair and Mr Van den Heever to your supplementary statement. You give at the foot of that page that has been presented to you a figure of R 3.5 million approximately.

Correct?

MR VAN DEN HEEVER: [No audible reply]

ADV KENNEDY SC: That is the value ...[intervenes]

CHAIRPERSON: What page is that on the supplementary?

ADV KENNEDY SC: I am afraid I do not have a file in front of me but I think ...[intervenes]

MR VAN DEN HEEVER: Page 2.

ADV KENNEDY SC: ...it is on the supplementary.

CHAIRPERSON: What page? Page 2?

10 **MR VAN DEN HEEVER**: Page 2 of the supplementary.

CHAIRPERSON: Alright.

ADV KENNEDY SC: Yes. Thank you, Chair. Sorry. At the foot of the second page of that affidavit you give a figure of R 3.5 million. Is that correct?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And was that the value of the orders placed on VR Laser prior to the change of ownership in VR Laser?

MR VAN DEN HEEVER: That is correct. By myself, yes.

20 **ADV KENNEDY SC**: I am sorry?

MR VAN DEN HEEVER: By myself, yes.

ADV KENNEDY SC: That you have put... that you had placed?

MR VAN DEN HEEVER: Yes, correct.

ADV KENNEDY SC: Yes. Were there other colleagues

within the organisation who were also placing orders?

MR VAN DEN HEEVER: Correct.

ADV KENNEDY SC: Or were you the only one who placed orders?

MR VAN DEN HEEVER: There were other colleagues as well.

ADV KENNEDY SC: I see. But from your knowledge, from your own involvement it was R 3.5 million before the change of ownership in VR Laser that provokes so much media
10 interest and subsequent investigation by the Public Protector and this Commission?

MR VAN DEN HEEVER: Yes, that is correct.

ADV KENNEDY SC: Thank you. And then, if we can compare that with the value that appears in the affidavit that you have presented of the R 345 million. Was that before or after or at the same as the change of ownership?

MR VAN DEN HEEVER: [No audible reply]

ADV KENNEDY SC: If you look at page 111, your affidavit, paragraph 93.

20 **MR VAN DEN HEEVER**: No, that was for the whole period. That includes the hulls, everything, up to 2018.

ADV KENNEDY SC: Right. And then, if we look at paragraph 94. There you refer to a period between 2009 and 2015. The purchase orders then amounted to the value of R 232 million.

MR VAN DEN HEEVER: Ja, that is correct. That was before the MOA period.

ADV KENNEDY SC: Right. Perhaps if... I am sorry for the interruption. Perhaps if I can ask the question, really, in this way? Before the ownership in VR Laser, what sort of amount was placed by way of the value of purchase orders compared with what happened after the change of ownership in VR Laser?

MR VAN DEN HEEVER: Well, there is a magnificent
10 different but we did not have it, the contract at that stage and it will explain the change in figures.

ADV KENNEDY SC: So it was a big difference once there was a change in ownership?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right. Thank you. Right.
Mr Van den Heever, I am done with this affidavit. We are going to deal with the other affidavit. It should not take that long. But before we leave this.

Is there anything else you want to raise that you feel is
20 significant to be brought to the attention of the Chair in relation to the Platform Hulls issue?

MR VAN DEN HEEVER: Nothing that I can think of now.

ADV KENNEDY SC: Right. Thank you. Thank you. With your leave Chair, may we then turn to the other affidavit that has already been submitted.

CHAIRPERSON: Yes, that is Exhibit W14.1 starting at page 5.

ADV KENNEDY SC: That is correct Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Thank you. If you have that in front of you Mr Van den Heever?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right. Thank you. Some of the initial pages are pretty much stuff we have already dealt with. So
10 we do not need to go into that. This affidavit, as I understand it, deals specifically with an earlier contract which is referred to as the Trunnion Contract awarded to LMT.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And you deal with that from page 12.

MR VAN DEN HEEVER: Where?

ADV KENNEDY SC: The heading is the Trunnion Contract and the R 12.7 million prepayment. Now you have set out on pages 12 and 13 the procedure that was followed. Various
20 entities were asked for quotations. Is that right?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: LMT was one. ELCA and IAD for the others referred to in paragraph 15.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: And then you refer to a proposal or a

quotation received from of these entities such as LMT. Paragraph 17. That from IT, D and 18. And then you deal with your interactions with colleagues, Mr Teubes, Mr Burger and Mr Knoetze and others.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Now if we can just to what appears to be the main focus of the affidavit from here on page 14. You refer to, in paragraph 24 that:

10 “It became obvious that DLS was in negotiations with LMT on providing financial assistance to LMT.”

And you refer to your picking that up in relation... in a trial of emails, there were discussions relating to financial challenges that LMT was trying to address. And DLS was to provide some financial assistance. What did you understand was actually going on and why?

MR VAN DEN HEEVER: Well, my understanding was that LMT had a cash flow problem and that they needed the assistance of DLS.

20 **ADV KENNEDY SC**: But that stage, was LMT owned by parties other than Denel?

MR VAN DEN HEEVER: I think so, ja. They were not part of us yet.

ADV KENNEDY SC: Right. But they later... There was later selling of 51% shareholding in LMT to Denel?

MR VAN DEN HEEVER: Ja, my understand was that due to

this contract, which was not paid or something, resulted in becoming or getting the ownership in LMT. That is my understanding of it.

ADV KENNEDY SC: Okay thank you. Page 17 refers to a suspensive condition in relation to this contract. What did this relate to?

MR VAN DEN HEEVER: It is basically that if you do not get Phase 2 of the Hoefyster Contract from Armscor...

ADV KENNEDY SC: Are you meaning that if you did not
10 complete Phase 1, you would not get Phase 2?

MR VAN DEN HEEVER: That is correct. Ja, and then you deal with the suspension conditions because the suspension condition refers to that.

ADV KENNEDY SC: Right. And did they in fact complete Phase 1, LMT?

MR VAN DEN HEEVER: No, DLS did not even, at this stage, has not completed Phase 1.

ADV KENNEDY SC: Right. And then you deal with the termination of the contract, paragraph 41 and following. Was
20 that the contract with LMT still, the same contract?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And did you give the notice of termination that is referred to in paragraph 43?

MR VAN DEN HEEVER: H'm.

ADV KENNEDY SC: Who is... you say there, you received

the notice of termination. It was signed by Dr Nel and Mr Burger.

MR VAN DEN HEEVER: Ja, I think it was a Mr De Bardien(?) that requested that documentation. It is somewhere in my statement. Let me just see.

ADV KENNEDY SC: Page 18, paragraph 42. Perhaps that helps you.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Right. Do you know why it was
10 cancelled?

MR VAN DEN HEEVER: I am not sure. I think it was due to the fact that... the money was paid or whatever. I do not know. But there was no need for the contract ...[intervenes]

ADV KENNEDY SC: Can I take you ...[intervenes]

MR VAN DEN HEEVER: ...any longer, I think. I am not sure.

ADV KENNEDY SC: I am sorry to have interrupted you. If I may take you to pages 45 and 46?

MR VAN DEN HEEVER: [No audible reply]

20 **ADV KENNEDY SC**: This is an email from Mr Dabiedeen(?) (De Bardien(?)), Veron(?) Dabiedeen of DLS Financial operations. Is that right?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And he attaches a signed cancellation letter. And is this the letter of cancellation that is referred to

in your affidavit on the following page 46?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: If I can just read it into the record?
Second and third paragraphs.

“It is recorded that the said contract number has not yet come into effect as a suspensive condition as set out in Clause 6.3.1.2.

10 The contract has to date not been fulfilled. It is further recorded that Denel (Pty) Ltd has recently acquired a majority shareholding of LMT Holdings that in light of the above, the parties have elected to evoke Clause 7.6.1 of the contract, hereby effecting a consensual cancellation of the contract. Cancellation notes will come into effect upon signature of the dully authorised representatives of both parties.”

And then we see there are signatures below that on the 21st of September 2012 by Mr Burger for Denel Land Systems and Dr Nel the then CEO for LMT Holdings.

20 **MR VAN DEN HEEVER**: [No audible reply]

ADV KENNEDY SC: Right. Now you then deal with another issue in your affidavit which I am going to try and deal with very briefly Mr Van den Heever and that is LMT purchase order. Can I take you back to page 18 of your affidavit?

MR VAN DEN HEEVER: H’m.

ADV KENNEDY SC: You refer to a Malaysia transaction.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Now you were asked to evaluate the feasibility of facing the manufacturing of the Malaysia LCT 30 turrets on LMT. Was the client there Malaysia? Were these turrets to be supplied to Malaysia?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: Not Armscor? This is different from the Hoefyster contract?

10 **MR VAN DEN HEEVER:** That is correct, yes.

ADV KENNEDY SC: Right. And had Denel got that business to supply armoured vehicles to Malaysia?

MR VAN DEN HEEVER: Ja, it was just turrets.

ADV KENNEDY SC: Just turrets?

MR VAN DEN HEEVER: Which they delivered to Malaysia that was fitted on an Indian fabricated vehicle.

ADV KENNEDY SC: Right. And so this was business that could be given to LMT, is what your affidavit refers to. And then if I can take you to page 19, paragraph 47. Mr Teubes
20 indicated that DLS had to contract with LMT in this regard.

“It was in the process of being acquired by DLS where DLS became a major shareholder but its business strategy had to change.”

Were you informed of this by Mr Teubes?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And was this the reason why you understood the Malaysia turrets business must be based on LMT?

MR VAN DEN HEEVER: Well, it makes sense to me, yes.

ADV KENNEDY SC: Is that what you were instructed to do?

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And then you refer in paragraph 50 to an instruction from Mr Van der Linde to create urgently requisitions for the purchase order to be placed on LMT.

10 **MR VAN DEN HEEVER:** That is correct.

ADV KENNEDY SC: Right. And that was to the value of R 10 million and you have attached to your affidavit the relevant documents. We do not need to go through that I believe Chair.

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: Now what interest me Mr Van den Heever is, at the top of your next page 20, you say:

20 “Considering the deviation from normal procedure as stated above, the urgency attached, I was reluctant to execute the instructions of management.”

In what way did you believe that this was a deviation from normal procedure to place urgently the purchase order on LMT?

MR VAN DEN HEEVER: Okay firstly, the procedure is to go

out on quotation and... In other words, compile an RFT(?). Send it out to the supplier, get your quotations or to the three suppliers which is part of your purchasing file that you need to have. And this was not followed.

I was just given a quotation that came from LMT and requested to place the order to that value of which Mr Van der Linde... the requisitions that are used, to place the order.

And then the approval of the order to that value of R 10 million normally takes two to three weeks for approval.

10 And this only took about two days for all the signatures.

ADV KENNEDY SC: In relation to the ordinary procedure which would have required going out for quotation. That would have been the RFQ process of inviting three suppliers that you knew were suitable to invite them.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Is the answer... is a possible answer to that concern about the fact that the process did not follow the RFQ process, is a possible answer that: Well, Denel was in the process of acquiring LMT. This was to improve the
20 business strategy of Denel.

And it would then make sense to Denel for its own purposes to try and give business LMT entity that it was about to acquire a majority shareholding in.

MR VAN DEN HEEVER: Well, according to me, you still need to follow procedure.

ADV KENNEDY SC: Right. So procedure still required that there would be a measure of competitive process?

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Not just with a company that of course are being acquired but also to get benefit to Denel.

MR VAN DEN HEEVER: That is correct, yes.

ADV KENNEDY SC: And then you deal on page 21 with tax invoices an advanced payment. Please explain to the Chair what the significance is of the advance payment that was
10 made in this regard? Who made what payment to whom and why?

MR VAN DEN HEEVER: Well, the order was loaded by me and sent to LMT for signature.

ADV KENNEDY SC: Yes.

MR VAN DEN HEEVER: And it was returned on the same day and invoiced the next day for payment of R 5.7 million and payment went through. So I do not know.

ADV KENNEDY SC: Was this according to standard procedure?

20 **MR VAN DEN HEEVER:** No, not according to me.

ADV KENNEDY SC: And was there a good business reason that you were aware of for such a prepayment to be made?

MR VAN DEN HEEVER: Only what was told to me by Mr Teubes that the money will be paid back once LMT get their money from somewhere in the Middle East.

I am not sure what country it was but they were expecting an amount from UAE or somewhere and then they will refund this money. And if they do not refund it, then we will have the 51% ownership.

ADV KENNEDY SC: Right. Now you deal from pages 22 to 23 to steps after the invoice was received from LMT and then you had dealing with a Ms Liz Laveshnee Chetty from your Finance Department. Correct?

MR VAN DEN HEEVER: That is correct, yes.

10 **ADV KENNEDY SC:** Who was wanting a copy of the agreement. You told her there had been no agreement except for the purchase order.

MR VAN DEN HEEVER: That is correct.

ADV KENNEDY SC: Were some purchase orders issued in terms of standard procedure without needing an agreement or was there a contract actually required in each case for this type of transaction?

MR VAN DEN HEEVER: Sometimes. Depending on the value. But on this R 10 million there should at least be some
20 sort of agreement but there was no agreement.

ADV KENNEDY SC: Right.

MR VAN DEN HEEVER: Except for the order that was placed on LMT.

ADV KENNEDY SC: And then you refer to a number of communications, I think all by email with Mr Jurie Human,

Mr Du Preez, Mr Wynand Meiring. And they referred to a need to close the order and make the... and in paragraph 66, Mr Du Preez responded that you could close the order and make the quantity and price zero. What is that about Mr Van den Heever?

MR VAN DEN HEEVER: Okay. When the order was loaded, the requisitions that was generated by Mr Van der Linde were used to create the lines in the purchase order.

And that comes from a note where the project stores
10 their money. And all the payments that was done on this, never went through on that requisitions.

It went through on advance payments and on different accounts. So those requisitions are basically unused and it was just connected to the order.

And then the project manager needed that money because he, well, I assumed he paid some of the money from these advanced payment accounts.

It was taken out of his notes. So he wanted us to close the orders that those requisitions... the money that was...
20 that R 10 million that was allocated to that order become available for his project again. If that makes sense?

ADV KENNEDY SC: Are you saying that there was an irregularity here?

MR VAN DEN HEEVER: Normally you should have – get a delivery against an order, a delivery note stating this is

what we deliver which then goes through the stores for receipt and invoice to finances to pay against the requisition that is linked to the order. This, we just received invoices and it was paid out of advanced payment account.

ADV KENNEDY SC: Now in paragraph 70, page 23, you refer, after giving the background facts, to getting information from finance department showing that out of the R9.698 million – was that the value of the order itself?

10 **MR VAN DEN HEEVER:** I think that was what was paid out on that order of R10 million, R9 698 370 was paid to LMT.

ADV KENNEDY SC: Yes.

MR VAN DEN HEEVER: And ...[intervenes]

ADV KENNEDY SC: Then you make a point about of that 9.225 million, a the shortfall of 472 000 appeared. What is the point that you are trying to make there? There is a difference and you said finance department could not give you a difference.

20 **MR VAN DEN HEEVER:** Ja, if you go back I think to point 69.

ADV KENNEDY SC: Yes.

MR VAN DEN HEEVER: Finance verified that they - LMT paid the full amount back to LMT on the order and when I got the information and did the calculation I saw that there

was – not all the money was received back but 472 971 was still outstanding but they could not give explanation why.

ADV KENNEDY SC: Right, may I have a brief moment, Chair? Mr van den Heever, thank you for your help. Those are the questions that I have. Thank you, Chair.

CHAIRPERSON: Thank you very much, Mr van den Heever, for coming to assist the Commission. If we need you we will ask you to come back but thank you very much,
10 you are now excused.

MR VAN DEN HEEVER: Thank you, Chair.

CHAIRPERSON: Thank you. Thank you, Ms Interpreter, you are also excused.

ADV KENNEDY SC: Thank you, Chair, we are ready with our next witness. As I indicated, I do not believe that she will be that long.

CHAIRPERSON: Yes.

ADV KENNEDY SC: She is available, may we ask leave to call her?

20 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: Her name is Carene Geldenhuys.

CHAIRPERSON: Ja, that is fine.

ADV KENNEDY SC: And while she is coming forward and before she is sworn in may I just for guidance refer to her affidavit in the same bundle, Denel 04, it appears from

page 148 and we will be asking for it to be admitted as EXHIBIT W15. You should find the tab there.

CHAIRPERSON: Yes, thank you. Yes, are you ready, Mr Kennedy?

ADV KENNEDY SC: Yes, thank you, Chair, may we ask that your learned associate swear the witness in?

CHAIRPERSON: Yes, my registrar.

ADV KENNEDY SC: Your registrar.

CHAIRPERSON: The Labour Court technology has stuck
10 with you.

ADV KENNEDY SC: Old habits.

CHAIRPERSON: Ja, thank you.

REGISTRAR: Please state your full names for the record?

MS GELDENHUYS: Carene Geldenhuys.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MS GELDENHUYS: No, I do not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

20 **MS GELDENHUYS:** Yes, I do.

REGISTRAR: Do you swear that the evidence you will give will be the truth the whole truth and nothing else but the truth. If so, please raise your right hand and say so help me God.

CARENE GELDENHUYS: So help me God.

CHAIRPERSON: Thank you, you may be seated, Ms Geldenhuys. I think you will need to sit on the other chair otherwise you will be too far from the microphone. I think the other microphone does not work. Okay, alright.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Yes, you may continue.

ADV KENNEDY SC: Good afternoon, Ms Geldenhuys. You have a bundle in front of you, a file. I hope it has been opened at page 151, if you look at the numbers on
10 the top left.

MS GELDENHUYS: Yes, I do.

ADV KENNEDY SC: Right, thank you. Can you confirm that your name appears on this page which is the first page of a statement?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Which you have in fact signed before Commissioner of Oaths. If I may take you to page ...[intervenes]

CHAIRPERSON: Just one second, Mr Kennedy. Just pull
20 the mic closer to you. Ja. Okay, alright.

ADV KENNEDY SC: Thank you. May you, Ms Geldenhuys, turn to page 165? Is that your signature on page 165?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And is it correct that as seems to

appear from the foot of the page you signed that in front of Commissioner of Oaths?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: So this is in fact an affidavit. Do you confirm that you have been through the contents of this affidavit?

MS GELDENHUYS: Yes, I have.

ADV KENNEDY SC: And that you confirm that in fact the contents of the affidavit are correct according to your own
10 knowledge?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right, thank you. Chair, we would then move formally for you leave to have admitted this affidavit, statement/affidavit with its annexures as an exhibit in bundle Denel 04 as EXHIBIT W15.

CHAIRPERSON: The statement/affidavit of Ms Carene Geldenhuys starting at page 151 together with its annexures is admitted as EXHIBIT W15.

STATEMENT/AFFIDAVIT OF CARENE GELDENHUYS
20 **STARTING AT PAGE 151 TOGETHER WITH ANNEXURES**
HANDED IN AS EXHIBIT W15.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: You may proceed.

ADV KENNEDY SC: Thank you. May we just for the record indicate – no, in fact you were previously

represented by attorneys were you ...[intervenes]

MS GELDENHUYS: Yes, I was, when I was still employed by Denel.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Was that Mr Pillay and his team?

MS GELDENHUYS: No, it was Diale Attorneys.

ADV KENNEDY SC: Diale Attorneys.

MS GELDENHUYS: Yes.

10 **ADV KENNEDY SC:** Thank you. But you are no longer represented by them.

MS GELDENHUYS: No.

ADV KENNEDY SC: Thank you. When did you leave Denel?

MS GELDENHUYS: Then end of March – no, the end of April, sorry, 2020.

ADV KENNEDY SC: Right. When did you start there?

MS GELDENHUYS: August – it was – when I started it was still BAE Systems, Land Systems South Africa, that
20 was in 2006 and then in April 2015 we were acquired by Denel, our business in South Africa.

ADV KENNEDY SC: And the business previously owned by BAE that was now acquired by Denel, did that then come to form a division within Denel?

MS GELDENHUYS: No, it was a standalone entity.

ADV KENNEDY SC: Right.

MS GELDENHUYS: With its own board but fully owned by Denel SOC.

ADV KENNEDY SC: So it is a separate company.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: What is the name of it?

MS GELDENHUYS: It is Denel Vehicle Systems (Pty) Ltd.

ADV KENNEDY SC: Right. If we can refer to it from now on as DVS as everybody seems to do.

10 **MS GELDENHUYS:** Yes.

ADV KENNEDY SC: So it was DVS under its previous name and then under the DVS name it was your employer while you were employed in the Denel Group.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Okay, thank you. And what was your job title?

MS GELDENHUYS: I was legal and commercial executive on the DVS executive team.

20 **ADV KENNEDY SC:** Now in – now we must bear in mind your affidavit was signed on the 15 January 2020. We see that on page 105. So when we go to your first paragraph, page 151, obviously that was representing the facts as they existed in January 2020. You were still then employed at DVS, correct?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right. And you there refer to the fact that you were employed as the legal and commercial executive of DVS. You were not involved, or were you, in anything to do with DLS?

MS GELDENHUYS: No.

ADV KENNEDY SC: Right. Now on page 152 you refer to the area of business of DVS, that it has its own three divisions and you described that in some detail in 2.2, correct?

10 **MS GELDENHUYS:** That is correct.

ADV KENNEDY SC: Okay. Chair, with your leave, I am leading the witness on matters that are believe are not controversial.

CHAIRPERSON: Yes, non-controversial matters.

ADV KENNEDY SC: Thank you and then you set out in 2.4 your key responsibility areas.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right. You referred to legal advice in 241 that you would provide the CEO and business.

20 **MS GELDENHUYS:** That is correct.

ADV KENNEDY SC: Where warranted and then also your functions including as part of your key areas drafting and reviewing legal documentation and agreement.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right. Now, Ms Geldenhuys, the

Commission has already heard some evidence in relation to an agreement that was concluded between DVS and VR Laser. Is that – you deal from page 153 with an instruction that you received to prepare a Memorandum of Agreement between DVS and VR Laser services.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And what sort of services were to be provided or goods were to be provided in terms of this agreement by VR Laser to DVS?

10 **MS GELDENHUYS:** At that stage we got an instruction through Mr Ntshepe who was the Acting CEO of Denel at that stage to enter into an agreement with VR Laser. We were not – because it was not something that came from within the business as a requirement that we have identified VR Laser as to be partner with us, we were not quite sure what it is that we need to contract with them, what type of arrangement it was.

ADV KENNEDY SC: Yes.

20 **MS GELDENHUYS:** We then took guidance from Mr Jan Wessels who was the COO of Denel at that stage. When he guided us to enter into a very high level nonbinding noncommittal type of agreement wherein we will agree that we will explore avenues to maybe in future collaborate together.

ADV KENNEDY SC: Right.

MS GELDENHUYS: And that was then the agreement that was drafted.

ADV KENNEDY SC: Okay, thank you. Now you mentioned Mr Ntshepe who was then Acting Group Chief Executive. We know that he took over then as the fully fledged Group CEO. When Mr Saloojee left Denel he was the previous Group CEO. Was Mr Ntshepe, when he was acting, was at the time that Mr Saloojee was on suspension? Do you know?

10 **MS GELDENHUYS:** I believe so.

ADV KENNEDY SC: Okay.

MS GELDENHUYS: I am not one hundred percent in terms of the timeline.

ADV KENNEDY SC: Alright.

MS GELDENHUYS: But this was – we – I know that Mr Saloojee was suspended at the end of September 2015, this is in the beginning of November, so I doubt it very much if there would have been a formal appointment already.

20 **ADV KENNEDY SC:** Okay. Now referred to the instruction coming from Mr Ntshepe and your affidavit says that that went through Mr Steyn. You refer in 322 to Mr Steyn as being Chief Executive Officer of DVS.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Now did it strike you as normal or

unusual that an initiative to enter into a contract with an outside entity such as VR Laser should come from the Group Chief Executive rather than something that was generated within the division itself?

MS GELDENHUYS: Like I have explained, we just became part of Denel. In the previous way that we did business under the BAE System's flag it would have been very strange because the business would identify who they need as a partner and they would substantiate why they need
10 that partner. It was strange that it came from the corporate office that we have to enter into an agreement but it was also well, maybe this is the Denel manner. We were too new in the group to one hundred percent say this is not the way that it is done.

ADV KENNEDY SC: So were you instructed by Mr Steyn to perform some duty?

MS GELDENHUYS: Yes, I was.

ADV KENNEDY SC: And that was to prepare an agreement?

20 **MS GELDENHUYS:** Yes, so I got a basis of the agreement from Mr Wessels which you will see in the pack where he said well, he has used this type of agreement before and he suggests we use it as a basis. We then took that agreement, which is nonbinding, noncommittal and we just amended it so that it fits into the current circumstances in

terms of the type of business that we are doing and then talking that we will then investigate further if there is indeed collaboration opportunities for the two businesses to work together.

ADV KENNEDY SC: Now you refer to in your affidavit to two agreements being signed initially. The one is a confidentiality agreement and the other a memorandum of agreement, your affidavit says, but may I take you to page 171? Do you have it?

10 **MS GELDENHUYS:** Yes, I do.

ADV KENNEDY SC: This is a memorandum – the title is Memorandum of Understanding and it is a five page document running to 175. Are you familiar with this document?

MS GELDENHUYS: Yes, I am.

ADV KENNEDY SC: Is this the document that you referred to in your affidavit as the nonbinding agreement?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Alright. Did you draft this?

20 **MS GELDENHUYS:** Yes I did but it was from – with input that I received from Mr Jan Wessels.

ADV KENNEDY SC: Yes. And was that then finalised by Mr Steyn signing it on behalf of Denel, page 175?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And it was signed on behalf of VR

Laser by Mr van der Merwe.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Alright. Now can we go now to the confidentiality agreement, that starts it seems at page 166. Again an agreement between Denel and VR Laser.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Signed on the same date as the memorandum of understanding.

MS GELDENHUYS: That is correct.

10 **ADV KENNEDY SC:** Right. Did you prefer the confidentiality agreement?

MS GELDENHUYS: Yes, I did.

ADV KENNEDY SC: Right. Now what did you understand the purpose of these agreements to be, the confidentiality agreement and the MOU? Let us start with confidentiality agreement.

MS GELDENHUYS: So as it is reflecting in clause 3 of the confidentiality agreement it was discussions and information to be exchanged that relates to the exploration
20 of possible future collaboration between the parties to exploit the complementary capabilities there is between the parties.

ADV KENNEDY SC: Right. And then there is a reference to patent rights in clause 9 on page 168.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: And then if we go back to page 166, above clause 1 in the preamble it refers to the parties and the addresses and so forth and then on the fifth line in the top paragraph that they desire – the parties desire to protect certain proprietary or confidential information which may be disclosed or exchanged between them both prior to and during the term of this agreement.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: So was the purpose of this
10 agreement? If we are going to do business together this agreement is going to ensure that VR Laser keeps confidential what we entrust to them in confidence.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right. Now if we can turn to the MOU, the memorandum of understanding, page 172. Perhaps the easiest point by way of the overall objective is page 172 in the preamble. It refers to Denel and VR Laser and then it says: Whereas. Do you have that?

MS GELDENHUYS: Yes I do.

20 **ADV KENNEDY SC:** “Whereas DVS has as its main
capability the development, manufacture and refurbishment of landmine protected and armoured vehicles, which vehicles are sold to the local and international market, whereas VRL is a local supplier of armoured steel and has experience in

the fabrication of armoured capsules inclusive of laser cutting and welding. VRL is an existing supplier of DVS, performs laser cutting and the supply of armoured steel under subcontract of DVS. Both parties realise that its capabilities are complementary to each other and requires further investigation into possible collaboration to the mutual benefit of both the parties.”

Right. So this was a memorandum of understanding, as
 10 you have it, nonbinding, it was really, as I understand it, and correct me if I am wrong, it was really a framework for the parties to agree to as a concept to move forward then to negotiate a binding agreement. Is that right?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And it would be an agreement that ultimately would give business from DVS to VRL for VRL to provide specialist laser cutting and other requirements for armoured steel relating to armoured vehicles.

MS GELDENHUYS: I think at this stage that we entered
 20 into this agreement it was not the intention of the business to give some of the DVS business to VR Laser at that stage.

ADV KENNEDY SC: Right.

MS GELDENHUYS: We entered into this agreement to see if there is something that is not part of our core

capability that we can give to them but we will need to have discussions with them to figure out what is there that we can give to them. It was never from the beginning the intention that we will give our main work to VR Laser.

ADV KENNEDY SC: Right. And then if I can refer you to clause 2 on the next page, 173. That sets out the general intention.

10 “The intention of the parties is to explore the feasibility to strategically collaborate and develop their relationship relating to future opportunities and the contracting models relating to such opportunity exploitation. The parties have identified the following as possible areas for collaboration noting that this is not an exhaustive list.

- (a) The possible future local manufacture of specialised steel structures in the RSA.
- (b) The supply of steel products by VRL to DVS on a preferential basis, and
- 20 (c) The future optimal fabrication of armour vehicle hulls.”

That was really - we are going to now explore the way forward to see whether we can do business with each. Is that a fair reflection of what ...[intervenes]

MS GELDENHUYS: That is a fair reflection.

ADV KENNEDY SC: Right. And even the items in (a), (b) and (c) showed the sort of business that was going to be explored but it was not an exhaustive list, as you put it.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Okay, thank you. Now if I can take you back to page 154. You refer to – you deal in paragraph 3.7, page 154, paragraph 3.7, you say:

“Following the execution of the agreement on 2 November it became apparent that Mr Ntshepe was
10 not satisfied with the contents.”

Just explain to the Chair please what the issue was.

MS GELDENHUYS: We understood that Mr Ntshepe contacted Mr Steyn and said to him that this is not the instructions that was given, what we have entered into is nonbinding agreement without agreed work share and this is not what was requested. It is requested that we entered into a binding agreement guaranteeing that there will be some work going to VR Laser.

CHAIRPERSON: I am sorry, who was saying that?

20 **MS GELDENHUYS:** As I understood it, it was – this was communicated to us by Mr Steyn, which was the CEO of DVS, who was my boss and he was conveying it to his executive team being the information or being told by his boss, Mr Ntshepe, that this is not – this agreement is not what they want.

CHAIRPERSON: Did you have any impression as to whether, whoever came up with the idea to put up this nonbinding agreement, was actually trying to avoid getting into a legal binding agreement because he or she could see that there could be trouble here?

MS GELDENHUYS: Well, as the executive team we all knew about it and this was with Mr Wessels, it was our plan, we are going to kick the ball into the future, we are going to do an agreement, it is not going to be binding and
10 we will see what it is that we can do, we have got the ...[intervenes]

CHAIRPERSON: You could say you did sign an agreement.

MS GELDENHUYS: ...the powers to be from our backs and we are going to go forward with our business as usual, it did not work.

CHAIRPERSON: But you could always say to Mr Ntshepe you did sign an agreement.

MS GELDENHUYS: We did say to him we signed an
20 agreement. He received the agreement, as far as I recall, and then a day or two later ...[intervenes]

CHAIRPERSON: This is not what I wanted.

MS GELDENHUYS: No, he was angry.

CHAIRPERSON: You and your team were caught out.

MS GELDENHUYS: We were cheeky that way.

CHAIRPERSON: Yes, Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. But just so that I understand fully. Was the intention never to take the matter forward from the executive point of view as far as you understood with the MOU or was it a genuine intention to negotiate further with VR Laser once the MOU was signed?

MS GELDENHUYS: We did not really understand what it is that we need to contract with them for.

10 **ADV KENNEDY SC:** Yes.

MS GELDENHUYS: I mean, it was uncomprehendable [sic], we have got our business, now we are asked to enter into agreement with another business and – but for what? I mean, it was – so you will see throughout my affidavit there is various actions we took and brainstorming we did and feedback, that we kept on getting and say but this cannot work and this is why it cannot work.

20 So we were told enter into agreement and we entered into agreement. It was not binding and – but let us see if there is something that we can do that is not giving away our core capabilities and our main business.

And yes, there was a real intention to see if there is on the side something that we can give to them but the intention was never to give our core capability or our core business to them.

CHAIRPERSON: And did you contemplate that if at all possible you wanted to postpone for as long as possible the day when you might have to make – to tell them but we have a problem with this?

MS GELDENHUYS: That is exactly the way the contract is structured. You will – and I might be jumping now into the – what you will lead me to.

CHAIRPERSON: Yes.

MS GELDENHUYS: So what we did is we first entered
10 into a nonbinding agreement and then it was said no, better you go for a binding agreement. There was various – and we will most probably go through it, iterations how it ended up, what the binding agreement looked like.

But there is a little rider that we put into the agreement where we kept on – where we were saying okay, we will do that but on condition that we need to look at a couple of things.

And in our mind if we get there one day, we will fight the fight again, that it will not make sense for us, as a
20 business, to give our work to VR Laser.

So as the executive team under Mr Steyn's leadership we felt that we were keeping our backdoor open a little bit although we are not upsetting our leadership in the Denel Group too much.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: So you were trying not to upset the leadership, the Acting Group CEO in particular at that time, but you – but am I right in understanding you were saying you are saying felt uncomfortable from the beginning?

MS GELDENHUYS: We were extremely uncomfortable.

ADV KENNEDY SC: Right. One thing I omitted to take you to and I apologise for this, Chair, is that when we refer again to page 175, the signature page of the MOU, your affidavit refers to the signature having happened at the
10 offices of DVS when the representatives of VR Laser were present.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Were you yourself present when this was signed?

MS GELDENHUYS: I was not present in the meeting but the meeting took place in Mr Steyn's office which is directly opposite my office and it is glass offices, so I could see the meeting happening although I was not in the meeting.

20 **ADV KENNEDY SC:** Now you are aware who actually attended for VR Laser, it seems to be signed by Mr van der Merwe.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: But your affidavit refers also to a person being present known as Kamal Singala?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: How would you know if he was present if you weren't there?

MS GELDENHUYS: Like I said my office is ...[intervenes]

CHAIRPERSON: Ja, she said it is a window, she could see.

MS GELDENHUYS: ... it is over ja, and Mr Steyn giving – this instruction came to entering into an agreement like in the day before, they were in his office while I was sitting
10 across the aisle drafting and finalising it, so he would walk in and out in my office to find out how far am I with the agreement already, and I know they were in there, I might have walked in there ...[intervenes]

ADV KENNEDY SC: But what – sorry to interrupt – what I am interested in is how do you know that – you knew some people were there, and you knew what they were there and how did you know it was Mr Singhala did Mr Steyn tell you or were you introduced to Mr Singhala or did you see...[intervenes].

20 **MS GELDENHUYS:** I think I was cc'd on the invitation, the business invitation, the outlook, and that says Singhala

ADV KENNEDY SC: Fine thank you and then your affidavit refers to a Rumour Mill informs you – you found out through the rumour mill that Mr Singhala, in fact has a fuller name, it's Kamal Singhala Gupta.

MS GELDENHUYS: Yes, only later on.

ADV KENNEDY SC: Okay, alright, now you've mentioned that Mr Ntshepe was unhappy, you deal with that in 3.7 and one of the points that he was unhappy with was that it was an non-binding agreement, it was not yet a binding agreement and there's reference also, to his complain that – about a single source supplier. What did you understand Mr Ntshepe's requirements to be?

MS GELDENHUYS: I want to come back to my evidence
10 earlier on, we were quite new in the Denel stable so the PMFA and the PPPMA – we weren't accustomed to it yet. So, at that stage, when the words, single source supplier was used in our environment it was just exactly the same what the layman will say, single source supplier. So, it was not linked back exactly to how we would from, a supply chain perspective from the state-owned entity look at a single source supplier. So, to us it is team with these people and you can have a type of exclusive agreement with them to work with them.

20 **ADV KENNEDY SC:** Right, so you will procure something exclusively from VR Laser?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: What would that something be, that you understood Mr Ntshepe desired?

MS GELDENHUYS: We still did not know at that stage.

So, it only, later on panned out that they were talking about that they want us to do all our hull manufacturing at VR Laser. So, throughout this period that we were entering into new agreement or entering and discussing agreements, it came out that they are talking about hull manufacturing at VR Laser. Although we started off, let's see what there is that's not part of our core capability that we can give to VR Laser.

ADV KENNEDY SC: Right, now your affidavit then goes
 10 on to talk of email and other communications involving yourself and Mr Steyn and Mr Steyn with Mr Ntshepe, is that right?

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: And Mr Wessels was also involved at a certain stage, we'll get to that in a moment but what did management feel – what did you at the Executive level of DLS feel once it was clear that what Mr Ntshepe wanted was, firstly – immediately rather than through a MOU and some negotiation and exploring the way forward, rather go
 20 straight for an actual binding agreement, secondly that it be a sole supplier, single supplier and thirdly, that what needed to be supplied included construction of hulls?

MS GELDENHUYS: I just want to correct you, it's DVS not DLS.

ADV KENNEDY SC: I beg your pardon.

MS GELDENHUYS: No, it's fine. So, we were, at this stage being told that there is already agreement that was entered by DLS with VR Laser and that they would suggest then that we mirror the type of agreement that DLS has entered into with VR Laser. So, there was then stages where they said, well let's combine DVS and DVS become a party of the DLS and VR Laser agreement. That posed various issues in terms of the amendment of the agreement because it's – DVS is not a division of Denel, it's a
 10 separate legal entity and then it was decided, well the best and the fastest route for us to go is to enter into a similar agreement that DLS had with VR Laser. Yet again, that's where we did a little bit of changing, sort of giving ourselves the opportunity to get out of this agreement should we – the business case mean that we are not bound by this agreement.

ADV KENNEDY SC: Right.

CHAIRPERSON: But your position seems to have been clear that your position at DVS, that you had no need to go
 20 into any agreement with VR Laser, you were fine.

MS GELDENHUYS: That's correct.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: Now, your affidavit refers, at the top of page 155 to DVS having the necessary fabrication capacity and that it was required to run pre-production

pilot fabrication to industrialised hulls for specific vehicles. So, what Mr Ntshepe asked you or instructing you to do to move from a non-binding agreement about talking about the future is something that is binding which would include fabrication of hulls. Was this something that could be done in-house by DVS itself?

MS GELDENHUYS: Absolutely that was our core capability.

ADV KENNEDY SC: It was your core capability?

10 **MS GELDENHUYS:** Absolutely.

ADV KENNEDY SC: Right, and then you refer to Mr Steyn in 3.10 informing you about a meeting earlier that day where the strategic intent of the Denel Landward Business was conveyed to VR Laser and it was explained that a signature would follow after the approval of the Board. What does this relate to, the Landward Business Strategic Intent?

MS GELDENHUYS: After we have been acquired – the DVS business by Denel there was a lot of talk, let me
20 rather say, after the – if I recall correctly, after the suspension of Mr Saloogee there was a lot of talk that the Landward business will consolidate, which will mean that it will be the LS, DVS and LMT that we will consolidate but there wasn't a proper manner in which we were going to do it and there wasn't a real direction what the type of legal

entity would be, it was just this cluster that will have a joint vision and this is then talking to the cluster being those three – or two divisions and our business' joint vision as it is envisaged by the DCO teams.

ADV KENNEDY SC: Yes, so are you saying this, and correct me if my understanding is wrong, within Denel, you had various entities that included LMT that was controlled by Denel with a 51% shareholding, you had DVS that was a company on its own but fully owned and controlled by
10 Denel.

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: LMT had certain core business of its own, you had core business of your own which had previously been conducted when it was owned by BAE, correct?

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: It had now been brought within the Denel Group, you had capacity and what was now being intended in terms of the Landward Business Strategy, was
20 to try and enhance the in-house capability for such products. That you would work together and maybe, ultimately, restructure. So, the focus was to carry on your respective core businesses in a coordinated in-house way, is that correct?

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: Right, now, the proposal...[intervenes].

MS GELDENHUYS: I just want to add here, this was very early stages, very high level. The detail was never flushed out, so it was very much blue sky statements that was being made. Definitely for us in the business unit, there was no tangible plans at that stage, understanding how it will work, how it will flush out into the day-to-day of the businesses.

10 **ADV KENNEDY SC:** I understand, so it was, at that stage just a broad strategic vision?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Right and did you understand that, that broad strategic vision is what had been decided on at the Executive level even above you?

MS GELDENHUYS: Absolutely.

ADV KENNEDY SC: At Board level of the Group?

MS GELDENHUYS: Absolutely.

ADV KENNEDY SC: Right, and...[intervenes].

20 **MS GELDENHUYS:** Board, Executive level at the Group, I'm not sure where.

ADV KENNEDY SC: Right, so although you hadn't got into the nuts and bolts of how this was going to be realised, this vision, that was where the Group wanted to move?

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: Now, how did you find that the instruction from Mr Ntshepe at the level of Group CEO or acting Group CEO, that now some of your core business should be contracted out on a sole supplier basis to VR Laser?

MS GELDENHUYS: It did not make sense to us.

ADV KENNEDY SC: Right, now your affidavit in 3.10 at page 155 refers to Mr Steyn giving you feedback on a
10 meeting that he seems to have had with – that day with VR Laser Services where he was trying to explain to them, VR Laser, that this approach had to be subject to the Landward Business Strategy. Do you understand why he was explaining that to VR Laser because they're outside the Group, isn't it an issue that he should have had with Mr Ntshepe?

MS GELDENHUYS: I think at that stage, and I don't want to put words into Mr Steyn's mouth, I think he was very much aware that, through the VR Laser channel it – there
20 is feedback into the Executive level in Denel. What I was referring to in this paragraph is – and it's supported by the emails that I attached hereto, is where Mr Steyn explained to Mr van der Merwe that we cannot just enter into an agreement and say, okay we're going to give you some of the work, we are a business, we've got an integrated

business plan that we've prepared for a five-year period where we committed that we will give a certain return to our shareholder. If it is that we need to change and take some of our core capability and our core work out of our business plan then we will have to change our business plan and go back to the Denel Board who is the authority that approves our business plan, they then need to see what is the impact of us taking out our business, out of our own business plan and they need to authorise it. So, this is
10 the reason why we kept on – or they kept on referring, it needs to be approved by the Board because the Board needs to see the impact, financially, what it will mean to the DVS business if we take the business that rightfully belongs then to DVS and we place it on VR Laser.

CHAIRPERSON: Now did Mr Steyn or van der Merwe, who was the CEO of DVS?

MS GELDENHUYS: Mr Steyn.

CHAIRPERSON: Mr Steyn, did he ever tell you or his team that he had confronted Mr Ntshepe and say, but I
20 don't understand what you are asking us to do, tell me what I – I don't understand the logic, why do we need to give some business to these people and if he said he did, what answer was he given because from what you have said, it's clear you and the team at DVS which must include Mr Steyn, didn't see the need for DVS to give some

business to VR Laser but did he confront him and say, give me a rational reason, I don't understand why you want us to do this and did he give him any reason?

MS GELDENHUYS: I cannot answer that question, what I can answer is that, continuously, Mr Steyn, through correspondence which is added to my affidavit and from our business we continuously conveyed to DCO and Mr Ntshepe why this cannot work. So, we reiterated why it cannot work, I do not bear knowledge whether he asked,
10 why must we do this.

CHAIRPERSON: No, no my question was whether Mr Steyn ever reported to you that he had asked Mr Ntshepe...[intervenes].

CHAIRPERSON: You don't recall?

MS GELDENHUYS: No.

CHAIRPERSON: But from what you are saying, are you suggesting that there were meetings between yourselves from DVS or some of you, with Mr Ntshepe, maybe other people, where you did tell him this or...[intervenes].

20 **MS GELDENHUYS:** Where we did tell him this cannot work for our business?

CHAIRPERSON: In a meeting.

MS GELDENHUYS: I do believe, not where I was present but I do believe, if I look at the correspondence which I was copied in to, it does look like there have been

meetings where Mr Steyn was present and some of them where Mr Wessels was also present wherein they explained or tried to explain to Mr Ntshepe why this cannot work and does not work for our business.

CHAIRPERSON: And there is no indication that he had an answer for them, a proper answer.

MS GELDENHUYS: Not to my knowledge.

CHAIRPERSON: Ja, okay, alright.

ADV KENNEDY SC: Thank you Chair. On this point may I
10 take you to an email that – as you point out is referred to in your affidavit, can I take you please to page 185.

MS GELDENHUYS: I've got it.

ADV KENNEDY SC: It's referred to as Annexure CG4.1, I see in your affidavit you refer to CG4 but is this the CG4 that you're referring to...[intervenes].

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: Correct, thank you. Now this is an email – let's leave aside the top section because it seems to be forwarded at a later stage but the actual email starts
20 about a third of the way down, do you see under in bold print 13 November, then there's a little table which shows the subject of the person who's sending it and date and so forth, the usual email heading?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: And that is sent from Johan Steyn,

that's your CEO of DVS.

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: And it's addressed to Piet Kruger.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Who was he?

MS GELDENHUYS: He was the – he was from DVS and he was the Operational Executive.

ADV KENNEDY SC: Okay and then it refers to yourself, is that right, Colette Geldenhuys?

10 **MS GELDENHUYS:** That's correct.

ADV KENNEDY SC: Percy Indaba also a DVS colleague?

MS GELDENHUYS: Also, a DVS colleague, he was, at that stage, I believe the General Manager of Gear Ratio

ADV KENNEDY SC: Okay, and then, is it, RP du Plessis, was copied in?

MS GELDENHUYS: That's correct, he was the Director of Programmes and IT at DVS.

ADV KENNEDY SC: At DVS?

MS GELDENHUYS: Yes.

20 **ADV KENNEDY SC:** So, he was on the DVS Board?

MS GELDENHUYS: Executive team, so both Kruger, myself, Indaba and du Plessis was part of the DVS Executive team.

ADV KENNEDY SC: Okay, then it's also copied to Johan Wessels.

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: He was the Group COO, at the time, is that correct?

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: So, he wasn't working within DVS, he was above that at head office.

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: At Group level reporting to Mr Ntshepe?

10 **MS GELDENHUYS:** That's correct.

ADV KENNEDY SC: Right and then who's the other person, Odwa Mhlwana?

MS GELDENHUYS: Odwa Mhlwana, Obo was at that stage the acting CEO of Denel after Mr Saloogee and Ntlontslo ...[? 17.58] were suspended. I need to say that Odwa came with us from BAE Systems. So, there was a close, at this stage, a very close relationship between us because it was one of our colleagues that was now pulled up to head office.

20 **ADV KENNEDY SC:** So, although, he was a bit distant now in a sense that he was elsewhere within the Group, no longer in the DVS...[intervenes].

MS GELDENHUYS: That's Correct.

ADV KENNEDY SC: You still had that historical connection?

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: Right, now this appears to be a report back from Mr Steyn about a meeting.

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: He refers – he says,

“Apologies for the lengthy email, I got stuck on the RG21 on my way back to the office from DCO. Due to the urgency of the matter this cannot wait until Monday”,

10 So as far as you, as an Executive team, within DVS were concerned, was this viewed as something significant and important?

MS GELDENHUYS: Yes, it was.

ADV KENNEDY SC: Then he says,

“Following Zwelakhe's [?] request two weeks ago”,
Is that Zwelakhe Ntshepe?

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: Right,

20 “To formalise an agreement with VRL for the fabrication of our hulls in future, several interactions take place between DVS and VRL to start the process. Evaluate VRL's capability. Looking into the negative effect of such an agreement on our fabrication workshops, recoveries etcetera, I had a follow-on meeting with Zwelakhe,

Jan and Odwa yesterday on the progress and next steps”.

He seems to be saying, we received this instruction, we’re trying to deal with it and take it forward, one of the things we have to look at is the negative effect that such an agreement would have on our business.

MS GELDENHUYS: That’s correct.

ADV KENNEDY SC: Did you understand there to be some interaction between Mr Steyn, who was the head of the
10 Executive of DVS with his superiors at head office?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Acting Group CEO, Group COO and CFO?

MS GELDENHUYS: That’s correct.

ADV KENNEDY SC: Right and then he says,

“Attached, a few slides originally drafted by Jan, updated following the meeting yesterday to illustrate our intent and clarifying current opportunities for VRL. Zwelakhe asked that Jan and
20 I meet with VRL today and share this with them, Pieter van der Merwe, the CEO”.

That’s VR Laser’s CEO, is that right?

MS GELDENHUYS: That’s correct.

ADV KENNEDY SC: Then he says,

“At our meeting, Jan and I explained that DVS has a

fabrication capability”,

Now is that confirming what you said earlier, you could make these things in-house?

MS GELDENHUYS: Absolutely.

ADV KENNEDY SC: “And that we are required to run pre-production pilot fabrication to industrialise hulls of specific vehicles. Pre-production quantities can vary depending on customer requirements etcetera. Then the next line, in the end we agreed that a more appropriate way to approach an agreement is to use the DLS/VRL agreement”,

That’s the DLS, that’s your sister entity – well you’re a separate company but DLS was an operating division of Denel itself.

MS GELDENHUYS: That’s correct.

ADV KENNEDY SC: And so the agreement reached, it seems, between Mr Steyn, Mr Wessels and Mr Ntslontlo with VR Laser is that, to accommodate the concern about the giving of business to VR Laser, despite the fact that DVS had an in-house capacity was to follow, as an example, another agreement which had already been entered into by DLS with VRL?

MS GELDENHUYS: That’s correct.

ADV KENNEDY SC: And that would be to – yes, ending up with a Denel Landwards VRL agreement excluding LMT.

“Jan’s request is that we draft the appropriate clauses, principles and potentially amend the DLS/VRL agreement, incorporate the DVS part and finalise it by next week Friday, Pieter will forward the version”,

And then there’s discussion about Jan explaining how it would be done by way of Denel Board of approval on the 7th of December then he says,

10 “This is the background leading up to what needs to be done now. 1. Finalise the detail of fabrication workload over the budget period, five years, based on our current budget, Percy will complete this. 2. Calculate the negative effect on recoveries”,

Now what are the recoveries that are referred to there?

MS GELDENHUYS: So, we’ve got a baseline for the amount of people that we’ve got and we have to sell a certain amount of vehicles or product, whatever it is to cover the amount of people and the overhead cost that
20 we’ve got. So, if we don’t sell enough, we have got under recoveries or we’ve got over recoveries.

ADV KENNEDY SC: Okay, and then 3, at the top of page 186 is,

“The next step is to draft the additional clauses required to cover DVS’s part in the current DLS/VRL

agreement to include the principles and outline very high level on the last slide, herewith some guidance”,

So, he’s giving you some pointers as to what you should do in drafting the clauses based on the DLS agreement with VR Laser, is that right?

MS GELDENHUYS: That’s correct.

ADV KENNEDY SC: And one of them is in,

10 “a) Other than in the DLS case the preamble should include the fact that DVS has a world class fabrication facility capability. DVS requires a high quality hull fabrication supply department to manufacture hulls for production that meets the requirements of Government’s Black Industrialist Programme initiated by DTI and in our opinion VRL meets such requirements”,

20 Now that seems to raise two issues. The one is that mention would be made that DVS has its own capability but now needs somebody that is a top-class supplier of particular items. Now, had your view changed or were you persuaded that DVS couldn’t provide all of this in-house?

MS GELDENHUYS: No, at that stage there was – and this is exactly what he referred to, a white paper, if I recall correctly, about Black Industrialist Programme that the

Government wished to roll out and it was then decided that we will use this Black Industrialist Programme at least as some sort of justification why we are entering into this agreement because we can't just follow the DLS agreement because they say in their view they don't have the capability to do it. We've got the capability, we have to state that we've got the capability but now you have to rationalise, if you've got the capability, why is it that you need to outsource it and this is the best and the close to
10 getting to somewhere wherein you look then at the Black Industrialist Programme. I have to say I know there were talks about it, I can't recall the detail of the programme so unfortunately, I can't comment further on the programme.

CHAIRPERSON: You must have been in a difficult position at DVS?

MS GELDENHUYS: We were in an extremely difficult position.

CHAIRPERSON: Because it seems to me that you could see that there was something untoward into this whole
20 thing. You had discomfort associating yourselves with it, you had discomfort being party to any agreement that would give VR Laser some business in these circumstances where you were satisfied you had all the capacity to do the work that you were doing but at the same time you seem to have had some pressure and you had to try and walk quite

a tight rope between having to incur the wrath of your top leaders and – or lose your business, your core business, you had to try and say, how do we strike a balance and still, not do what seems to us to be wrong but at the same time, still be there or not lose, does that reflect, more or less what you think your situation was?

MS GELDENHUYS: It was definitely what our situation was in – hindsight is always a perfect science but when we were in the happenings, I think the business rationale for
 10 this does not make sense for us. We are an old business, we know what we do, we've shown profits, we are good on what we are doing. It does not make business sense for us to give our business away to anybody else. That was a bigger drive for us than whether it was VR Laser, whether it was for DLS, whether it was LMT, the drive for us is, why must we give our business away. So, at that stage the big – the red flags was definitely on our level, not what we know now it was more, why do we – business principles, this does not make sense.

20 **CHAIRPERSON:** Yes, so it was based on your assessment of your business?

MS GELDENHUYS: Absolutely.

CHAIRPERSON: To say we don't need to do that but obviously if somebody keeps on saying do it and you can't understand why, your thoughts have got to start wondering.

MS GELDENHUYS: Yes.

CHAIRPERSON: Ja, okay, alright.

ADV KENNEDY SC: Thank you Chair. Ms Geldenhuys so this email correspondence that we've just looked at wasn't copied into Mr Ntshepe, according to the email address list but it was copied into Mr Wessels as COO, Group COO.

MS GELDENHUYS: That's correct.

ADV KENNEDY SC: And he reported to Mr Ntshepe, then acting Group CEO.

10 **MS GELDENHUYS:** Yes, so both Mr Wessels, Mr Mhlwana and Mr Steyn reported to...[intervenes].

ADV KENNEDY SC: Mr Mhlwana as well?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: At Group head office level?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Right, now just – the slide presentation that he's referred to in the email, is that the set of three slides that we see, or four slides that we see.

MS GELDENHUYS: That is correct.

20 **ADV KENNEDY SC:** And what did this – did this depict what the objective was for this landward – landward objective to incorporate the VR Laser that they had in mind

MS GELDENHUYS: According to Mr Steyn yes.

ADV KENNEDY SC: Right.

MS GELDENHUYS: So this was very high level it was not on

the executive level of the business discussed or – it was for information for us.

ADV KENNEDY SC: Right. Now to the extent that an email earlier suggested that if you followed the V – sorry the DLS single source supply – single supply agreement with VR Laser that that might somehow bring it within the landward strategic objective of Denel to try and keep things in-house. In your view would it – was that possible – was that feasible?

10 **MS GELDENHUYS:** Just repeat the question please.

ADV KENNEDY SC: Just – sorry I am – I was not very clear. You gave evidence earlier about this landward strategic policy.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: That Denel board had already adopted. They brought in what was previously owned by BAE.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: But then became DVS your company.

MS GELDENHUYS: Yes.

20 **ADV KENNEDY SC:** They already had a – their own capacity and other divisions as well.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And they had bought a majority controlling share in LMT.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And all of your entities and businesses had certain core capabilities.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And capacities and in your case that included as part of your core business the ability to manufacture hulls of armoured vehicles.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Correct. And you said earlier the strategic objective was to try and enhance the in-house
10 capability.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right.

MS GELDENHUYS: I – I also just want to say the – the direction or the strategic intent it changed quite often.

ADV KENNEDY SC: Right.

MS GELDENHUYS: So – so I would not know at this stage what it was; where it was.

ADV KENNEDY SC: Okay.

MS GELDENHUYS: Whether it was let us consolidate and
20 be one company and we bring you in and we divisionalised you whether you going to stay on your own but we just going to manage.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: Whether it was very fluid.

ADV KENNEDY SC: Yes you testified earlier that how it

would be achieved would be something that would still developed.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: But at this stage were you under at least the understanding that that broad objective was still in place?

MS GELDENHUYS: Yes it was.

ADV KENNEDY SC: Okay.

MS GELDENHUYS: But there was also an understanding
10 that there was a strategic agreement that was being entered into a VR Laser.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: For what I do not know.

ADV KENNEDY SC: I am really just asking...

MS GELDENHUYS: For the bigger – for the bigger part of the business.

ADV KENNEDY SC: yes.

MS GELDENHUYS: I mean we knew we did not understand
for our part of the business why we need to do it so the
20 rationale why it was there for the bigger part of the business was they have shared with us.

ADV KENNEDY SC: Right. But that – what I am suggesting to you and just ask you to comment on one way of looking at it perhaps is that if you have an objective that tries to keep in-house it does not make sense to go out of the Denel's

divisions and companies.

MS GELDENHUYS: No.

ADV KENNEDY SC: Including DVS to now start getting some of your core business done by VR Laser.

MS GELDENHUYS: No it does not.

ADV KENNEDY SC: Is – do you share that concern?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Or do I express – do I summarise what your concern was?

10 **MS GELDENHUYS:** It is 100% correct because if we would have done that it would have meant that DVS would have ended up in a systems house and not with the manufacturing capability and that was not what our main business was. Our main business was physically manufacturing.

ADV KENNEDY SC: Okay. May I ask you then please Mr Geldenhuys to turn to page 191.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: The email half way down seems to be an email from the 13 November 2015. And it appears to
20 come from – is it from Mr Steyn to Mr – from Mr Steyn yes? Is that right?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And it seems to be addressed in confidence to Jan that Wessels and Odwa that is Mr Mhlontlo.

MS GELDENHUYS: No Mhlwana.

ADV KENNEDY SC: I beg your pardon Mhlwana yes.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Thank you. I beg your pardon. And then Mr – I do not want to go through all of this but you have mentioned this in your affidavit as being an email that Mr Steyn shared with you to show that he had expressed concerns with Mr Wessels and Mr Mhlwana, is that right?

MS GELDENHUYS: That is correct.

10 **ADV KENNEDY SC:** Okay. And then if we look at the top email that is from Jan Wessels back to Mr Steyn again their colleague – or Mr Wessels' colleague Mr Mhlwana was copied in and it is headed Pitfalls and concerns fabrication outsourcing to be VRL. And then he says:

20 “Refer my email response to your earlier wider email that is the best response – approach I can advise. Present sober and professional delta business impact plus and minus of such potential scenario to board 7 December that is why no decision can be finalised before that point when shareholder made his choice. Important to quantify every parameter fairly and objectively, the plusses and the minus deltas and doing so not to be seen against change in principle though.”

Now what did you under – if I may just mention Mr Wessels himself has been providing evidence to the commission but I just want to ask you from your discussions with Mr Steyn and your colleagues in executive management at DVS what did you understand was happening between Mr Steyn and Mr Wessels?

MS GELDENHUYS: So...

ADV KENNEDY SC: Was Mr Steyn raising concerns along the lines that you have raised with the Chairperson today?

10 **MS GELDENHUYS:** Yes.

ADV KENNEDY SC: With his colleague who was his superior in the group Mr Wessels.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And his colleague also his superior Mr Mhlantla.

MS GELDENHUYS: Mhlwana.

ADV KENNEDY SC: Ms Mhlwana I beg your pardon.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: I do beg your pardon.

20 **MS GELDENHUYS:** That is correct and then the – the coming back yet again we were new in the groups so Mr Jan Wessels was the COO.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: So Mr Steyn at that stage leaned quite on him because it was guiding into the group.

ADV KENNEDY SC: Ja.

MS GELDENHUYS: As the COO I mean with him as well.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: And Johan kept raising the concerns that we have got. We have drafted lists; we have calculations; we showed what our concerns is and then Jan I do believe that he tried as well to convince Mr Ntshepe that this is not the right and you will see it from the emails that this is not the same scenario as the VR – DLS scenario
10 because they do not have capacity or capability to do hull manufacturing and that it cannot be seen as exactly the same that Mr Wessels eventually said well the best thing that you can do now is the board needs to decide. You will have to tell the board what is the impact of this agreement. If you enter into this type agreement what is the impact? You will show it in your business case and your business plan for the next five years on the board meeting that was scheduled for the 7 December and then the board needs to decide what is it that they want to do. Does the board want
20 you to enter into an agreement like this or not?

ADV KENNEDY SC: Right.

MS GELDENHUYS: This is what I understand from this email.

ADV KENNEDY SC: Okay. Thank you. And then I would like to refer again to the email from Johan Steyn to Mr

Wessels and Mr Mhlwana at the foot of this page 191. We dealt with that but what I am interested in is the following page immediately after the heading or the conclusion regards Johan. There is a heading Fabrication outsourcing considerations in my copy I assume that everybody has the same copy – colour it is in brown, light brown or tan. And there are 15/16 points that are considerations relating to the outsourcing of fabrication. Who do you understand these to be considerations – who do you understand to be the person
 10 listing these considerations?

MS GELDENHUYS: So...

ADV KENNEDY SC: Was that Mr Steyn or who?

MS GELDENHUYS: So how this list came about was Mr Steyn requested myself, Abrie Du Plessis, Piet Kruger and Percy Ndaba to brainstorm if we go through this agreement what the impact would be on our business. And this was – we had off site strategic session and we just in 10/15 minutes compiled this list to indicate what we see as the executive team or a core part of the executive team why this
 20 agreement would be problematic. And you will then see in the email on the previous page where he then actually informed Mr Wessels and Mr Mhlwana that this agreement was drafted by his team and there was no influence from his side. I think it – at this stage it must be said that Mr Steyn was now obviously at this stage seen in the group as being

blocking all the agreements because he just did not – he kept on coming back and saying no this cannot happen, this cannot happen. So it was seen or it was – he was seen and most probably then the executive team have – of DVS was seen as being a – a little rock in somebody's shoes.

ADV KENNEDY SC: Okay if we can look at – as you point out the email itself refers to what you have said about him not giving the input it was from a collective team effort. I am back at page 191. Email at the bottom and the first sentence

10 – first paragraph:

“At our exec team off site early this week I asked Abrie, Piet, Percy and Carene – Carene that is yourself, correct?”

MS GELDENHUYS: That is correct.

ADV KENNEDY SC:

20 “To form a small team and brainstorm all the issues/angles concerns with respect to outsourcing our fabrication work. Below an unedited version of the list I have received an hour ago. We will use this list to ensure we cover most of the potential pitfalls in the agreement with VRL. Most notably of it all is the general view not influenced by me that this would not be the right thing to do.”

Right thing to do from whose perspective?

MS GELDENHUYS: From DVS's perspective.

ADV KENNEDY SC: From DVS's perspective and then he puts in brackets items 1 and – item 1 and 2 and then he puts four explanation – exclamation marks I beg your pardon. Then if we go to look at items 1 and 2 on your list at page 192. The first two items are:

“DVS will lose a core competency a real competitor will be created.”

Was this is a serious concern on your part and your
10 colleagues part?

MS GELDENHUYS: Absolutely.

ADV KENNEDY SC: Right. And then 3

“The outsourcing of all fabrication will rob DVS of the opportunity to develop fabrication QSE's and EME's for a purpose of empowerment.”

What is QSE's and EME's?

MS GELDENHUYS: It is micro enterprises and qualified enterprises. It is part of the – the BBBEE score card and
20 how you develop.

ADV KENNEDY SC: Right.

MS GELDENHUYS: The industry.

ADV KENNEDY SC: Right.

MS GELDENHUYS: As well as previous disadvantaged individuals.

ADV KENNEDY SC: What about the possible counter argument that well if you giving it to VR Laser if they have black empowerment credentials are you not achieving the same thing?

MS GELDENHUYS: Ja but I do not think that they were – or they were the qualified enterprises or the micro enterprises.

ADV KENNEDY SC: I see. And then the fourth point. Hull – I am sorry.

10 “Hull fabrication is critical for protection and
the accountability and reputational risk will
remain with DVS but the responsibility will be
with another party.”

Just explain that to us please?

MS GELDENHUYS: So when he is referring to protection. He is referring to landmine protection.

ADV KENNEDY SC: Right.

20 **MS GELDENHUYS:** So the fabrication of the hull is critical
for landmine protection and the accountability will remain
with us but the responsibility to ensure that there is landmine
protection is now outsourced to another party. So we will
take the risk but we are not 100% in control of the risk.

ADV KENNEDY SC: So you would be accountable?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: If for example soldiers are blown up in
a – in an unsafe armoured vehicle you would have to be

accountable but you have not manufactured it. You have got somebody to do it and you...

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: You leaving it to them to achieve the standard.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Okay. Thank you. And then – and then I am not going to deal with all of the other issues but I just want to highlight a few.

- 10 7. Consider PFMA requirement. That is the Public Finance Management Act that an entity must preserve and protect its IP and capability.

And then highlighted in yellow Carene to check.

That is yourself.

MS GELDENHUYS: That is correct.

- ADV KENNEDY SC:** Right. And then the other point that I would highlight is paragraph 10 Retrenchment or reallocation of current resources in fabrication must be considered. So one of the various other items that you were concerned
- 20 about is that there could be implications for having to retrench people who were employed in fabrication in the in-house capability if no longer were they doing the fabrication.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Do I understand you correctly?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Thank you. Now I would like you to go to another chain of emails that we find immediately following that that is page 193 to 195. Let us start at the email in November on page 194 from Jan Wessels 17 November 2015 that is an email from Mr Wessels to Mr Ntshepe.

MS GELDENHUYS: That is correct.

CHAIRPERSON: What page is that – I heard 193?

ADV KENNEDY SC: Sorry Chair 194.

CHAIRPERSON: Oh okay.

10 **ADV KENNEDY SC:** About a third of the page down you see from Jan Wessels sent on Tuesday November 17, 2015. You with me Ms Geldenhuys?

MS GELDENHUYS: Yes I am.

ADV KENNEDY SC: And it appears and I am not going to go through this all but it appears that Mr Wessels was raising some of the concerns that had been raised by Mr Steyn.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And he refers to a meeting on the 13 November which had included Mr Van Der Merwe from VRL
20 and Mr Steyn and Mr Wessels himself. And then he says – do you see a number of bullet points?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Yes in fact before we get that. I think I should read into the record if I may Chair the next sentence.

CHAIRPERSON: Yes.

ADV KENNEDY SC:

“I have to repeat again that the process and complexity differs from when DLS appointed VRL as preferred single source hull fabricator. DLS had no in-house capability anyway and used a variety of outsourced fabricators from now with DVS with DVS having a strong in-house capability which needs to be converted in an optimal way.”

- 10 Am I right in understanding he was raising the point that you have gone into some detail with the Chair to say in DLS’s case they did not have an in-house capability so it might make sense to have an outside provider on a single source basis being VR Laser. But you were different. Here DVS as opposed to DLS had its own in-house capacity so why contract it out?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Is he referring to the same point as yours?

- 20 **MS GELDENHUYS:** Exactly.

ADV KENNEDY SC: Alright thank you. And then he says:

“The following were discussed in detail on Friday the 13 November at the meeting.”

And again Chair I am not going to go through everything but just focus on a few.

“The model of strategic cooperation envisaged between DVS and VRL in the context that DVS has a big in-house fabrication capability including people, facilities, infrastructure that will need to be migrated to VRL partially or fully when and agreement is reached.”

Again it seems to be raising at least some of the points that you have also mentioned as problem areas that – that rang
10 some alarm bells.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And then there is reference to

“Discreet programs, practicalities, timelines and then the fifth bullet point is acknowledged by both sides that the DVS business plan budget for 2016/2017 plus four years will be affected. DVS becomes more of a systems company than a manufacturer.”

Did you understand that that was where DVS would be
20 heading if it entered into this agreement with VR Laser where a lot of your core business was now – was manufacturing which was now to be done by VR Laser?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Right. And it says:

“As such Denel board will have to sign off the

partnership by virtue of approving the revised budget.”

And then he refers to the way forward

“A draft binding agreement will be constructed and then it will be referred to various parties etcetera.”

Now – so – and then we get a response from Mr Ntshepe at the top of this page but can we start at the foot of page 193 where we just see in the last three lines – do you see from

10 Zolake Ntshepe?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Sent on the 17 November at 8:44 am to Mr Wessels copied in Mr Mhlwana as well as Stephan B and Johan Steyn and this is what he says:

“Hi Jan your email is too long and as you usually say some of the issues you put on...”

CHAIRPERSON: I am sorry – I am sorry Mr Kennedy I have lost you.

ADV KENNEDY SC: It is the top of page 194 line 3 Chair.

20 **CHAIRPERSON:** Oh the top – the top one.

ADV KENNEDY SC: That is correct.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: So this is an email from Mr Ntshepe replying to the lengthy and detailed email that Mr Wessels had sent him raising inter alia the concerns about the impact

this would have on DVS's core business.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Okay. So Mr Ntshepe comes back with a very brief email he says:

10 “Hi Jan your email is too long and as you usually say some of the issues you put on paper can be discussed. You forgot to mention that I showed you Johan Odwa and now a Stephan I am not sure exactly what
10 that means a letter coming from the chairman instructing me to divisionalise and optimise DVS and DLS and show savings whilst the process is being carried through. I have asked Johan and Stephan to do just that because we were taking too long to come to a final conclusion on this matter. This process would of course involve you as a third independent party. We are required to present a plan for the board and I have
20 asked Stephan to take the lead on this.”

Were you made aware of this response from Mr Ntshepe?

MS GELDENHUYS: Yes we were.

ADV KENNEDY SC: We see that he criticises Mr Wessels firstly for being too long in the – in his email and secondly for raising issues that perhaps require rather discussion

presumably not discussion by email but face to face and then he – the rest of his email seems to be saying he is under pressure from the chairperson to make structural changes within Denel and the matter was accordingly urgent. Were you aware that – whether Mr Ntshepe and this email or anywhere else actually got to grips with giving a response of substance to the concerns that Mr Wessels had raised in his email concerning for example the impact on DVS's core business being taken away?

10 **MS GELDENHUYS**: No I am not aware.

ADV KENNEDY SC: And that was one of the concerns that you had raised that then went to Mr Steyn, that then went to Mr Wessels and Mr Wessels then was conveying it by way his email below the one that we have just looked at.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right.

CHAIRPERSON: Do you know whether the reference to chairman in that email is reference to the chairman of the Denel board?

20 **MS GELDENHUYS**: It is indeed.

CHAIRPERSON: Corporate.

MS GELDENHUYS: It is indeed.

CHAIRPERSON: And at that time who was that?

MS GELDENHUYS: Mr Mantla.

CHAIRPERSON: Mr Mantsha?

MS GELDENHUYS: Mantsha yes.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: So this is not a reference to the chairperson of the DVS board?

MS GELDENHUYS: No.

ADV KENNEDY SC: It is a chairperson of the Denel SOC Limited board SOC Limited board to whom Mr Ntshepe reported.

MS GELDENHUYS: Yes.

10 **ADV KENNEDY SC:** As Group CEO. Was that your understanding?

MS GELDENHUYS: That is correct.

CHAIRPERSON: Yes you must just think it through carefully because there are boards for different entities and then there is the overall board for Denel ...

ADV KENNEDY SC: SOC.

CHAIRPERSON: Yes.

MS GELDENHUYS: Yes so...

CHAIRPERSON: Yes SOC.

20 **MS GELDENHUYS:** So this was talking to the Denel SOC board.

CHAIRPERSON: And the chairman of that board.

MS GELDENHUYS: The chairman of that board.

CHAIRPERSON: Okay.

MS GELDENHUYS: What I understand from this email was

what happened was that Mr Ntshepe indicated that the chairman said DVS must be divisionalised meaning we cannot be a stand-alone business anymore we must be pulled into Denel group and not be a stand-alone company anymore and that real cost savings must be shown which I read between the lines as a subtle threat in if we need to show cost savings you have got two businesses, the work is there but the only thing that is duplicated is the executive teams. So some of the executives need to go that is the real
 10 cost saving. He also then goes further when he said and Stephan will take the lead on this which in effect will then mean that Mr Steyn's authority level is taken away from him and he is moving underneath Mr Stephan Burger from DLS.

ADV KENNEDY SC: Right thank you. May I then proceed to page 193. That is an email – if you look at the table including subject and who it comes from and to whom. It is an email sent on the 20 November from Johan Steyn, is that correct?

MS GELDENHUYS: That is correct.

20 **ADV KENNEDY SC:** It is addressed to Mr Mhlwana, Mr Kruger, Mr Du Plessis, yourself Ms Geldenhuys and Mr Ndaba and copied in Stephan Magabolo.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And what Mr Steyn says is this:

“All since Zwelake surprising instruction

given to me a few weeks ago to enter into an agreement with VRL we have made good progress.”

Now did you understand Zwelaki to mean Mr Ntshepe and did you understand the instruction to mean that you must proceed with the single source supply agreement with VR Laser?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Did he explain to you why or did you
10 understand why that instruction was – came as a surprise to Mr Steyn? Was it the point that your raised earlier?

MS GELDENHUYS: Because it was not driven by our business.

ADV KENNEDY SC: Yes. And then he continues we have made good progress with Jan Wessels’ help and oversight. We had several discussions with VRL and DCO about this. DCO meaning?

MS GELDENHUYS: Denel Corporate Office.

ADV KENNEDY SC: Corporate Office that is head office?

20 **MS GELDENHUYS:** Yes.

ADV KENNEDY SC: Headed by Mr Wessels reporting to Mr Ntshepe?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right. The process evolved mainly around OMC – what is that?

MS GELDENHUYS: So it is stands for Olifant Manufacturing Company. It is an old legacy name of one of the divisions of DVS.

ADV KENNEDY SC: I see. So mainly around that division's fabrication capability how we protect it not to increase risk in the business and we utilise it in the future. And then says he:

10 "I had a brief review of revision 3 attached to
the draft agreement with Jan Wessels and
Stephan Burger yesterday at DCO and both
were happy with it. Since Zwelake instructed
Stephan to take the lead in this see below
email from him he, Stephan will now discuss
and finalise this agreement with VRL."

Now Stephan Burger was the CEO of DLS.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: At that stage.

MS GELDENHUYS: That is correct.

20 **ADV KENNEDY SC:** But the DLS already had its own single
source supply agreement with VR Laser?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Is that correct? You were a separate –
in fact not only a – not a separate division in fact a separate
company from DLS which was a division of Denel itself.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Is that correct. What did you – do you have any comment or feeling about why suddenly now Mr Stephan Burger from a separate entity is now becoming actively involved in negotiating and finalising the agreement with VR Laser?

MS GELDENHUYS: Mr Steyn was resisting too much and his executive team.

ADV KENNEDY SC: Right.

MS GELDENHUYS: And like I said earlier on in effect him
10 and his executive team was moved one layer lower than the authority then that sits with DLS.

ADV KENNEDY SC: Okay thank you. And then it continues.

“I will keep you posted if and when I get
feedback.”

Am I right to read or do you also read into this a measure of unhappiness on the part of Mr Steyn that he was not necessarily being kept in the loop?

MS GELDENHUYS: Ja I definitely read it that he will not be
20 part of discussions because he is resisting too much.

ADV KENNEDY SC: Did he express that to you Mr Steyn?

MS GELDENHUYS: I cannot recall it was so many words.

ADV KENNEDY SC: You cannot recall.

MS GELDENHUYS: But we all knew this is what is happening.

ADV KENNEDY SC:

“And then my understanding is the Denel
board approval is required before DCO can
enter into this agreement. See Jan’s email
below. We – that is Jan, Odwa and I
discussed and agreed this with Zwelake last
week so until then and after the agreement is
signed no – and until after the agreement is
signed in other words no onward
10 communication please.”

What did you understand that to be instructing you to do?

MS GELDENHUYS: So we have to wait for the board
approval and let us first see if there is approval before we
communicate within the business to the people in the
business that there is an agreement being entered into.

ADV KENNEDY SC: And then his next paragraph reads:

“I pointed out to Jan and Stephan yesterday
that we are making progress with determining
the effect of this agreement on the DVS
20 business and that it will completed soon.”

And then the final paragraph I will not read out that seems to
refer to his colleagues and superiors in relation to some of
the financial data.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Thank you. I am sorry Chair. May I

just find the reference?

CHAIRPERSON: Okay.

ADV KENNEDY SC: Yes. I just need you to confirm. There is a draft agreement at page 196. In fact, not a draft. This is a signed agreement.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Were you involved in the drafting of this agreement?

MS GELDENHUYS: No, this is the agreement between VR
10 Laser and DLS.

ADV KENNEDY SC: DLS?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: Oh, so that was the one that was actually concluded. It seems at pages 291 and 220 on the 18th or the 14th and then the 18th of December 2015.

MS GELDENHUYS: [No audible reply]

ADV KENNEDY SC: Is that correct?

MS GELDENHUYS: Just repeat again, please?

ADV KENNEDY SC: The signature was in December. Page
20 219. The signatures happened on the 14th and 18th of December.

MS GELDENHUYS: Yes, that is correct.

ADV KENNEDY SC: But that is, as you pointed out, was the agreement between DLS as the ...[intervenes]

MS GELDENHUYS: No. You... there... the one agreement

starts on page 209.

ADV KENNEDY SC: I am sorry. I beg your pardon.

MS GELDENHUYS: Correct.

ADV KENNEDY SC: Thank you very much. I do beg your pardon Chair. It is actually at page 203. It is what I was looking for. Thank you very much. Is the 19th of May 2015.

MS GELDENHUYS: [No audible reply]

ADV KENNEDY SC: Is that correct?

MS GELDENHUYS: Ja. So I was not part of this
10 agreement.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: So this agreement starts on page 196 which is with VR Laser and the DLS. And I was not privy to this agreement. I was given this agreement afterwards.

ADV KENNEDY SC: But you were told to use that?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: As it were, to copy ...[intervenes]

MS GELDENHUYS: Yes.

ADV KENNEDY SC: ...and paste to do a similar agreement
20 for ...[intervenes]

MS GELDENHUYS: Ja, on that basis. Yes.

ADV KENNEDY SC: And then the DVS agreement is from page 209.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right. Now apart from the initial

drafting that you were involved in. Were you involved in the finalisation of the drafting of this agreement?

MS GELDENHUYS: Yes, I was.

ADV KENNEDY SC: Right. And was that according to instructions from anybody?

MS GELDENHUYS: Yes. So we were then told to complete the agreement. It was then given to DLS and some of the senior people at DLS, reviewed the agreement as well. And when they said they are happy with the agreement, we then
10 concluded that we are in a position for Johan Steyn to sign the agreement.

ADV KENNEDY SC: Alright. And did he in fact do that?

MS GELDENHUYS: I believe, if I recall correctly, that VR Laser signed it first.

ADV KENNEDY SC: Alright. Let us just take a look at 219.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: That was the reference that I confuse myself with earlier. That was the 14th of December.

MS GELDENHUYS: That is correct.

20 **ADV KENNEDY SC**: Signed by Mr Van der Merwe. I see there is a witness who has signed there Geldenhuys. Is that yourself?

MS GELDENHUYS: That is but I was not present at the signature.

ADV KENNEDY SC: I see. And then on the following page

220, it was signed in Pretoria on the 18th of December by Mr Steyn.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Is that your signature again as a witness?

MS GELDENHUYS: Yes, and I was present here.

ADV KENNEDY SC: You were present this time?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: How did it come about that you signed
10 as a witness?

MS GELDENHUYS: I cannot recall. I was now shocked when I saw this. [laughing]

ADV KENNEDY SC: [laughing]

MS GELDENHUYS: I do not know whether I maybe have signed on the wrong line. I do not know.

CHAIRPERSON: And was this a binding one?

MS GELDENHUYS: This is a binding agreement. Yes.
[laughing]

CHAIRPERSON: [laughing]

20 **MS GELDENHUYS**: But not a binding witness. [laughing]

CHAIRPERSON: [laughing]

ADV KENNEDY SC: [laughing] And does this in fact mirror in substance the earlier agreement between DLS and VRL?

MS GELDENHUYS: That ...[intervenes]

ADV KENNEDY SC: In the sense that there was a

commitment by the Denel entity to appoint VR Laser, obviously for different things to do, but it was on a single source supply basis.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And what was the period?

MS GELDENHUYS: It was for a period of ten years.

ADV KENNEDY SC: Yes. Similar to the DLS agreement, which was also for a period of ten years, correct?

MS GELDENHUYS: That is correct, yes.

10 **ADV KENNEDY SC**: Right. Did you and in fact... Yes, did you have any view on that specific point? Leave aside whether the issue of whether it was a good business decision to give away a lot of DVS's core business to an outsider. Did you have any views as to whether it was appropriate to enter into an agreement for ten years?

MS GELDENHUYS: I cannot say that we have given this a lot of thought. At this stage, we were so... we tried everything ...[intervenes]

CHAIRPERSON: You ...[intervenes]

20 **MS GELDENHUYS**: ...to enter into this agreement. We just... we had a couple of sentences that would give us an out but we stopped the fight. We could not proceed with it anymore. I mean, it ended up that, like I said earlier on, that the business was sort of restructured because we were resisting too much.

CHAIRPERSON: H'm.

MS GELDENHUYS: So I cannot tell you that at that stage, I even thought about the duration of the agreement because this is the agreement we are going to enter into. We will enter into it and we have given ourselves a caveat in certain circumstances, we will not proceed with this agreement and let us fight the fight when we get there, when we were supposed to place orders on VR Laser.

CHAIRPERSON: But this agreement, was it signed after
10 you have gone to the board, Denel Board? Because I heard earlier on the idea that well you would have to go and tell the board and see what it says? Had that happened by the time this agreement was signed?

MS GELDENHUYS: I do not know if it happened. In the evidence it is that Mr Steyn asked Mr Ntshepe if it indeed happened, if the board gave authority for us to proceed with the agreement. And then in my pack there, there is an email back from Mr Ntshepe that said this is approved, go ahead to sign the agreement.

20 **CHAIRPERSON:** Oh.

MS GELDENHUYS: So whether it happened in front of the board, whether the board ever discussed it, we bear now knowledge.

CHAIRPERSON: In terms of the emails exchanged, it is not clear whether when Mr Ntshepe said this is approved, he

meant that that had been approved by the board or whether he meant as acting Group CEO, he was approving it?

MS GELDENHUYS: No, I ...[intervenes]

CHAIRPERSON: You cannot ...[intervenes]

MS GELDENHUYS: I just want to look at the emails again.
I...

CHAIRPERSON: H'm.

MS GELDENHUYS: The email trails specifically referred to, there is a board meeting.

10 **CHAIRPERSON**: Ja.

MS GELDENHUYS: This need to go to the board meeting.

CHAIRPERSON: Ja.

MS GELDENHUYS: What happened now...

CHAIRPERSON: Ja.

MS GELDENHUYS: So if it was not said physically. Did the board approve it? It is definitely alluding to it that the board approved this.

CHAIRPERSON: Ja. Oh, okay alright. Mr Kennedy.

20 **ADV KENNEDY SC**: Yes, thank you Chair. May I just have a moment? I have just been drawn... my attention has just been drawn.

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: If I can just pick up a point that has just been drawn to my attention? If we can go back for a moment to page ...[intervenes]

CHAIRPERSON: No, maybe you are able to assist me in terms of the question I was asking?

ADV KENNEDY SC: Exactly Chair.

CHAIRPERSON: Ja.

ADV KENNEDY SC: I am and I hope to get with the assistance Chair.

CHAIRPERSON: Ja, okay, okay.

ADV KENNEDY SC: But just before I get to the emails that Ms Geldenhuys has just referred us to, that we will get to.

10 **CHAIRPERSON:** May I just ask to go back to page 194? That very brief email that came from Mr Ntshepe. Mr Ntshepe said, page 194. Remember the email that said:

“Hi, Jan. Your email is too long.”

CHAIRPERSON: Ja.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: And as usual, he refers to a letter coming from the chairman, instructing to *divisionalise*. That, of course, was not an instruction from the board. It seems to specifically approve the VR Laser contract.

20 **CHAIRPERSON:** H’m.

ADV KENNEDY SC: Correct?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Okay but now if I can take you ahead to page 207?

MS GELDENHUYS: [No audible reply]

ADV KENNEDY SC: You will see this is a trial of emails.

MS GELDENHUYS: Yes.

ADV KENNEDY SC: I would like to start at the foot of the page. The one from Mr Steyn on the 15th of December to Mr Ntshepe, copying in Mr Wessels and Mr Mhlwana. You have it?

MS GELDENHUYS: Yes, these are the emails I referred to earlier on, to the Chair.

ADV KENNEDY SC: Okay. Then what he says here. Ja, I
10 think it is with reading it into the record Chair.

“...following your instructions a few weeks ago to sign the agreement with VR Laser for DVS’s fabrication work, we had several discussion with them, initially, with Jan involved and recently with Stephan Burger.

VRL how now signed the agreement attached with minor adjustments of the DLS, Stephan and Denise have reviewed it as well, DVS’s legal, Carene...”

That is yourself, is it?

20 **MS GELDENHUYS:** That is correct.

ADV KENNEDY SC: Yes.

“...also checked it from a legal point of view.”

Now if I can just stop at that point just to get some clarification. His email, we note, is dated the 15th of December and we have noted a moment ago that VR

Laser, in fact, signed it on the 14th of December.

So he seems to be referring to the very agreement we looked at a moment ago. To say to Mr Ntshepe: VR Laser have already signed it.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: With a few minor amendments. And then to continue. He says:

10 “I am not sure about the delegated authority in a case like this. My information is that it needs board approval or you might want Fortune to review it but I am not sure.”

So Wessels expressed ignorance about whether the board approval is actually required, although he says he has told it. It seems to be required. Who is the Fortune, the person referred to as Fortune there?

MS GELDENHUYS: Fortune was the Legal Manager at Denel Corporate office.

ADV KENNEDY SC: Corporate?

20 **MS GELDENHUYS**: Ja. Unfortunately, I cannot remember or recall her surname.

ADV KENNEDY SC: Okay. And then:

 “I am looking forward to your further instructions.”

So he has updated Mr Tshepe to say the agreement has now been signed by the other side.

That there has been checking done by people like

yourself to check that it is legally okay. And then he refers... but he flags the issue of whether, in terms of the delegation, board approval is required.

And then the email immediately above it, comes from Mr Ntshepe back to mister... addressed this time to Mr Steyn, copying in Mr Wessels and Mr Mhlwana.

“Hi Johan. It is approved. You can go ahead.”

So that one-liner expresses... it says that it has been approved. Are you aware whether it had been approved at
10 this or at any other stage by anyone other than Mr Ntshepe himself?

MS GELDENHUYS: No. But I understood this to be, there was a board meeting and it is approved at the board.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: The tone throughout the correspondence was, it needs to go to the board on the 7th of December. And this email is after the 7th of December.

ADV KENNEDY SC: Yes.

MS GELDENHUYS: So whether the 7th of December, this
20 board meeting took place, whether this was an agenda item on the board meeting, I bear no knowledge.

CHAIRPERSON: You see, what stands out here is, that it does not answer the question raised by Johan to say who has the authority to approve this and because he says he thinks it is the board but he says he is not sure.

So Mr Ntshepe does not say: Yes, it is the board and the board has approved it. He says, it is approved, you can go ahead.

He gives himself room later to say: I did not mean it had been approved by the board because it did not need the board approval, according to me. It needed my approval and I granted the approval.

Or if the board had approved, he might say: Well, the board had approved and I was telling him, he must not worry
10 about other things. It has been approved by the board. It is just that I did not say so expressly.

But the... Ja, the answer is not categorical. Of course, the other emails that you referred to, where the... which you were saying the board is going to have a meeting and so on.

It may well be that, when one looks at that whole email trial, then one might give his answer a certain meaning. Okay.

ADV KENNEDY SC: Thank you, Chair. Now I just want to ...[intervenes]

20 **CHAIRPERSON:** I am sorry. We are at five.

ADV KENNEDY SC: Yes.

CHAIRPERSON: How does it look like in terms of how much time do we need?

ADV KENNEDY SC: I hope about 30-minutes Chair.

CHAIRPERSON: You think we will finish at half past?

ADV KENNEDY SC: I hope so, yes. I think that is probable.

CHAIRPERSON: Okay alright. Maybe let us just take a short adjournment. Maybe five minutes.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Ten minutes. Maybe let us say ten minutes because five minutes is going to finish while you are walking if you are going out.

ADV KENNEDY SC: Yes.

10 **CHAIRPERSON:** Okay let us take a ten minute break and then we will come back.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV KENNEDY SC: Thank you, Chair.

20 **CHAIRPERSON:** So by the time of the agreement that we are talking about now, the binding one, had the instruction to divisionalise DVS been carried out or not?

MS GELDENHUYS: It never actually came to fruition.

CHAIRPERSON: Oh.

MS GELDENHUYS: So we were working towards it but it did not come to fruition.

CHAIRPERSON: Were you working towards it in the same

way you were working towards a nonbinding agreement?

ADV KENNEDY SC: We were leading the nonbinding agreement, somebody else was leading the – working towards divisionalising.

CHAIRPERSON: Oh, okay. Yes, Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. Could we turn to page 159 of your affidavit. You deal there in paragraph 6 to the next few pages with an item that you have headed the outsourcing of the 40 outstanding N35 hulls to VR
10 Laser and the termination of the Memorandum of Agreement. Now is that the termination of the Memorandum of Agreement we have just been looking at, that was concluded in December 2015?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Right. Now can you just – I do not propose, Chair, unless you guide me otherwise, to go into the detail of this, this affidavit is there for the Chair to read.

CHAIRPERSON: Ja. No, no, you do not need to.

20 **ADV KENNEDY SC:** Thank you, Chair. Can you just sum up for us before we get to the actual termination of the agreement, what did these 40 outstanding N35 hulls and their outsourcing to VR Laser, what did they involve? Were they hulls covered by the agreement that was concluded, the single source supply or was that something separate?

MS GELDENHUYS: They would have been covered by the agreement but there was more than this 40 hulls, if I recall correctly, and now I might be wrong on the amount of numbers. We designed this vehicle and then we built 30 preproduction units. Now part of the – you recall that we said that there is pilot runs that needs to happen before you can outsource your fabrication so that you get to a certain maturity level. We built the vehicles in-house to get to the maturity level.

10 Then there was a follow on order on – or it was part of the same order, but there was 40 vehicles to be built which was now in a state that it is really to be outsourced and it is now past the certain maturity state but then we decided that this 40 vehicles and this is – we kicked the ball to – from 2015 to February 2017. So now we are in February 2017 and we did our sums and we said it is not worth our while to outsource this, we need to build these 40 vehicles within DVS and then Mr Steyn informed Mr Ntshepe and Mr Mgwana that we are going to build - the
20 executive team and himself decided we are going to build these vehicles within DVS.

ADV KENNEDY SC: Right and that took place in 2017.

MS GELDENHUYS: That is correct.

CHAIRPERSON: So you were not very confrontational or not but you knew what you were trying to do.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And then you refer – if I can take you perhaps to page 230.

MS GELDENHUYS: 230?

ADV KENNEDY SC: 230, yes. At the foot of page of page 230 is an email from Pieter van der Merwe who was from VR Laser, is that correct?

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: And he was addressing your Mr
10 Steyn and yourself, Ms Geldenhuys and others. What was this email relating to? What was he requiring?

MS GELDENHUYS: So for ...[intervenes]

ADV KENNEDY SC: Was this relating to these additional items to be fabricated?

MS GELDENHUYS: I am not hundred percent sure if it was only to that specific order but it is indeed to all the work that has happened in DVS. So what happened was, in the binding agreement we kept that caveat for ourselves, if it makes financial sense for us, we will look at it to
20 contract VR Laser but what we kept on doing is we did our business case each and every time before we placed the order and what we did is we did ask VR Laser to quote and we did ask other people to quote as well and then based on information that we got we figured out what it is that we can do ourselves and then we decided.

So this email that was written in July 2017 by Mr Pieter van der Merwe – and I have to just qualify that I was not deeply involved in the supply chain process and the various programmes and opportunities that was running at that stage which he is referring to. He came to us and he said but we have entered into agreement, we are seen in the market that we are quoting, you are never coming back to us and saying whether we are successful. We thought we have got a single source supplier agreement with you
10 but we do not see orders coming to us, do you still think that we have got a single source supplier agreement or do you not agreement anymore? Which is in effect his email.

ADV KENNEDY SC: Which is then?

MS GELDENHUYS: Which is in effect the contents of his email.

ADV KENNEDY SC: Yes, thank you.

MS GELDENHUYS: We have got an agreement but we do not get work from you so what is happening?

CHAIRPERSON: That is VR Laser?

20 **MS GELDENHUYS:** VR Laser, yes.

CHAIRPERSON: And by the time of this email you recall how long the agreement had been in place, for how long it had been in place?

MS GELDENHUYS: Since December 2015.

CHAIRPERSON: So this was about a year and a half?

MS GELDENHUYS: I can bring it under the Chairperson's attention that there was indeed one order that we did place on VR Laser for fabrication of hulls in this period but our business case at that stage, where we were in our business, it would have been more to the business's profitability if we outsourced it because we did not have enough people at that moment. We had to ramp up and everything and it made sense. At that stage VR Laser was cheaper than us then what we could have done it inside.

10 **CHAIRPERSON:** Okay.

MS GELDENHUYS: So it made financial sense to us. I think, if I recall correctly, it was for 9 RG32 vehicles that we placed the order on them.

ADV KENNEDY SC: Alright, then if I may take you to page 232 and 3. These are two letters that you sent. The one 232 is dated 8 March 2018 addressed to VR Laser CEO and that refers to a termination that relates to Denel invoking. The second paragraph:

20 "We have no alternative as to herewith invoke DVS' termination for convenience right that forms part of the terms and conditions on which the specific orders were placed on yourselves. The aforementioned orders is thus herewith cancelled."

So you are here cancelling particular orders.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: This does not say you are cancelling a complete agreement though.

MS GELDENHUYS: No, it was the orders.

ADV KENNEDY SC: And does the same apply to the subsequent letter of 3 April page 233?

MS GELDENHUYS: The subsequent letter is actually the – the order number was incorrectly – so the subsequent letter was just fixing the incorrect quoted order number.

ADV KENNEDY SC: I see. So it was really just clarifying
10 something from your previous letter.

MS GELDENHUYS: Yes, yes.

ADV KENNEDY SC: Again not a termination of the agreement itself.

MS GELDENHUYS: No, I understood that the strategy agreements with VR Laser, according to my knowledge, was cancelled at a corporate level at a certain stage.

ADV KENNEDY SC: Were you involved in that?

MS GELDENHUYS: No.

ADV KENNEDY SC: Now I just want to go back to a
20 comment that you made earlier that Mr Steyn was expressing perhaps in diplomatic terms in the emails that we looked at earlier to a feeling that he was being sidelined or kept out of the loop and Mr Burger was now taking the lead in dealing with VR Laser, etcetera. Your own position, as a member of the executive team at DVS,

was there a change in what you understood to be the attitude of others in the Denel organisation in relation to how you were being treated in particular when one looks at how Mr Burger was now taking the initiative, Mr Steyn was no longer kept in the loop to the same extent. Did this affect you also as an executive team in relation to these matters?

MS GELDENHUYS: Yes, during divisionalising discussions there was a new structure for the landward business. Like
10 I explained, show cost savings, there is just two executive teams one needs to end up and there was discussions with various executives members as to where you will fit in, who you will report to and – ja, so we had to compete for our positions again to be in this landward structure on the executive team.

CHAIRPERSON: But I may have missed something. I understood the idea of restructuring and maybe Mr Burger taking over and the DVS CEO being under him if DVS was divisionalised, as you put it, but if DVS was not
20 divisionalised and remained legal entity on its own, I do not see how that talk would fit in unless the talk may have been meant to intimidate the DVS executive or soften them up because they were being difficult. In other words, to make – to kind of threaten them, you know, if you continue like this, this is what may happen, you had better behave.

MS GELDENHUYS: From a legal point of view I agree with you, the structure cannot work like that, it is two separate legal entities and you cannot now just dissolve a legal entity by a piece of paper overnight. Somebody that is not your employer now decides – that we know and that we have, myself particularly raised numerous times to Mr Burger and saying but this cannot happen this way and it was ignored. So whether it is a combination of a bit of threats going on or whether there was a, in my mind, as a
10 legal person, legally that could not happen, it just cannot happen. They do not have legal stance but from a business perspective from divisionalising and consolidating and Mr Burger being the head of our business, in terms of the Denel Group that happened and he has got authority over us.

CHAIRPERSON: So you had a *de facto* restructuring?

MS GELDENHUYS: Yes.

CHAIRPERSON: But not a *de jure* restructuring.

MS GELDENHUYS: That is correct.

20 **CHAIRPERSON:** But from a certain point you at DVS and the executives knew that from now on we are under Mr Burger, or whatever.

MS GELDENHUYS: Yes.

CHAIRPERSON: Ja.

MS GELDENHUYS: From that email where Mr Ntshepe

said: And Mr Burger will lead from now on.

CHAIRPERSON: Oh, yes.

MS GELDENHUYS: So there was a meeting – he referred in that email, I showed an email to everybody from the Chair where he said: And Stephan will lead.

CHAIRPERSON: Yes, yes.

MS GELDENHUYS: From that moment.

CHAIRPERSON: So it was from that moment.

MS GELDENHUYS: From that moment, yes.

10 **CHAIRPERSON:** Ja. Yes, Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. Ms Geldenhuys, I just want to take you through a couple of – the final paragraphs in your affidavit. Some of those we have touched on already so I do not propose to go into those. In paragraph 9 you refer to the prescribed procedure in identifying a single source supplier. When did your company move into the Denel Group? At what stage was that? How soon before this agreement took place?

20 **MS GELDENHUYS:** So it was, if I recall, 28 April the transaction closed.

ADV KENNEDY SC: Which year?

MS GELDENHUYS: 2015.

ADV KENNEDY SC: 2015.

MS GELDENHUYS: So it is five, six months prior.

ADV KENNEDY SC: Five, six months prior?

MS GELDENHUYS: Yes.

ADV KENNEDY SC: You indicate your lack of knowledge of particular processes within the Denel Group at the time. Just explain that to the Chair please?

MS GELDENHUYS: So when we – obviously, from the regulatory framework for a state owned entity is vastly different from what it is for a private company and we understood and we were informed that for the first year while we are part of the Denel stable we will not be subject
10 to the PFMA. So we updated our processes, we started with integration and everything whilst we are doing our day-to-day work but there was no real knowledge for us during that period of exactly the PFMA and what is required from us because the integration was not completed and we did not know that – or we were told that the PMFA was not applicable to us.

ADV KENNEDY SC: Now may I just go back to one point that my learned colleague has drawn to my attention which I think does indeed need reference. Just go back to page
20 185. Yes, this is the email we looked at earlier, 13 November, from Mr Steyn to *inter alia* yourself. The second – the third after greeting Piet, Carene and Percy, he says:

“Following Zwelakhe’s request two weeks ago to finalise a formal agreement with VRL for fabrication

of our hulls in future, several interactions took place between DVS and VRL to start the process...”’

And this is the important part:

“...to evaluate VRL’s capability.”

Now that must be seen against your evidence earlier that DVS had its own in-house capability and one division in particular might be heavily hit. So Mr Steyn refers to a discussion about a process which would involve, amongst others things, evaluating VRL’s capability. In other words,
10 to ensure that if VRL was going to get business that DVS was already doing in-house it would have to at least be sure that VRL could do the work.

Now if I can take you to page 211. This is part of the agreement that was actually signed in December 2015 that you witnessed and at page 211 in clause B – B is part of clause A, which deals with the scope of the Memorandum of Agreement, it reads:

“VRL with its proven capabilities and quality is considered to be a key supplier and a strategy
20 partner to DVS.”’

So Mr Steyn’s email, sometime before said we need to evaluate VR Laser’s capabilities, the agreement then says well, it is already proven that it has got remarkably good capabilities. You have already given evidence that VR Laser had already been for some time a supplier to Denel

but are you aware of what steps, if any, were taken in fact to carry out Mr Steyn's feeling that before such an agreement is concluded VRL's capability specifically in relation to this type of work that you could do in-house, whether that was actually tested and established?

MS GELDENHUYS: I know that Mr Steyn requested Mr Kruger and Mr Ndaba to visit VR Laser to go and sort of do an inspection or to go and see what their capabilities is and what is happening there and I know that was, if I recall
10 correctly, that was also met a couple of days later from Mr Ntshepe to Mr Steyn in a very unfavourable tone wherein he said that your people are jeopardising Denel's business going to VR Laser. So that is what I recall that happened, I do think ...[intervenes]

CHAIRPERSON: Who said your people are jeopardising Denel's business going to VR Laser?

MS GELDENHUYS: It was Mr Ntshepe that said that to Mr Steyn.

CHAIRPERSON: So in other words saying they should not
20 be going there?

MS GELDENHUYS: Yes.

CHAIRPERSON: It is quite a telling remark. Yes, okay.

MS GELDENHUYS: I also think that the reference to capabilities that Mr Steyn made in his email that you referred to is also referring to maybe there is additional

work that we can sent to VR Laser that would not be the hull fabrication. So go and see what it is that they can do, maybe we can send them other work and not our core business.

ADV KENNEDY SC: But ultimately they in fact concluded a single source supply agreement for all the work?

MS GELDENHUYS: Yes but the wording in this single source agreement was a – we gave up. We gave up.

ADV KENNEDY SC: Chair, may I conclude with just one
10 more very brief topic? On page 163 you deal with the legal status of the Memorandum of Agreement and you refer to certain litigation that was initiated, brought by VR Laser against DVS. Were you still the legal executive at DVS at the time that was started?

MS GELDENHUYS: Yes, I was.

ADV KENNEDY SC: And just very broadly, what does the litigation relate to? What is VR Laser asking the court to against Denel Vehicles Services?

MS GELDENHUYS: So I referred earlier on that there was
20 indeed an order that was placed on VR Laser that made sense to us and we received goods from them. We never paid them. When the – there was a combination of activities between – Denel ran into financial difficulties, we got a new board, allegations of state capture, allegations of state capture with VR Laser, it was you are not paying.

Let us first look at what happened here and let us see if the agreement is tainted and how we are going to deal with it further. And now I do not want to testify anything further because then I will...

CHAIRPERSON: Ja. No, no, we understand.

MS GELDENHUYS: It is *sub judice*.

ADV KENNEDY SC: Yes, certainly.

MS GELDENHUYS: I cannot testify ...[intervenes]

CHAIRPERSON: We understand, ja.

10 **ADV KENNEDY SC:** Right.

MS GELDENHUYS: On this point.

ADV KENNEDY SC: Thank you. And then in 11.3.4 on page 164 you refer to an intention by DVS to review and set aside the Memorandum of Agreement. Notwithstanding that, it paid an amount of R2.7 million to VR Laser.

MS GELDENHUYS: That is correct.

ADV KENNEDY SC: Had that been started, that review application, before you left office as legal executive of DVS?

20 **MS GELDENHUYS:** If I recall correctly, the review application has not started. What happened in this circumstances, DLS owed VR Laser a lot of money as well because DV – or Denel was in financial difficulties, there was a lot of work that was with VR Laser, that the moment that it is released, DLS would get money, to make a sale,

and they could get money in for the business. So the payment from DVS of half of R2.7 million was sort of to secure that VR Laser release some of DLS' goods that was work-in-progress so that DLS can sell it so that they can generate more cash. So it was a group type of arrangement to get more liquidity into the business at that stage.

ADV KENNEDY SC: Right, thank you. Thank you, Ms Geldenhuys. Chair, we have no further questions from the
10 legal team.

CHAIRPERSON: Thank you. Thank you very much, Ms Geldenhuys, for coming to assist the Commission, we appreciate it very much. If we need you to come back we will ask you to come back but thank you very much, you are now excused.

MS GELDENHUYS: Thank you.

CHAIRPERSON: Thank you. Mr Kennedy, tomorrow your estimate of how much time we need for your witness is what?

20 **ADV KENNEDY SC:** My estimate is still probably three hours, Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So I hope that we can finish comfortably.

CHAIRPERSON: We can start at nine. Should we start at

nine?

ADV KENNEDY SC: I believe so. That would assist, thank you, Chair.

CHAIRPERSON: We want to finish at twelve.

ADV KENNEDY SC: Yes, thank you, Chair, that should be feasible.

CHAIRPERSON: Ja.

ADV KENNEDY SC: As I have indicated to your previously we plan to call only the one witness, Mr Teubes.

10 He will in fact cover quite a lot of material but we think that we can finish it comfortably within three hours.

CHAIRPERSON: Yes.

ADV KENNEDY SC: May I just draw to your attention one logistical thing? You have previously been given a bundle of his documents, his affidavit and annexures. We have been given at a late stage a supplementary affidavit. I have in fact not yet had a chance to work on it, I will tonight, but may I just indicate to you that you should expect a supplementary affidavit coming tonight.

20 **CHAIRPERSON:** Okay.

ADV KENNEDY SC: Which I understand will be sent by your registrar.

CHAIRPERSON: Okay. No, that is fine.

ADV KENNEDY SC: Thank you very much.

CHAIRPERSON: That is fine, so tomorrow we will start at

nine then.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Yes, we will adjourn for the day and tomorrow we start at nine. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good evening Mr Seleka, good evening everybody.

ADV SELEKA SC: Good evening DCJ.

10 **CHAIRPERSON:** I apologise to everybody, particularly to you Mr Tsotsi because we asked you to come this evening and then somehow I forgot that we have an evening session and when we finished at five I said no we will adjourn until tomorrow, so – but arrangements had been made and I apologise to the team as well, the legal team and the television people who find themselves having to work beyond the time that they have planned and to everybody, I am grateful that everybody is able to continue. Thank you for coming Mr Tsotsi.

20 Okay, alright.

MR TSOTSI: Thank you Chair.

CHAIRPERSON: Yes, Mr Seleka are you – yes we will have to I think get Mr Tsotsi to do the oath afresh before we proceed. Let us do that, yes.

REGISTRAR: Please state your full names for the record.

MR TSOTSI: Zola Andile Tsotsi.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR TSOTSI: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR TSOTSI: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth, the whole truth and nothing else but
10 the truth, if so please raise your right hand and say so help me God.

MR TSOTSI: So help me God.

ZOLA ANDILE TSOTSI: [duly sworn, states]

CHAIRPERSON: Thank you very much Mr Tsotsi. Just for the – to inform the public we are having an evening session this evening in relation to Eskom in accordance with our programme for this part of the year where we are trying to finish the hearing of oral evidence within the time that we have been given so some of the evenings we are
20 going to sit during the day, finish at four or five, take a break, come back, continue so this is one of those sessions and in next week and the weeks to come we will be having more of those so we will have day sessions and evening sessions to try and finish the work of the Commission.

Okay, thank you. Mr Seleka?

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Maybe you will - it might help for – to just recap where we are so that the public can follow.

ADVI SELEKA SC: Yes Chair.

CHAIRPERSON: And Mr Tsotsi has given evidence a few times before, he is here because he needs to finish, there was some – there's some issues that had not been dealt with when we had to adjourn last time he was here.

10 **ADV SELEKA SC:** Yes, thank you Chair. When we adjourned last time Chairperson, Mr Tsotsi, we were at the point where I had just asked you a question about the meeting of the 16th of March 2015. The meeting which was testified about by firstly by Mr Nick Linnell, you added to it also as a result of my questioning, and you had testified in response to the question I asked as to who the persons were who attend the meeting, that you had been informed it was Mr Romeo Khumalo and Mr Zithembe Khosa. Is that correct?

20 **MR TSOTSI:** That is correct.

ADV SELEKA SC: So we had gone through extensively also the affidavit of Ms Dudu Myeni in regard to the events that took place at the meeting of the 8th of March 2015, do you recall that?

MR TSOTSI: Yes I do.

ADV SELEKA SC: And we gave you the opportunity to respond to her version of events and also to interrogate your own version, do you remember that?

MR TSOTSI: Yes.

ADV SELEKA SC: So I would like to pick it up on the meeting of the 16th of March and what remains thereafter Chairperson is to put further versions of other witnesses to you Mr Tsotsi and I think that should then wrap up your evidence in regard to the suspensions, and that version
10 ultimately includes what they have said before the Chairperson in regard to the grounds for your what they call disciplinary action or whatever steps they were subjecting you to as the Board.

Do you follow that?

MR TSOTSI: Yes I do.

ADV SELEKA SC: Thank you. Now you did confirm as I recall, because I did watch the video of your testimony, that this meeting that you were in fact informed that the meeting did take place on the 16th of March 2015, you can
20 confirm?

MR TSOTSI: Yes.

ADV SELEKA SC: And as I recall your recollection was that you were informed by Jabu Maswanganye about this meeting?

MR TSOTSI: Correct ja.

ADV SELEKA SC: Yes, can you tell the Chairperson what was said to be the purpose of this meeting?

MR TSOTSI: Chair I really did not know, I wasn't expressly told what the purpose of the meeting was, even what was discussed so I was not aware of neither the content of the meeting, nor the reason for the convening of the meeting, to that extent yes.

ADV SELEKA SC: Mr Tsotsi were you invited to that meeting?

10 **MR TSOTSI:** No, I was not invited.

ADV SELEKA SC: Did you know that the meeting was going to take place?

MR TSOTSI: No, I didn't know.

ADV SELEKA SC: Now I have also gone back to listen to the evidence of Mr Linnell and towards the end of his evidence he testified on the 5th of October and on the 6th of October, he couldn't finish on the 1st because there was a lightning interruption. On the 6th towards the end of his testimony he says that he was also informed that the
20 Minister did attend the meeting of the 16th of March, were you aware of that?

MR TSOTSI: Yes I was aware of that yes.

CHAIRPERSON: You had learnt that the Minister had attended the meeting, is that what you are saying you were aware of?

ADV SELEKA SC: Yes, I had learnt that the Minister had attended the meeting yes.

MR TSOTSI: Okay, okay, yes.

ADV SELEKA SC: Now Mr Linnell he has since, he is in touch with the Commission, with us in the work stream, and he will be providing the Commission with a supplementary affidavit on this issue, because as he explains to us, and maybe you can confirm this because he says he sent an email to your legal team back on the 30th of March 2015,
10 seeking to propose certain questions that your legal team should ask the persons he said should be called as witnesses to your disciplinary action, do you recall that?

MR TSOTSI: I don't expressly recall that particular email, I will have to check with the legal team Chair but I don't recall it myself.

ADV SELEKA SC: Okay, now we will show when Mr Linnell has provided us with that, because he mentions names of certain board members who he said should be asked questions why attended the meeting of the 16th of
20 March.

Now let me paint the picture for you sir that we move a little faster. Mr Linnell, this is on the 16th of March, on the 17th of March he receives an email from a gentleman called Thulosilele, and he receives this email he said at ten to five, early in the morning, 4.50 am.

Chairperson Mr Linnell's affidavit is found on page 158 of Eskom Bundle ...[intervenes]

CHAIRPERSON: Just for the record we are using Eskom Bundle 07A, is that right?

ADV SELEKA SC: 07A, thank you Chair.

CHAIRPERSON: Yes, and what page will I find that?

ADV SELEKA SC: Page 158.

CHAIRPERSON: 158?

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Okay thank you. Yes.

ADV SELEKA SC: And I – this is the evidence already testified about Mr Tsotsi from paragraph 42, and 158 it is the black pagination ...[intervenes]

MR TSOTSI: What page?

ADV SELEKA SC: 158.

CHAIRPERSON: And look at, remember the black numbers as opposed to the red numbers.

ADV SELEKA SC: Yes.

CHAIRPERSON: Use the black numbers.

20 **MR TSOTSI:** Oh, okay.

ADV SELEKA SC: In the left hand corner.

MR TSOTSI: Okay, got it.

CHAIRPERSON: Ja.

ADV SELEKA SC: You have the, you have that?

MR TSOTSI: Yes.

ADV SELEKA SC: Now I am not going to read from it but I will tell you, because the evidence has been testified about, so Mr Linnell testified on the very day of the 16th of March 2015 he had a meeting he thinks he recall with Ms Mabude at your house to plan the way forward in regards to the terms of reference. Ms Mabude was the Chairperson of Audit & Risk Committee, you recall that?

MR TSOTSI: Correct.

ADV SELEKA SC: Now he testifies that there was an
10 agreement with Ms Mabude for them to meet further the next day but on the 17th of March 2015, the early hours of the morning, he receives an email to the effect that he is no longer needed at the Audit & Risk meeting to which he had been invited and he thinks this was the turning point, and he reads that together with the attitude of Ms Mabude the night before or the day before which he refers to as a cooling of enthusiasm in regard to what he had been assigned to do, Mr Linnell.

MR TSOTSI: I see that yes.

20 **ADV SELEKA SC:** So he then says this – he read this email, and linked it to the meeting which was said to have taken place on the 16th of March, a secret meeting, a private meeting where some Board members were present together with some suspended executives. Did you hear that?

MR TSOTSI: Yes.

ADV SELEKA SC: Now obviously this has to be tested before the Chairperson by those who are coming, we have to put this version to them because we have only so far heard the one side of the story from Mr Linnell and from yourself, because if indeed some Board members met with suspended executives on the 16th of March, if indeed that is the case, and you might not know, Mr Baloyi was removed from the Board for having made communication
10 with a suspended executive. Did you know that?

MR TSOTSI: Yes I recall Mr Baloyi's testimony to that effect yes.

ADV SELEKA SC: So these board members if the facts are established to be true, they were – they “charged”, and I use the word in inverted commas “charged” Mr Baloyi and found him guilty of an act they themselves had committed way back on the 16th of March, fresh after the suspension of the executives, five days after the suspension of the executives. You follow that?

20 **MR TSOTSI:** Correct.

ADV SELEKA SC: But we will test that with them when they are here, because you have alleged two names, Mr Sithemba Khoza, and Mr Romeo Khumalo.

MR TSOTSI: Yes.

ADV SELEKA SC: Now what then develops Mr Tsotsi is

that on the 18th however, and you see that further in the affidavit of Mr Linnell, he says he ignored the – he interpreted the email to the effect that he is no longer needed.

MR TSOTSI: Yes.

ADV SELEKA SC: But nonetheless he disregarded that and he proceeded to prepared the terms of reference, which in paragraph 46 of his affidavit he forwards them to you and to Ms Mabude.

10 **MR TSOTSI:** Right.

ADV SELEKA SC: Because – and you know why they are forwarded them to Ms Mabude because the Board had delegated the power to Audit & Risk to oversee the inquiry, so Ms Mabude was the Chairperson of the inquiry, is that correct?

MR TSOTSI: Correct.

ADV SELEKA SC: And on the next page, page 158, he says also – well he touches on what's the terms of his reference, the essential terms of his reference were he
20 recommended that a retired judge be appointed, he recommended that a law firm be appointed together with, I think that was ENS, together with an auditing firm, Grant Thornton, and that you see in paragraph 50 of the affidavit. And remember paragraph 45, sorry 49, that is – those terms of reference are also emailed to Ms Dudu Myeni and

then there is a meeting again at your house in the evening of the 18th of March. Do you recall that?

MR TSOTSI: Yes I do.

ADV SELEKA SC: Because you indicated in paragraph 52 he says the Chairman contacted me and informed me that he had spoken to Ms Mabude and she had undertaken to come to his house as soon as she was able to discuss the documents sent. He asked that I also attend. And by mid-morning there was no further response from Ms Mabude
10 and I called the Chairperson and I suggested I visit him as the media were asking for comment.

And I want to skip some of these paragraphs – if you go to paragraph 64 on page 160, because that's where he says I was later informed – this is still on the 18th, later informed by Mr Tsotsi that members of the board had met with the Minister on Friday, so I skipped a paragraph which I want, because you meet with the two of them and there is a discussion that ensues and there is a debate about the acceptability or otherwise of the terms of reference and I
20 remember he says you interjected and said cut it out because the two of them were becoming angry with each other. Can you recall that?

MR TSOTSI: Yes I do.

ADV SELEKA SC: But the nonetheless he says he gets invited to another meeting of Audit & Risk that was to take

place on the 19th of March. Now Chairperson that email there is an email in fact that shows that Ms Mabude did have a meeting with Mr Tsotsi and Mr Linnell at your house and she advises members of the Board that I have agreed with Mr Nick that he must come to our meeting and meet with us as Audit & Risk, that email Chairperson is found in Eskom bundle 10, Exhibit U20. Exhibit U20 is Mr Baloyi's bundle, and he provided the Commission with a couple of emails, the one I am referring to now is on page 330.

10 **MR TSOTSI:** Page?

ADV SELEKA SC: 330. Page 330 it is the second – it is technically the first email from the top Chairperson but the second in this case, which is from Chwaita Mabude, it is an email sent on Wednesday 18 March 2015, at 22:20, twenty past ten in the evening, do you see that Mr Tsotsi.

MR TSOTSI: Yes, 22:20?

ADV SELEKA SC: 22:20.

MR TSOTSI: 18th March?

ADV SELEKA SC: 18 March yes. It is an email sent to all
20 the Board members, the company secretary, you were also there, Tsotsiz@eskom.co.za, and the email reads:

“Good evening ...”

Well the subject line is:

“Re Eskom Board Media statement 18 March 2015”

So it reads:

“Good evening,

I had a meeting with the chairman Nick. We have agreed to take this to the ARC meeting to further discuss and resolve. The meeting will be in the afternoon depending on the availability of members.

Regards

CHM”

Do you recall this email?

MR TSOTSI: Not explicitly no, I don’t recall the actual the
10 email, but I recall the event of the meeting at my house.

ADV SELEKA SC: Just say that again, you recall?

MR TSOTSI: I recall the meeting at my house.

ADV SELEKA SC: At your house, thank you. Do you recall that the agreement was to this effect?

MR TSOTSI: Yes, absolutely.

ADV SELEKA SC: Well according to Mr Linnell even though the meeting was scheduled to take place the meeting was subsequently cancelled. Do you recall that?

MR TSOTSI: I recall Nick complaining about that yes.

20 **ADV SELEKA SC:** Yes, and it is interesting that now that I have read the subject line, dealing with a media statement I would like to go back to that affidavit of Mr Nick Linnell in your bundle, the paragraphs that I have – that I had skipped.

MR TSOTSI: Ja.

ADV SELEKA SC: So that is back to page 158.

CHAIRPERSON: Are you back to Mr Tsotsi's bundle.

ADV SELEKA SC: Mr Tsotsi's bundle Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: 158?

ADV SELEKA SC: Page 159, sorry.

CHAIRPERSON: Continue. Of course Mr Seleka in putting to Mr Tsotsi other witnesses' versions where they
10 don't contradict him, his version, or don't implicate him in any wrongdoing you don't have really to go through that unless you want him to confirm something.

ADV SELEKA SC: That is fine Chair.

CHAIRPERSON: Ja and I take it he has had a chance to read all of these emails.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, if there is a particular one here he feels he would like to comment that you don't touch he may do so but the ones that you need to focus on the evidence
20 you need to focus on ...[indistinct] where they either say something that is inconsistent with his version or they contradict him or they implicate him in some wrongdoing or if you are wanting to confirm a particular version.

ADV SELEKA SC: Thank you Chair, I am with you. Let me approach it this way Mr Tsotsi. Thank you Chair,

because that helps me expedite it. Let me approach it this way Mr Tsotsi, the involvement of Mr Linnell is apparent from the facts, the involvement of Mr Linnell by the Board, in matters pertaining to the intended inquiry, you can see that from the documentation, correct?

MR TSOTSI: Yes.

ADV SELEKA SC: Yes, and I want to then accelerate to the charges that get brought against you by the Board, because that is decided in the meeting of the 19th.

10 **MR TSOTSI:** Yes.

ADV SELEKA SC: And one of those charges is that you had commissioned the drafting of a media statement which went without the Board approval, let me see that you find in the reference bundle, Chair I will quickly read it. Charge 3 says:

20 “The director authorised the Commission with a media statement in relation to an inquiry into the affairs of the company with the assistance of the consultant without the knowledge and/or consent of the Board.”

That charge goes on to say this media statement consequently fell into the public domain, the media statement contained numerous inaccuracies and misinformation which may lead to the company facing potential legal action from third parties named therein.

Now we know that you have dealt with this at this meeting, and maybe you could open to the reference bundle for Mr Tsotsi so that we can quickly deal with this particular allegation.

CHAIRPERSON: Well I don't know what you have in mind Mr Seleka, but I do recall that I think Dr Ngubane it would be fair to say to a very large extent he struggled to explain at least some of these charges. I do remember that I asked him whether he agreed that they could not charge Mr
10 Tsotsi for involving Mr Linnell in the affairs of the Board and Eskom and the role he was to play, because they had a chance to tell him we don't want this man here, you have to follow procedures and my recollection is that Dr Ngubane could not defend that part of the charge and he sought to say something else, I can't remember what he said and – which my impression is might not have been in the charge sheet, in the first charge.

So where, whatever they have said it doesn't really contradict seriously what Mr Tsotsi has said, we don't need
20 to spend much time on it and the best – one thing you can do is just mention to Mr Tsotsi what they said and if he has comments he can comment and move on. It is only in regard to those where they may have sought to resist or justify their decision to charge him with the various charges. Now I know that on the one about the media statement both

– certainly Dr Ngubane I seem to say really struggled as well in the face of questions to defend that. But you might have a better recollection and you might have a recollection that is different from mine.

All I am simply saying is where – where we do not need to be detained where they did not come up with – they were not able to defend the charges. But there may be one or – that they seemed to defend I am not sure but even with that I am struggling to remember which one. But you are
10 young I saw you – you – and your junior is even younger so you might have a better memory than me.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja Chair thank you. Then that is exactly the reason why I left charge 1 and 2 and I went to 3.

CHAIRPERSON: Yes okay alright.

ADV SELEKA SC: Because 3 that is where they seem to be.

CHAIRPERSON: Ja.

ADV SELEKA SC: You know like a dog holding onto a bone
20 and I did not want to let go.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Tsotsi.

MR TSOTSI: I am in the worst position memory wise Chair.

CHAIRPERSON: I can understand Mr Tsotsi.

MR TSOTSI: Ja.

ADV SELEKA SC: Ja. The first part of charge 3 I agree with the Chairperson in neither here nor there because we can see from the documentation the evidence led that they engaged with Mr Linnell in the drafting of the statement. But they say the statement was leaked and they want to – you will know that you leaked the statement. And they are hanging onto that. You want to respond to that quickly?

MR TSOTSI: Chair like I said.

CHAIRPERSON: Yes.

10 **MR TSOTSI:** Clearly that I deny my leaking the statement. I am – it makes me wonder what will be the purpose of my leaking the statement in the first place.

CHAIRPERSON: Ja no I think Mr Seleka on that one..

ADV SELEKA SC: It is also the problem.

CHAIRPERSON: We have a problem because I asked Mr Tsotsi – Dr Ngubane why the Chairperson would have wanted to leak a media statement when he knew that all he wanted is to get the board to approve and you remember what Dr Ngubane's response was. He said something like about a
20 ego or something like that.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: So – so continue but really...

ADV SELEKA SC: No that is fine.

CHAIRPERSON: Ja.

ADV SELEKA SC: No, no we will not belabour the point but

that was just to give you a chance Mr Tsotsi to put your – your response to that on record.

CHAIRPERSON: If other board members come and tell us something different then you know we might bring you back you know. There are some board members who must still come.

ADV SELEKA SC: Ja.

CHAIRPERSON: Like Mr Romeo Khumalo but...

ADV SELEKA SC: There was not...

10 **CHAIRPERSON:** There are those that have testified on this I think there were some challenges.

ADV SELEKA SC: Ja. Thank you Chair. Chair let me then – let us test this one. They also Mr Tsotsi mentioned something about you having proposed to the board – to the board members that one Mr Malesela Sekhasimbe who was at that time on suspension the fact which they say you did not disclose to the board. You proposed that he be appointed to one of the acting positions of those who were suspended.

20 **CHAIRPERSON:** I think did they not say CEO – acting CEO or maybe not acting CEO but ja.

ADV SELEKA SC: Mr Tsotsi will...

CHAIRPERSON: What do you say to that?

MR TSOTSI: Yes Chair.

ADV SELEKA SC: May I say that as you answer Mr Tsotsi.

I am aware that that is not one of the charges but I am aware that they have said they were unhappy about that as well. You understand what I am saying?

MR TSOTSI: Yes I do understand.

ADV SELEKA SC: Yes.

MR TSOTSI: I just want to without belabouring this issue Chair just to put it in perspective. The issue regarding Mr Sekhasimbe and Sumitomo dates back to 2008 for it is an old issue. And I just want to confine myself with what they are
10 concerned with meaning that I suggested someone who is suspended should act in a position of the Group Executive of Technology and Commercial.

Now the situation Chair is that after the said incident for which Mr Sekhasimbe was suspended I spoke and this happened at the end of February 2015 around end of February 2015 somewhere around there if not very early March 2015.

I then raised this issue with the Chief Executive Mr Matona and I said – I asked Mr Matona to look into this
20 because I think at the time I said to him I felt that Ms Sekhasimbe was – was being hard done by because he really has nothing to do with the charges that is being laid against him and that he should see to it that Mr Sekhasimbe is taken out of suspension because he is not involved in ...

ADV SELEKA SC: Sorry Mr Tsotsi you may deal with that

later when I put to you Mr Koko's version. But just address this one of whether or not you had suggested to the board at the time of the suspension of the executives that one of the acting persons should be Mr Sekhasimbe and you did not disclose to the board that he was in fact on suspension.

MR TSOTSI: Chair that is not correct, that is not true. The fact of the matter is when I – when I raised the issue of – and queries the names of the people who are going to be suspended – I mean who are going to be taking the places of
 10 the people who are suspended I said to the board in regard to Mr Sekhasimbe he – he would have been the person appropriate to act in the position of Mr Matshela but he has been suspended and I even commented that I was very unhappy with the suspension because I did not believe that he merited to be suspended.

And the name that was brought forward was that of one of the engineers who worked with Mr Matshela who then subsequently became the person who acted. So I did tell the board or the members of the PNG committee at the time that
 20 Mr Sekhasimbe was under suspension and therefore could not act. I merely brought up his name because I felt he the person who was appropriate for that position. It is then that the name of the other person came up who eventually ended up acting.

ADV SELEKA SC: Is that...

CHAIRPERSON: I wonder Mr Seleka whether...

ADV SELEKA SC: Yes.

CHAIRPERSON: In the minutes or in the transcript recording this part is reflected in any way...

ADV SELEKA SC: I have the minutes right here Chair.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: So that is telepathic communication Chair. That is – in the Reference Bundle Chairperson Mr Tsotsi the – the minutes of the 30 March 2015.

10 **MR TSOTSI:** Yes.

CHAIRPERSON: Have I got the Reference Bundle here?

ADV SELEKA SC: The Reference Bundle. Eskom Bundle is it 12? Yes Eskom Bundle 12.

CHAIRPERSON: Okay and what is the page number?

ADV SELEKA SC: The page number is 230.

CHAIRPERSON: 230 okay.

ADV SELEKA SC: 230.

CHAIRPERSON: You can continue as soon as Mr Tsotsi has found the page in the meantime.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: But you will know whether we need to check or where to find it.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: And we can do without ...

ADV SELEKA SC: Oh ja.

CHAIRPERSON: It just in [talking over one another].

ADV SELEKA SC: Let me read it? Let me read it.

CHAIRPERSON: Okay.

ADV SELEKA SC:

“Mr Tsotsi you are called to this meeting on
the 30 March that is because you could not
be removed on the 19 March. On the 30
March you have the charges given to you and
now you are making your presentation to the
10 board on each of the charges.”

And although Sekhasimbe issue is not one of the charges.

MR TSOTSI: Yes.

ADV SELEKA SC: You did address it in that meeting. At the
bottom of the page of 230 the minute taker records:

“In respect of the nomination of Mr
Sekhasimbe as acting CE.”

And this is what Chairperson recollected earlier.

“Mr Tsotsi stated that although Mr
Sekhasimbe was a good candidate he could
20 not be considered as he was on suspension.”

So they record that you said this.

MR TSOTSI: Yes.

CHAIRPERSON: So this is – these are minutes of what
meeting?

ADV SELEKA SC: These are minutes of the board meeting

Chairperson page 226.

CHAIRPERSON: Of what date?

ADV SELEKA SC: On 30 March 2015.

CHAIRPERSON: Oh so this is now Mr – they are recording what was said on that date.

ADV SELEKA SC: Yes.

CHAIRPERSON: About something that happened before.

ADV SELEKA SC: That is right.

CHAIRPERSON: And it would be interesting now if there is
10 anybody who said no, no, no but you said you want him to act.

ADV SELEKA SC: Chair if you turn to page 232 these are the minutes that get to be signed more than a year later by Dr Ngubane on the 18 November 2016.

CHAIRPERSON: And there is no indication of anybody who contradicted Mr Tsotsi to say that is not what you told us at the board two weeks back or whatever.

ADV SELEKA SC: Not at all Chair.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** Because in fact on page 231 the second last paragraph it says:

“The acting Chairman thanked Mr Tsotsi for his presentation and asked members if they wanted to clarify on any items.”

And I put this to Ms Venete Klein that they were given the

opportunity to ask questions on Mr Tsotsi's presentation why did they not ask questions? Ja.

CHAIRPERSON: I remember. Okay no that is alright.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Well it looks like Mr Tsotsi these minutes seem to be consistent with what you are saying in terms of what you say you had told the board about Mr Sekhasimbe because you are saying – you had told them that although he would have been in your view the right person to act he was
10 suspended and therefore could not which is what this says. Ja okay.

ADV SELEKA SC: Yes. Mr Tsotsi then related to this issue of Mr Sekhasimbe is the Sumitomo issue which is alleged quite extensively by Mr Koko; Mr Koko has provided the commission with an affidavit in which he says: You signed a letter to Sumitomo a Japanese company committing Eskom to a payment to this company and when he discovered this I think the letter was either sent by Mr Sekhasimbe to Sumitomo or was it brought to you by him – he then took
20 steps to suspend him.

You were unhappy about the suspension of Mr Sekhasimbe. You asked Mr Matona to approach Mr Koko about the issue. According to Mr Koko you said to Mr Matona tell Koko – Mr Koko to reverse the suspension and he said he will not reverse the suspension.

And as a result of his refusal to reverse that suspension he believes that that is how he was suspended on the 11 March 2015. Because Mr Matona said to him if you do not lift the suspension of Mr Sekhasimbe you and I are going to be suspended. And he believes on the 11th that is how he was suspended. It is because of you.

MR TSOTSI: Chair that is a complete fabrication. I think the corroborations of the other witnesses who have come before this commission for me are sufficient to dispel the
10 idea that Mr Matshela is proposing to the extent that I recall very specifically that Mr Matona himself does not accord with what is being alleged he is supposed to have done or said. So I am – I have to dismiss what Mr Matshela is alleging.

CHAIRPERSON: Ja well at least there seems to be an acceptance by many of the witnesses that the idea that he and the other executives should be suspended is an idea you got for the first time at the Durban meeting. So there is that but he will give his evidence and we will hear.

He might have genuinely believed that it was because
20 of that and maybe by now he has heard a lot of evidence if he is following about where the idea of the suspension of the executives seems to have come from. So he will come and he will give evidence.

ADV SELEKA SC: Yes Chair. Chair I may just point out yesterday we received a supplementary affidavit from Mr

Matona where he rebuts those allegations

CHAIRPERSON: Oh.

ADV SELEKA SC: We have forwarded it...

CHAIRPERSON: To Mr Tsotsi.

ADV SELEKA SC: To Mr Tsotsi and Mr Koko.

CHAIRPERSON: Yes okay alright.

ADV SELEKA SC: That affidavit will find itself into the bundle of Mr Matona.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** In due course.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you Chair. Now Mr Koko – Mr Tsotsi I beg your pardon. Linked with that because you know it is important we have not touched on the sequence of events and you need to tell the Chairperson the sequence of events insofar as you recall.

When I talk about the sequence I mean the chronology, the dates of the events. Because then you get to the time when you meet with the Minister. Where the
20 Minister says to you Mr Chairperson I understand from the management and from the directorate that you are interfering with the executives. Now that is in 2015.

MR TSOTSI: Yes that is in 2015 around the time of the- of the SONA.

ADV SELEKA SC: The State of the Nation Address.

MR TSOTSI: Yes.

ADV SELEKA SC: That is in February 2015. Because Mr Tsotsi alleges that the issue of Sumitomo arose during or about June 2014.

MR TSOTSI: Mr Matona.

ADV SELEKA SC: Mr Koko.

MR TSOTSI: Okay Mr Koko yes.

ADV SELEKA SC: Yes I beg your pardon. Mr Koko.

MR TSOTSI: Yes. That is about correct.

10 **ADV SELEKA SC:** Now the Minister in her affidavit explicitly says an executive came to her – one executive and complained about you interfering with management. Chairperson the same bundle of Mr Tsotsi page 450.

CHAIRPERSON: The Reference Bundle? Not the Reference Bundle.

ADV SELEKA SC: Not the one of Mr Tsotsi.

CHAIRPERSON: Oh what page?

ADV SELEKA SC: Page 450.

CHAIRPERSON: Hm.

20 **ADV SELEKA SC:** Yes Eskom Bundle 7[a].

CHAIRPERSON: Yes.

ADV SELEKA SC: Page 450 paragraph 1 – it starts at 100 but I want to pick it up at 101. Because at 100 the Minister refers to the question which we asked her and we put the version of Mr Tsotsi to her about the meeting in February

2015 which she reproduces there. Am I – you found it?

MR TSOTSI: Yes.

ADV SELEKA SC: Mr Tsotsi okay.

MR TSOTSI: Yes.

ADV SELEKA SC: Then paragraph 101 the Minister says

10 “The only related conversation I remember
 having with Mr Zola Tsotsi related to his
 interference with management for operational
 issues as opposed to directorate issues. In
 his oral testimony before the commission he
 confirms this referring to me he says
 whereupon the Minister had. Well in this
 instance he was not happy about the fact
 that I was said to be interfering with
 management. There have been complaints
 about Mr Zola Tsotsi both from the
 executives and the directorate.”

Now she adds:

20 “The directorate. What comes to mind in
 particular was that one of the executives
 came to see me in person complaining about
 Mr Tsotsi’s interference with operational
 issues producing a letter allegedly penned by
 Mr Tsotsi to a Japanese company about
 buying oil or some other fuel I decided I had

to intervene. This is why I invited Mr Tsotsi reprimanded him and directed him to refrain from interfering with management. As to the verbatim exchange I cannot recall. I do recall that the meeting was tense. The exchange could have been intemperate. I must also say that I did not have the best of relationship with Mr Tsotsi. We did not really get on well with each other.”

- 10 Says the Minister. She says. Do you know what the Minister is talking about there? The Japanese company?

MR TSOTSI: Yes Chair. I must assume that when she says one of the executives came to her to complain about my interference in management she must be referring to this incident and hence consequently referring to Mr Matshela as the person who would have come to her.

- CHAIRPERSON:** But – was it something acceptable for any executive at Eskom or any SOE for that matter other than at least the CEO Group CEO to bypass this Group CEO, bypass
20 the board and go and speak to the Minister about issues at work? Was that something that was permitted; was that using the right channels? Was the position not that normally you would be the contact person for the Minister but obviously if somebody needed to complain to the Minister about you they would not ask you to speak to the Minister

about it. But then one would have thought that any executive would speak to the Group CEO and it would be the Group CEO who one would have expected would first raise the issue with you or with the board. But certainly if the Group CEO approached the Minister about a complaint relating to the board or to the chairperson one might be able to understand that compared to an executive lower than the Group CEO bypassing the Group CEO; going to the Minister to speak about the chairperson of the board.

- 10 **MR TSOTSI**: You are correct Chairman. If protocol in the organisation was very clear about how the communication should work. The least I would have expected would be for the Chief Executive to have received such a complaint and put it to me and if he felt that he needed to pass it onto the shareholder because it involved the chairman then he had the opportunity to contact the Director General who then could process the issue at the level of the Minister.

CHAIRPERSON: The Minister.

MR TSOTSI: That would have been...

- 20 **CHAIRPERSON**: The channels.

MR TSOTSI: The channel yes.

CHAIRPERSON: Yes.

MR TSOTSI: Yes.

CHAIRPERSON: Okay alright. And the Minister does not seem to – does not say anything here about having taken

objection to this executive whoever it was if it was not the Group CEO bypassing the Group CEO and going to – and the board and going to talk to her.

MR TSOTSI: Not only that Chair but to – just to elaborate some on this matter. When she approached me about this particular issue and of course I knew what she was talking about she did not even ask for – from me what my side of the story is.

CHAIRPERSON: Yes.

10 **MR TSOTSI**: You know she did not say to what is happening, can you explain to me what actually transpired? She decided that it was opportune for her just to reprimand me on the basis of what she had been informed by a member of the executives.

CHAIRPERSON: The executive ja.

MR TSOTSI: Without having – who did not follow – bother to follow any proper protocol.

CHAIRPERSON: Yes, yes. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Mr Tsotsi I intended
20 exactly to ask you the question.

MR TSOTSI: Sorry Sir.

ADV SELEKA SC: No, no that is fine because although the Minister says what she is saying the question is did she mention that to you? Did she say it to you this is the reason why I am speaking with you. One executive has said to me

you have written a letter committing Eskom to payment in respect of this Japanese company.

MR TSOTSI: No she never – she never addressed the issue.

ADV SELEKA SC: Well your version is up there. The Minister has reproduced your version in her affidavit. Do you see that? And this is where the Minister says to you “Chairman I have received complaints from management and board members that you are interfering in management. Please refrain from doing so because if you do not I shall
10 have to find someone else to do your job.”

MR TSOTSI: Yes.

ADV SELEKA SC: But she later in her affidavit says:

“As to the verbatim exchange I cannot recall.”

MR TSOTSI: Yes.

CHAIRPERSON: Well it does appear on her version – on her own version it does appear like she did not give you a chance to – to respond to whatever the executive concerned or board members who might have spoken to her what they
20 really said you had done wrong.

MR TSOTSI: That is correct Chair.

CHAIRPERSON: It does appear she on her version she had made up her mind whatever they have told her you have done.

MR TSOTSI: Yes.

CHAIRPERSON: And she was then reprimanding you and saying stop it otherwise I will find somebody else to do your job.

MR TSOTSI: Correct.

CHAIRPERSON: That is the impression one gets from her own version.

MR TSOTSI: Yes.

ADV SELEKA SC: Then Mr Tsotsi there is another version of the Minister which I want to place to you. Turn the page
10 to 451. This is now in regard to your removal Mr Tsotsi.

MR TSOTSI: Chair I do not know if I am – I want to belabour this point but it is noteworthy that the individual who was the subject of all of this to her about my interfering with management went to the CCMA and was – what is the word now – what is the legal word? Shall I say acquitted is that correct or was it? The CCMA ...

ADV SELEKA SC: Vindicated.

MR TSOTSI: He was vindicated at the CCMA that he had been unfairly treated.

20 **CHAIRPERSON:** Oh.

MR TSOTSI: By this action.

CHAIRPERSON: Yes.

MR TSOTSI: Of suspension.

CHAIRPERSON: So his suspension was found to have been unfair?

MR TSOTSI: Yes.

CHAIRPERSON: That is now we are talking about Mr Sekhasimbe?

ADV SELEKA SC: Sekhasimbe.

MR TSOTSI: Sekhasimbe.

CHAIRPERSON: Um.

MR TSOTSI: Sekhasimbe.

CHAIRPERSON: Yes Sekhasimbe okay.

MR TSOTSI: Yes.

10 **CHAIRPERSON:** So you just making the point that your views that you held about his suspension were vindicated because the CCMA found that the suspension was unfair.

MR TSOTSI: Correct Chair.

CHAIRPERSON: Ja.

MR TSOTSI: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Now Mr Tsotsi you will assist us obtain that information.

MR TSOTSI: I would gladly do Chair.

20 **ADV SELEKA SC:** Ja. Thank you. Was he reinstated?

MR TSOTSI: He – there was an instruction from the CCMA I gather that he was to be reinstated but the – the person in charge of the CCMA proceedings I gather indicated that it would be – he would be entering hostile environment – work environment. He should – his entitlement should go back to

work but the person felt that he would be entering a hostile work environment and may have to opt for negotiating his departure from the organisation. But I think the ruling of the CCMA would make it clear as to what actually transpired.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you. Then in regard to your removal. I have said page 451. The minister deals with the removal of yourself as chairman of the board and she says in paragraph 108 that:

10 “This was a vote issue and I did not interfere. I did not have any private discussions with Mr Tsotsi about this.

I do know that eventually Mr Tsotsi and the board reached some understanding and settled the matter. As I understood the arrangement, he would resign so that his name does not tarnish as a director and so can continue serving on other boards.”

CHAIRPERSON: Of course, she was not there. She is just saying this based on whatever reports she had received.

20 **ADV SELEKA SC:** And that is what we want to test Chairman. That is exactly ...[intervenes]

CHAIRPERSON: Ja, but I do not know whether you want to first check with Mr Tsotsi because not somebody who was there.

ADV SELEKA SC: Okay.

CHAIRPERSON: So you see? So I do not think you should... raise that with Tsotsi.

ADV SELEKA SC: Okay.

CHAIRPERSON: The people who can speak about that, the board members. She must have received certain reports.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: She is interpreting certain things. So I do not think you... I think you should move on to something else, ja.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Because she was not there. She was not part of the board meeting.

ADV SELEKA SC: Should I ask him one question, Chair?

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: And that is that she did not interfere.

CHAIRPERSON: H'm.

ADV SELEKA SC: Mr Tsotsi, are you able to respond to that allegation by the minister that she did not interfere in the issue between you – what she says is an issue between
20 you and the board?

MR TSOTSI: Chairman, let me say what I know.

CHAIRPERSON: Yes.

MR TSOTSI: And want to make a judgment as well that constitutes interference or not. The meeting of the 19th of March where I was first or where I first encountered

these charges, that meeting finished in the early hours of the morning around one o'clock or something.

And the same day, I knew and I was told that the board had requested – in fact, it is in the minutes – the board requested to have a meeting with the minister.

Now when they asked that I should recuse myself from that meeting, it was blatantly obvious to me that they want to talk about me and the issue that they have raised with me in the previous meeting.

10 Now I have consistently asked for minutes of that particular meeting because for me that would have been very significant because I needed to know how the board presented the issue to the minister because that will determine their own role in terms of how that meeting was conducted.

And I have persistently not been able to find those minutes. I recall in Cape Town at the parliamentary hearing, I specifically pointed out the fact that those minutes are important for one to get a sense as to exactly what happened
20 in that meeting of the 20th.

And I think it will be worthwhile to explore with members who were present in that meeting exactly what happened. So her presence there and the discussion that went on, culminated in now my formal – me being formally charged.

CHAIRPERSON: H'm, h'm.

MR TSOTSI: Ja, I think it is up to whoever who wants to make a determination as to whether the minister effectively interfered or not.

CHAIRPERSON: Have you tried to get those minutes?

ADV SELEKA SC: The minutes Chairperson of the 19th when Mr Tsotsi is ...[intervenes]

CHAIRPERSON: Ja, I think the one he is talking about is...[intervenes]

MR TSOTSI: The 20th.

10 **CHAIRPERSON:** ...between the board and the ...[intervenes]

MR TSOTSI: And the minister.

CHAIRPERSON: ...and the minister.

MR TSOTSI: Yes.

CHAIRPERSON: Yes, those minutes he is talking about.

ADV SELEKA SC: Oh, no we do not have those minutes Chair.

CHAIRPERSON: Have you asked for them?

20 **ADV SELEKA SC:** Yes, Chair. There is the minutes. I see my investigator is signalling to me. Yes, they did ask for the minutes. They were not given if those minutes exist.

CHAIRPERSON: But we know whether minutes were taken.

ADV SELEKA SC: No, Chair.

CHAIRPERSON: What... I do not know whether during your time, the board or members of the board had... ever had the

meeting with the minister other than in a situation where the minister came to a meeting of the board in which case there would be minutes. But if they went to see here, would minutes normally be taken? Do you know?

MR TSOTSI: They ought to be taken Chair. There is no reason why they should not be taken.

CHAIRPERSON: H'm, h'm. If it is formal business ...[intervenes]

MR TSOTSI: ...the minutes were available.

10 **CHAIRPERSON**: ...because they are coming to discuss formal business.

MR TSOTSI: Correct.

[Parties intervening each other and cannot be heard clearly.]

CHAIRPERSON: But in terms of your experience, had there been such meetings between the board or members of the board delegation with the minister outside of board meetings? And if so, would there have been minutes that were kept in the past? Because you were a long-serving member of the board.

20 **MR TSOTSI**: Chair, I do not recall there be a meeting with... Minister Gigaba, actually only attended, to the best of my recollection, a meeting when we have asked him or he has requested to address a particular issue.

CHAIRPERSON: Ja.

MR TSOTSI: But that did not happen very often.

CHAIRPERSON: Ja, okay. Well, at least what should be done is to get people who would know that about that meeting, such as the person who was the chair. The person was the chairperson of the board at the time or who was acting as chairperson and the company secretary if her or she was there in that meeting with the minister.

MR TSOTSI: Yes.

CHAIRPERSON: To depose to affidavits to say: Did the meeting take place? Were there minutes? What was
10 discussed? There should be affidavits by people. The minister herself should be – if she does not deal with that in her affidavit – should be asked to depose to an affidavit to say whether such a meeting did take place with her. What was discussed. As far as she knows were there minutes. Blah-blah-blah.'

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay let us continue.

20 **ADV SELEKA SC:** Mr Tsotsi, so you are saying there was a meeting on the 20th of March?

MR TSOTSI: The 20th of March, yes.

ADV SELEKA SC: So you were not invited to that meeting?

MR TSOTSI: I was explicitly excluded from that meeting, yes.

ADV SELEKA SC: Who told you that you are excluded?

MR TSOTSI: If I recall, I think it was Dr Ngubane who asked that I should recuse myself because he was acting chairman at the time.

ADV SELEKA SC: Yes. No, we ...[intervenes]

CHAIRPERSON: Well, I do not know if the two are not talking at cross-purposes. Were you asking him whether he was not invited to the meeting between the board and the minister?

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Of 20 March.

CHAIRPERSON: Of 20 March?

ADV SELEKA SC: Yes.

CHAIRPERSON: That is the meeting that we have been talking about?

ADV SELEKA SC: That is right Chair.

20 **CHAIRPERSON:** Yes. And Mr Tsotsi, you said you were excluded from the meeting. Were you saying that because the decision to go and see the minister was taken in a meeting from which you were excluded? Or was there specific decision or is there somebody who said: No, you must not come along.

MR TSOTSI: I was specifically told by Dr Ngubane that I should recuse myself from the meeting.

CHAIRPERSON: Yes, the meeting with the minister?

MR TSOTSI: With the minister, yes.

CHAIRPERSON: Oh, okay, okay.

MR TSOTSI: Yes.

CHAIRPERSON: So that is fine.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay that is fine.

ADV SELEKA SC: So he is there on the meeting – at the meeting on the 19th Chairperson.

10 **CHAIRPERSON**: Yes.

ADV SELEKA SC: That meeting that takes place overnight.

CHAIRPERSON: Yes.

ADV SELEKA SC: They stopped at around – to one the next morning.

CHAIRPERSON: But the meeting of the 19th, is the position not that that is the meeting where they asked him to leave the meeting.

ADV SELEKA SC: Correct.

20 **CHAIRPERSON**: And when he comes back, Dr Ngubane is chairing.

ADV SELEKA SC: Yes.

CHAIRPERSON: And suddenly he is just a director now. He is no longer chairperson. From then on, did he ever come back to be a chairperson? Mr Tsotsi, you never came back to be chairperson or did you?

MR TSOTSI: No, Chair I did not chair any meeting subsequent to that.

CHAIRPERSON: After that, ja.

ADV SELEKA SC: Yes.

MR TSOTSI: Yes.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Is there anything further that you want to tell the Chairperson about the meeting of the 19th?

MR TSOTSI: Chair, something I thought I observed and I
10 could not quite understand what to make of it, was that the meeting of the 19th when I was chairing the meeting at that point in time, was in process and we were discussing Eskom business.

And then, at some point, Mr Romeo Khumalo walked into the meeting. And he whispered something to Dr Ngubane. And it is at that point I was asked to recuse myself from the meeting.

CHAIRPERSON: Yes.

MR TSOTSI: Ja.

20 **CHAIRPERSON:** Ja. I remember you mentioned that in the past.

MR TSOTSI: Yes. So I got the impression, for what it is worth, that there was a message that must have come in from somewhere.

CHAIRPERSON: H'm, h'm.

MR TSOTSI: That it is time to deal with this person in this particular way.

CHAIRPERSON: Yes.

MR TSOTSI: That I thought was rather unusual but that was the last time I chaired a meeting of the board.

CHAIRPERSON: Ja, okay.

MR TSOTSI: And incidentally, I also requested Chair the minutes of the discussion which took place ...[intervenes]

CHAIRPERSON: In your absence?

10 **MR TSOTSI:** ...on the 30th now when I was now defending myself in terms of the charges in the presence of my attorneys as well as the Eskom's attorneys.

CHAIRPERSON: H'm.

MR TSOTSI: Because at the end of my presentation, I was asked and my team was asked to recuse ourselves. And the board deliberated. Up to now, I do not know what it was that they were deliberating on. And I have not been able to find out. And I have requested those minutes and I was never given those minutes.

20 **CHAIRPERSON:** Mr Seleka, has your team asked for the minutes of those deliberations?

MR TSOTSI: Because I may add Chair just for ease of reference for Mr Seleka. If you look at the end of the recordal of the minutes of the 30th, there is a statement there which says minutes of the – whatever they call it-

minutes of in-committee or what – are kept separately. I was very intrigued by that because ...[intervenes]

CHAIRPERSON: Yes.

MR TSOTSI: ...that minutes do exist... Sorry, if you look at the minutes of the 30th of March, the end of that minute, there is a statement at the bottom there.

CHAIRPERSON: Ja, ja.

MR TSOTSI: Ja.

ADV SELEKA SC: Chairperson, what we have in regard to
10 the meeting of the 19th.

CHAIRPERSON: H'm?

ADV SELEKA SC: We have on single documents which is the minutes of the meeting. It records when Mr Khumalo comes in. It records when the board takes a break and it resumes. And at resumption, Mr Tsotsi is asked to be excused. And you have a minute of what takes place in his absence to the end of that discussion when he is called back.

CHAIRPERSON: yes.

20 **ADV SELEKA SC:** And the meeting gets adjourned.

CHAIRPERSON: Yes.

ADV SELEKA SC: So you have it in the same document.

CHAIRPERSON: Yes, okay.

MR TSOTSI: That is for the 19th Chair.

CHAIRPERSON: Ja.

MR TSOTSI: That I accept.

CHAIRPERSON: Ja, that is for the 19th.

ADV SELEKA SC: Yes.

CHAIRPERSON: Which is also important. It is good that you have said that.

ADV SELEKA SC: Yes.

CHAIRPERSON: But he has added now something in regard to the 30th, the minutes.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** He says after he and his legal team had made a presentation, they were asked to leave for the board to deliberate, I guess on the presentation. And he says he has asked for the minutes which would cover those deliberations.

ADV SELEKA SC: Yes.

CHAIRPERSON: But he says he has never been furnished with those.

ADV SELEKA SC: Yes. Yes, no ...[intervenes]

CHAIRPERSON: And he says the minutes of the 30th
20 ...[intervenes]

ADV SELEKA SC: I am looking ...[intervenes]

CHAIRPERSON: ...reflect that those minutes of the deliberations were kept separate.

MR TSOTSI: Yes, exactly.

CHAIRPERSON: Ja, so which means they must be in

existence somewhere.

ADV SELEKA SC: Ja, that is if they recorded them Chair. They do say, as Mr Tsotsi points out, just before closure the minute-taker had indicated in-committee minutes are kept separately.

CHAIRPERSON: Yes.

ADV SELEKA SC: I know that we do have some of the minutes of in-committee board meetings.

CHAIRPERSON: H'm.

10 **ADV SELEKA SC:** But the investigators do not have... they do not have the one which Mr Tsotsi is referring to where he was excused in that meeting.

CHAIRPERSON: I think ...[intervenes]

ADV SELEKA SC: So we will make a note of that.

CHAIRPERSON: I think make a note and the company secretary must be asked for the minutes of the board's deliberations after the presentation by Mr Tsotsi and his legal team ...[intervenes]

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON:** ...on the 30th.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. Okay alright.

MR TSOTSI: Can I just on that point Chair because I think this is very important because that deliberation will tell us what motivated ...[intervenes]

CHAIRPERSON: Ja.

MR TSOTSI: ...for them to discard my presentation.

CHAIRPERSON: Ja.

MR TSOTSI: And in fact, opt for ...[intervenes]

CHAIRPERSON: Ja.

MR TSOTSI: ...my having to be struck off as a director.

CHAIRPERSON: Ja. Well, Dr Ngubane's evidence – I do not know whether this is what may have emerged from those deliberations – his evidence was that somebody – I do not
10 know if it was him – came up with the idea to say: You know, we must talk to Mr Tsotsi and say maybe he should resign because if we pass a vote of no confidence, that is going to impact negatively on him.

And I think he said he was then mandated. I do not alone or together with somebody else to approach you to put this idea of you resigning. To say: Look, if we... if the board passes a vote of no confidence, it is going to impact negatively on you. Maybe it is better if you just resign. That is what he said.

20 **MR TSOTSI:** Yes, I do recall that Chair.

CHAIRPERSON: Ja. So it is just that I do not know whether he said that was discussed outside of the deliberations of the board or whether it was during the deliberations. But we know that in the end, that is what happened.

MR TSOTSI: Yes.

ADV SELEKA SC: Yes.

MR TSOTSI: I also heard that Mr Baloyi was a sending voice in those deliberations.

CHAIRPERSON: Yes, yes. But it might be helpful to get those minutes if they exist.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay alright. Let us move on.

ADV SELEKA SC: Ja, we will finish ...[intervenes]

10 **CHAIRPERSON:** We are at twelve minutes past eight.

ADV SELEKA SC: Yes. I have got... Chair, we are finished. The Chair is correct that that Mr Venete Klein's evidence.

CHAIRPERSON: Oh, that is Ms Klein's evidence?

ADV SELEKA SC: That is Ms Venete Klein's evidence.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Mister... I have got three points Chair.

20 Arising from the affidavit recently received and the Chairperson has not seen that affidavit of Mr Zethembe Khoza. Mr Tsotsi, which you... a copy of which you were favoured with. Has it been included in the Reference Bundle?

INVESTIGATORS: [No audible reply]

ADV SELEKA SC: Chair, it has been included in the Reference Bundle. But there is a paragraph there by Mr Zethembe Khoza. Although he ...[intervenes]

CHAIRPERSON: Do we know what page it is in the bundle?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: But if you do not think I need to go to it, it is fine.

ADV SELEKA SC: Ja, it is the ...[intervenes]

CHAIRPERSON: Maybe it is fine, I think.

10 **ADV SELEKA SC:** It is the smaller bundle.

CHAIRPERSON: You can let me know later on. You can put to Mr Tsotsi what you want to put.

ADV SELEKA SC: Yes. Page?

INVESTIGATORS: [No audible reply]

ADV SELEKA SC: Page 447.

CHAIRPERSON: Page?

ADV SELEKA SC: 447.

CHAIRPERSON: On the same bundle?

20 **ADV SELEKA SC:** From the Eskom Bundle 13. It is a continuation of the Reference Bundle.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: But continue.

ADV SELEKA SC: Yes. Mr Tsotsi, there is an allegation there regarding you ...[intervenes]

CHAIRPERSON: Just repeat the page for Mr Tsotsi.

ADV SELEKA SC: 447.

CHAIRPERSON: 447.

ADV SELEKA SC: On page... That is the beginning page of the affidavit. The specific paragraph I want to read from is, is 454.

MR TSOTSI: 447. I have got the wrong document. What, what? What document is that?

ADV SELEKA SC: Eskom Bundle 13.

10 **MR TSOTSI:** [No audible reply]

ADV SELEKA SC: Eskom Bundle 13.

MR TSOTSI: [No audible reply]

ADV SELEKA SC: You can have mine.

MR TSOTSI: Okay, I have got it.

ADV SELEKA SC: Just go straight to page 454.

MR TSOTSI: [No audible reply]

ADV SELEKA SC: Paragraph 34, Mr Zethembe Khoza writes:

“I do not recall that the minister...

20 No, it is not this one.

MR TSOTSI: 46?

ADV SELEKA SC: Yes, there is an allegation he makes about you regarding the pre-suspension letters.

MR TSOTSI: 46.

ADV SELEKA SC: 46. Thank you. Page 457 Chairperson.

CHAIRPERSON: I am now at 454. You say I must go back to 447?

ADV SELEKA SC: To 457.

CHAIRPERSON: Oh, 457?

ADV SELEKA SC: 457.

CHAIRPERSON: Okay.

ADV SELEKA SC: Paragraph 46.

CHAIRPERSON: Okay yes?

ADV SELEKA SC: Yes. Mr Zethembe says:

10 “I do not recall exactly when and cannot find the record of same but Tsotsi sent me pre-suspension letters for Marokane, Molefe, Koko and Matona which alluded to their alleged misconduct.

At the time, I thought that the letters would be prepared Linnell in order to assist the board. However, as the board did not charge the executives in any way, these letters were ultimately never utilised.

20 As I was relieved from my role as chairman of the People in Governance Committee, I was transmitted copies of these letters to Klein on 14 March 2015. The copy of the email is annexed hereto, marked ZK9.”

Now Mr Tsotsi, I provided you with this affidavit and I believe you have had a chance to look at it.

MR TSOTSI: Yes.

ADV SELEKA SC: Mr Zethembe said you, although he cannot recall when and cannot find a record of same, he nonetheless says, he got pre-suspension letters from you. And might I add?

That this pre-suspension letters are also talked about by Ms Venete Klein in her affidavit, although she does not mention you, nor does she mention Mr Zethembe Khoza in her affidavit.

10 But when she testified here, she said that she recalls she received these letters from Mr Zethembe Khoza. Now Mr Khoza said he received them from you even though he has no record or recollection of exactly when.

Now Chairperson, these are the letters that in the affidavit of Ms Venete Klein, she says that were authored by Ms Suzanne Daniels together with Mr Salim Essa.

CHAIRPERSON: I see Mr Khoza says that as well.

ADV SELEKA SC: Says the same thing.

CHAIRPERSON: Ja. He certainly says that at paragraph
20 47.

ADV SELEKA SC: That is right Chair.

CHAIRPERSON: He says:

“While preparing this affidavit, I noticed that the pre-suspension letters were actually prepared by Daniels and edited by Mr Salim Essa.”

I think it is the same letters that in the previous paragraph he says he thought he got from Mr Tsotsi.

ADV SELEKA SC: Yes.

CHAIRPERSON: And he thought that they had been prepared by Mr Linnell.

ADV SELEKA SC: That is right.

CHAIRPERSON: That is what he says at 46 but at 47 he says:

10 “While preparing this affidavit, I noticed that the pre-suspension letters were actually prepared by Daniels and edited by Mr Salim Essa.”

He says:

“The properties of the document show this as I have now discovered. Again, I did not know how to check who has authored or edited the Word document prior to know.”

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: H’m.

ADV SELEKA SC: Mr Tsotsi, your comment on this?

20 **MR TSOTSI:** Yes, Chair. First of all, I think, I do not know where Mr Khoza got this from but without a doubt I never ...[intervenes]

CHAIRPERSON: But I ...[intervenes]

MR TSOTSI: ...sadly ...[intervenes]

CHAIRPERSON: Yes, I do not know Mr Seleka we should

order to let him comment because in effect, Mr Khoza seems to be retracting that or is that not your understanding?

ADV SELEKA SC: No, that is exactly my understanding Chair.

CHAIRPERSON: Ja. He first says he thought he got them from Mr Tsotsi and after they had been prepared by Mr Linnell. But the next paragraph he says: No, actually, when now preparing this affidavit, I realised that they were prepared by Daniels and edited by Salim Essa. So I do not
10 think Mr Tsotsi needs to comment further on it because in effect, he is withdrawing what he has said before.

ADV SELEKA SC: Thank you, Chair. Should we move on Chair?

CHAIRPERSON: Ja.

ADV SELEKA SC: I am happy to move on.

CHAIRPERSON: Yes, move on. Move on.

ADV SELEKA SC: Ja. And then. Mr Tsotsi, a minor thing. Well, I am going to leave that one. There is a meeting after you have resigned. You have resigned. There is a meeting
20 between you and Ms Molefe as she talks about in her affidavit where you – she says apologise to her that she should not have been suspended.

MR TSOTSI: Yes.

ADV SELEKA SC: You confirm that meeting?

MR TSOTSI: Yes, Chair. I felt very aggrieved about in

particular about her suspension and I just felt the need to say to her that I did not believe she should have been suspended.

And I made this clear in the way I addressed the issue of the FD coming in as part of the list of the executives to be suspended. I pretty much had a good sense of what is likely to happen.

Let alone the fact that I did not believe that there was anything to investigate in the Department of Finance. When
10 I say I had a sense of what was likely to happen actually did occur when I was confronted by a whole host of investors of Eskom who were asking these questions.

And they particularly wanted to know what has the FD done. Because she, I mean, the Financial Director is the custodian of the investment of the investors of the business. So I pretty much knew that there was going to be this problem.

And incidentally, Mark Pamensky also mentioned that during the one of the – I think it was the PMG Meeting if I
20 recall correctly.

So I am just, you know, connecting these issues because I ultimately felt that I needed to say to Ms Molefe she should never really had been suspended.

CHAIRPERSON: Ja, okay. Mr Seleka.

ADV SELEKA SC: Chair, that actually marks the end of my

questions. I have something on the composition of the sub-committees but he has now dealt with it in one way. We will... I think we will test it with the minister.

CHAIRPERSON: Well, if you want to ask him about that, you can ask him.

ADV SELEKA SC: Can I ask?

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Ja. Mr Tsotsi, Nokholo(?) has provided us with an affidavit to which some of the emails exchanged
10 between you and the minister are attached and this specifically relates to the composition of the board.

Then the emails are dated... your email to the minister is 26 January 2015. The minister respond to that by email dated 28 January 2015. 26th, 23rd(?) [clearing of throat by witness] You first sent an email with the composition. Chair, for your benefit, I think you need to have a look at it. That is Eskom Bundle 10 and Exhibit U22.

CHAIRPERSON: Yes.

ADV SELEKA SC: And this is the last... I am exploring with
20 Mr Tsotsi. Eskom Bundle 2, Exhibit 22.

MR TSOTSI: Number?

ADV SELEKA SC: 10.

MR TSOTSI: Yes?

ADV SELEKA SC: Exhibit 22.

MR TSOTSI: Page?

ADV SELEKA SC: Page 471. And your email starts on page – thank you Mr Tsotsi. Your email is below the minister’s email. So your email from Zola Tsotsi, date is 26 January 2015 at 13.52. You address the email to Lynne.Brown5@me.com and the subject is:

“Deployment of nonexecutive board members to board committees.”

MR TSOTSI: My email is on what page?

ADV SELEKA SC: 472.

10 **MR TSOTSI:** 472, okay.

ADV SELEKA SC: So you forward to the minister your email below. So your email below reads:

“Dear Minister, please find the revised board subcommittee deployment as follows:

Audit and Risk...”

You give the names and I believe we should read according to how you have almost tabulated them, is that correct?

Under audit and risk is Chwayita Mabude and you go to the next page, Viroshni Naidoo, Nadia Carrim, Romeo Kumalo,

20 Norman Baloyi.

MR TSOTSI: Yes.

ADV SELEKA SC: Do you see that? And the list carries on, under Tender and Procurement you have Ben Ngubane as the Chairperson. At the next page, it is Chwayita Mabude, Zethembe Khoza, Nazia Carrim. And then the

IFC, Mapamenzi, Pat Naidoo, Zethembe Khoza, Venita Klein and so on. There are some mistakes here in the names. The spelling of the names.

MR TSOTSI: Ja.

ADV SELEKA SC: For instance, Nazia Carrim, she is not Nadia, she is Nazia.

MR TSOTSI: Correct.

ADV SELEKA SC: Mr Kumalo is spelt without an h.

MR TSOTSI: Ja.

10 **ADV SELEKA SC:** Mr Khoza is not Zathembe, it is Zethembe Khoza.

MR TSOTSI: Yes.

ADV SELEKA SC: Were these your mistakes? Typographical errors?

MR TSOTSI: They must have been, Chair, typographical errors.

ADV SELEKA SC: Then the minister ...[intervenes]

CHAIRPERSON: But are you sure that this was your composition?

20 **MR TSOTSI:** Yes, Chair, on the basis of this email it has to be, yes.

ADV SELEKA SC: Yes.

MR TSOTSI: Well, let me [indistinct – dropping voice]

CHAIRPERSON: You remember there is another composition that we are still looking for, I do not know if

you found it in the meantime.

MR TSOTSI: Chair, this email is a culmination of the back and forth that occurred on this issue between the minister and myself and I guess I should say between three of us, Salim Essa, minister and myself. Now I would imagine that following the minister's insistence when we met at our house, where I said Tony Gupta was present and so was Salim Essa, this would have been ultimately what she had wanted to have. So I am saying that this probably would
10 not represent what I had wanted but the likelihood that it would represent what the minister had wanted and together with whoever was – Salim Essa, in this instance, would have wanted.

So I am saying – because I look at the date and I see that it is – we are communicating with the minister at the end of January and the back and forth with minister and Salim Essa started – would have started sometime in – conceivably in December, if not early January.

ADV SELEKA SC: Chairperson, incidentally, we do have
20 Mr Tsotsi's email of December 2014 to the minister.

CHAIRPERSON: Oh.

ADV SELEKA SC: Which is not part of the record and I am going to beg the Chairperson's leave to hand it up.

CHAIRPERSON: Yes.

ADV SELEKA SC: For the purposes of the Chairperson's

comparison and Mr Tsotsi's benefit.

CHAIRPERSON: Yes.

ADV SELEKA SC: We will mark it accordingly for inclusion into the record and Mr Tsotsi could briefly then explain to the Chairperson how the two documents compare, one for the Chairperson, one for the witness. So the email handed up, Chairperson, is an email from Zola Tsotsi sent on Tuesday 16 December 2014 at 14.02, also sent to Lynne.Brown5@me.com and the subject is also:

10 “Deployment of nonexecutive board members to board committees.”

And it says:

“Dear Minister, I trust you are well and enjoying some rest. Please find below the preliminary deployment of nonexecutive board members to board committees. The audit committee at Eskom has always been chaired by a CA.”

I presume that means a chartered accountant, Mr Tsotsi?

CHAIRPERSON: Ja, it obviously means that, I would
20 imagine.

ADV SELEKA SC: Not a candidate attorney.

CHAIRPERSON: No.

ADV SELEKA SC: We may have to deal with media reaction to this change. Are you contemplating limiting the board to 13? The previous board had 14 members. For

those serving on three committees, depending on their day jobs, the workload may be quite taxing. So would this have been the first email you sent, Mr Tsotsi? And I notice the – sorry, can I give you a change to answer then, Mr Tsotsi? Would this have been the first email you sent to the minister?

MR TSOTSI: I cannot recall whether this is the first one but certainly it was December which accords with what I recall was when the interaction was taking place.

10 **ADV SELEKA SC:** Yes. And I also notice the errors in the surnames of some of your board members there. Zethembe Khoza is spelt with an x.

CHAIRPERSON: Yes, would not have imagined that you would spell Khoza like that, Mr Tsotsi.

MR TSOTSI: That is a gross error, Chair.

CHAIRPERSON: H'm?

MR TSOTSI: That is a gross error.

ADV SELEKA SC: Could this be in Salim Essa's list, Mr Tsotsi?

20 **CHAIRPERSON:** I mean, I cannot imagine that you would spell Khoza with an x.

MR TSOTSI: Ja, that ...[intervenes]

CHAIRPERSON: Unless it was your secretary and your secretary was someone who could make this kind of mistake.

MR TSOTSI: Yes, I see that [inaudible – speaking simultaneously]

CHAIRPERSON: And then you did not check properly.

MR TSOTSI: His name has been repeated as Zathembe Xhosa.

CHAIRPERSON: Ja, I mean it is...

MR TSOTSI: Ja, that is definitely an error.

CHAIRPERSON: But also, I see you were going to serve – you, being Chairperson of the board, you were going to
10 serve as a member – as an ordinary member in various committees, is that normal?

ADV SELEKA SC: Ja, in IFC?

CHAIRPERSON: If you are Chairperson of the board do you not chair just the board and you do not go to other committees and – because they must report to the board, those committees, and you are chairing the board?

MR TSOTSI: It has been a tradition at Eskom that the Chairman does participate in some of – in fact, the Chairman is limited – well, obviously, the Chairman would
20 not serve in the statutory committee. But the Chairman is generally limited to the people in governance committee and the social the – it is the ethics? Cannot remember, there is another committee that the Chairman is ...[intervenes]

CHAIRPERSON: Just looks very ...[intervenes]

MR TSOTSI: But certainly not the IFC.

CHAIRPERSON: It looks very strange to me because if the Chief Justice who chairs the heads of court goes to a committee and he is then just a member, an ordinary member of that committee, that committee is chaired by somebody else, it looks very awkward if the President, who chairs a cabinet meeting then goes to a subcommittee of the cabinet and then he attends as an ordinary member and that committee is chaired by somebody else, it is
10 strange.

MR TSOTSI: Yes. I can accept that, yes.

CHAIRPERSON: But is what you intended because one of the things I think Mr Seleka is looking at and I am looking at is whether this genuinely came from you. But if it genuinely came from you, that is what you say and we accept.

MR TSOTSI: This would have come from me, yes.

CHAIRPERSON: It came from you?

MR TSOTSI: Yes.

20 **CHAIRPERSON:** Yes. Okay, alright. In which case obviously your secretary would not have put your name in certain committees unless you had said ...[intervenes]

MR TSOTSI: Yes.

CHAIRPERSON: Ja, ja. Okay, alright.

ADV SELEKA SC: Mr Tsotsi?

MR TSOTSI: Yes?

ADV SELEKA SC: Ja, do you not leave the Chairperson with the impression that it is your secretary who typed this?

CHAIRPERSON: Well, probably secretary typed but if she typed or he typed what he said she should type then it is not her fault or his fault. I think what Mr Khoza - Mr Tsotsi, I am sorry, Mr Tsotsi has said is the composition reflected what he wanted.

10 **MR TSOTSI:** Yes, thank you, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair. Okay, alright, and you were saying that certainly not you, Mr Zola Tsotsi, chairman of the board on the IFC.

MR TSOTSI: Ja, well that is a bit odd.

ADV SELEKA SC: Yes.

MR TSOTSI: It would not have been a good idea.

ADV SELEKA SC: Yes. But it also still begs the question well, is this your list?

20 **MR TSOTSI:** Well ...[intervenes]

CHAIRPERSON: Well, he has said it is his.

MR TSOTSI: I can only say it is mine because ...[intervenes]

CHAIRPERSON: Ja, he has said it is his.

MR TSOTSI: I am the one who sent the email to the

minister.

CHAIRPERSON: So you accept that, ja.

MR TSOTSI: I cannot disassociate myself from it.

ADV SELEKA SC: It is alright.

MR TSOTSI: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: It is alright. Then, Chair, lastly on this, if you go back to the file, is the minister's reply to Mr Tsotsi.

10 **CHAIRPERSON:** About the composition?

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja?

ADV SELEKA SC: That email – let me see, I think it is duplicated. We can read it on the next page, which is page 474.

MR TSOTSI: Which bundle?

ADV SELEKA SC: The bundle where your email – Eskom bundle 10, EXHIBIT 22.

MR TSOTSI: Oh, the same one we were looking at.

20 **ADV SELEKA SC:** The same one, yes.

MR TSOTSI: What page?

ADV SELEKA SC: Page 474.

MR TSOTSI: Oh, the next page.

ADV SELEKA SC: Ja, the next page. So the minister responds to you 28 January 2015 at 8.21 and she copies a

couple of people there, Matsietsi Makholo, Brandon Roberts and others and she says:

“Dear Mr Tsotsi, thank you for the email below regarding the composition of board committees. Given that this is a newly appointed board it is my responsibility, as shareholder representative, to formally consider the composition of the committees. I would therefore appreciate it if the composition of board committees is submitted under formal cover letter with the following supporting information, a copy of the board resolution on the composition, a draft resolution for shareholder approval of members of the audit and risk committee, a draft shareholder resolution confirming membership of...”

I think it is social and ethics committee.

“...and sustainability, a draft shareholder resolution noting all other committees, list of all directors’ disclosure of interest including...”

20 And the rest of it is there. What I did not understand, Mr Tsotsi, and maybe you can explain to the Chairperson and us is the minister’s statement that given that this a newly appointed board, it is my responsibility, as shareholder, to formally consider the composition of the committees because we have understood from the – some of the

witnesses who testified here, that the minister's responsibility would have only related to two statutory subcommittees.

MR TSOTSI: Yes, exactly. Chair, that is correct, when they [inaudible – loud coughing] committees what would happen is that the – whatever proposal the board may make on those committees is subject, expressly subject to the approval of the minister so ...[intervenes]

CHAIRPERSON: Yes because in regard to that committee
10 or those committees she has the power.

MR TSOTSI: Correct.

CHAIRPERSON: Now in regard to other committees has she got any power?

MR TSOTSI: No, no, Chair, she does not have the power.

CHAIRPERSON: So to the extent that she says in the email that the composition of all the committees of the board is subject to her power, she has the power to decide that that would not be correct.

MR TSOTSI: No, Chair, that is not correct.

20 **CHAIRPERSON:** Yes.

MR TSOTSI: What the board is doing is giving the shareholder the courtesy of knowing how is involved in which committees.

CHAIRPERSON: Yes but not because she has the ...[intervenes]

MR TSOTSI: Not because [inaudible – speaking simultaneously]

CHAIRPERSON: ...to the decide that.

MR TSOTSI: Correct.

CHAIRPERSON: Ja. In her affidavit does she repeat this?

ADV SELEKA SC: She deals with this, Chair, to some extent ...[intervenes]

CHAIRPERSON: I guess we are wrapping up now, hey?

10 **ADV SELEKA SC:** I am, I am, Chair. I have in fact. Let me ...[intervenes]

CHAIRPERSON: There may be – there may be staff who might still need to go some long distances home who did not know they have to stay longer today. It is all my fault.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

ADV SELEKA SC: Sorry, sorry, quickly – that is back to your bundle, Mr Tsotsi, and that is on page 444, page 444 from paragraph 43 onwards.

20 **CHAIRPERSON:** What does she say?

ADV SELEKA SC: She confirms that she is responsible only for the appointment of members of two board subcommittees.

CHAIRPERSON: Ja.

ADV SELEKA SC: Audit and risk and social and ethics

committee.

CHAIRPERSON: Ja.

ADV SELEKA SC: And then she goes into the process at DPE that she would be guided in appointing members of the board.

CHAIRPERSON: Ja.

ADV SELEKA SC: But then she does not stop at audit and risk and social and ethics. In paragraph 47 she goes on about she would have followed the same process for the
10 other subcommittees.

CHAIRPERSON: Ja.

ADV SELEKA SC: In respect of the two that she said she is responsible for. But then she says:

“I cannot recall offhand whether this is what happened regarding the 2014 appointment of the committees”

CHAIRPERSON: Ja, no that is fine, if her affidavit says she is only responsible for those two committees, that is fine. When she comes she will give evidence about that
20 email.

ADV SELEKA SC: Yes.

CHAIRPERSON: And she can provide clarification.

ADV SELEKA SC: Ja. Mr Tsotsi, just right at the end now, there is an email in December 2014 you sent to the minister with the composition. Then there is an email on

the 26 January 2015 that you sent to the minister, with the composition. Now what informed the email, the composition, the composition, in the email of 26 January 2015. Now my question is, let me put it, is that the composition that the minister wanted in January when you sent it to him(?).

MR TSOTSI: That would be the case, Chair, because as I said, the back and forth occurred during the month of December primarily and what culminated in then the formal
10 submission to the minister would then be the composition as the minister had wanted it to be.

CHAIRPERSON: So is the position that for – that in regard to all the committees you or the board ended up basically letting her have or decide the composition.

MR TSOTSI: That is the *de facto* situation, Chairman.

CHAIRPERSON: That is what ultimately happened?

MR TSOTSI: Yes.

CHAIRPERSON: Yes. Because in the email she had said it is her, as the shareholder she would decide.

20 **MR TSOTSI:** Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: So that means the minister went beyond the limit of the two subcommittees that she is responsible for.

MR TSOTSI: It would appear so by her own admission

because she is saying that she needs the formal document for her consideration. You will recall that is what you read earlier in the email.

ADV SELEKA SC: Ja.

CHAIRPERSON: Ja.

ADV SELEKA SC: No, that is one thing. That is one thing, yes.

MR TSOTSI: Yes.

ADV SELEKA SC: But I am talking factually from the
10 composition in your subsequent email, that that is what the minister wanted you ...[intervenes]

MR TSOTSI: That is what the minister had wanted ...[intervenes]

ADV SELEKA SC: How to compose.

MR TSOTSI: Ultimately, yes.

ADV SELEKA SC: So it went beyond just the two subcommittees.

MR TSOTSI: Yes, correct.

ADV SELEKA SC: You see, the reason why I was
20 remarking on the – understanding the states is because the Fundudzi report shows that a composition had been received by the DPE from businessman's email info portal and the misspellings were like in your first email. Mr Zethembe Khoza is spelt with an x.

MR TSOTSI: Yes.

ADV SELEKA SC: And I thought that was remarkable.
Coincidence?

MR TSOTSI: I think just a coincidence, yes. It is a very
interesting coincidence, Chairman.

CHAIRPERSON: Well, unless – well, you remember your
evidence previously.

MR TSOTSI: Yes.

CHAIRPERSON: Was that you received a composition, a
fax or email from Mr Salim Essa.

10 **MR TSOTSI:** Yes.

CHAIRPERSON: With how the committees of the board
should be composed of.

MR TSOTSI: Yes.

CHAIRPERSON: And you were not happy with that. You
sent your own composition of the committees of the board
to the minister.

MR TSOTSI: Yes.

CHAIRPERSON: And then you said – you testified and
you said the minister sent you her composition and you
20 said her composition of the committees of the board was
exactly the same.

MR TSOTSI: Yes.

CHAIRPERSON: As the composition of Mr Salim Essa
that you were not happy with.

MR TSOTSI: Yes, that is correct.

CHAIRPERSON: You remember you said that?

MR TSOTSI: Yes, absolutely.

CHAIRPERSON: Now it is possible – if you say your composition of the board committees of – is it 26 January?

MR TSOTSI: 26 January, Chair.

CHAIRPERSON: If you say that was the culmination of the to-ing and fro-ing involving you and the minister and Mr Salim Essa and if you say that that composition was what the minister wanted and if what the minister had previously
10 sent you was the same as what you had received from Mr Salim Essa, then it may be that the minister sent you a list with those spelling errors because those spelling errors maybe were included in Salim Essa's list, composition, and what you did not do is to correct those spelling errors. That is one point of looking at it.

MR TSOTSI: It seems to be, yes. Yes, that is quite possible, Chairman.

CHAIRPERSON: Because for you it really seems very strange that you would spell Khoza with an x.

20 **MR TSOTSI:** Yes, exactly.

CHAIRPERSON: But anyway, I think...

ADV SELEKA SC: That is the end, Chair.

CHAIRPERSON: Was that your last question?

ADV SELEKA SC: That is the end, Chair.

CHAIRPERSON: If there are any other questions you can

always send them to Mr Tsotsi.

ADV SELEKA SC: Yes.

CHAIRPERSON: With a request for him to respond to them by way of an affidavit.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: So that – ja.

ADV SELEKA SC: Certainly.

CHAIRPERSON: Okay. Thank you very much, Mr Tsotsi.
Sorry – oh yes...

10 **ADV SELEKA SC:** You want to say...?

CHAIRPERSON: Oh, I looked for you here because I think – I thought last time you were sitting this side. I may have been mistaken so I did not realise you are there.

MR NGCEBETSHA: No, thank you, understood, Chairperson.

CHAIRPERSON: Yes, yes.

MR NGCEBETSHA: I have just two points only.

CHAIRPERSON: Two questions?

MR NGCEBETSHA: Yes, just...

20 **CHAIRPERSON:** Okay, alright, yes.

MR NGCEBETSHA: Thank you.

CHAIRPERSON: That is re-examination, hey?

MR NGCEBETSHA: Yes.

CHAIRPERSON: Ja, okay, alright.

MR NGCEBETSHA: Mr Tsotsi, you spoke at length

regarding the meeting of the 30 March in which you first went to your presentation, there was an adjournment and subsequently you were approached by Mr Romeo Kumalo together with Dr Ben Ngubane which culminated in you going back to the formal board meeting and tendered your resignation.

Now I just want first to confirm – tell the Chairperson in your own words whether the resignation tendered was voluntary or not.

10 **MR TSOTSI**: Chair, that is a very interesting question and not an easy question to actually answer.

CHAIRPERSON: Yes.

MR TSOTSI: Because you recall that the state of mind I was in was one of someone who is being accused of things that were certainly very flimsy. I made the point in the meeting with the board in my own defence to say that these charges were definitely spurious and were of no substance whatsoever and this was confirmed by my legal team that in fact what they were putting forward is really of
20 no substance.

And I realised that if I was to challenge this situation any further, it is going to impact on the company and take away from the focus of what Eskom should be doing and that is to recover from the situation that it is in and I really did not want to be party to defocusing Eskom

and bringing the focus upon myself.

So my resignation in a sense was – in a sense was forced because I felt that I did not want to be an albatross around the neck of the company and I consented to then resigning for that reason not because I felt that I did not have a winnable case nor that I capitulated to the - you know, to the accusations that they were making. Quite the contrary.

As I say, it was really in the interest of making sure
10 that the business does not have to have a fallout out of this situation occasioned by my resistance. So that is really the – to answer the question, I felt it was a forced situation.

CHAIRPERSON: Okay.

MR NGCEBETSHA: Thank you. Now on going through that, I suppose it is common cause now, that the resignation was received and accepted. There were certain commitments made to you by the board to meet certain obligations. Without naming them, were any of
20 those obligations that were made to you met by the board or by the company?

MR TSOTSI: No, Chair, none of them were met altogether. None of them were. In fact I do not why you want to restrict me from commenting about what it is I should say what they are about but one important issue,

has got to do with my legal fees.

CHAIRPERSON: Ja, you mentioned that last time.

MR TSOTSI: So I felt done by, by the attitude of
[indistinct – dropping voice]

CHAIRPERSON: Ja.

MR TSOTSI: Yes.

MR NGCEBETSHA: Now my next question is, what effect
would your removal – or rather, what effect did your
removal from the board as Chairman of Eskom have on you
10 seeing that you had already testified that this pretty much
was the only job you could hold because of the enormity of
the work that you had...?

MR TSOTSI: Chairman, I can only describe it as
debilitating, to be quite honest. I lost, you know, not only
an income but I lost opportunities for further income. It
became very clear that people who were supposed
associated or tainted with State Capture, if I may say so,
were being shunned by you know prospective employers
and there were all sorts of stories and rumours going
20 around. One in particular concerned me because it was
said that Gupta family went out of its way to draw up a list
of all those people who should not be engaged by –
certainly by the public sector, and my name apparently is
one of them.

So I am just saying I would not want to relive that

situation again.

CHAIRPERSON: Ja.

MR NGCEBETSHA: Chairperson I think that concludes my questions, I just need maybe to place it on record that whilst we may receive from Tsotsi matters that confirm he is an implicated person by some of the witnesses, we have adopted an approach that says that we have been fairly satisfied with the manner in which the evidence leader poses the different version.

10 **CHAIRPERSON:** Yes.

MR NGCEBETSHA: And instead of complicating and in the spirit of expedition of the work of this Commission we just want to formally record our reservation in the eventuality that it is absolutely needed then we will submit an application at that point.

CHAIRPERSON: Yes, yes.

MR NGCEBETSHA: Thank you, that is all.

CHAIRPERSON: No thank you, I think that is the right approach ja. Okay Mr Tsotsi thank you very much, I know
20 that you will still come back because – or Mr Seleka knows that he thinks he has troubled you enough, I thought he might be needing you for the secondments but now I remember you were no longer there during the secondments, ja.

Okay, thank you very much Mr Tsotsi for coming to

assist the Commission, we appreciate it very much and thank you for coming in the evening.

MR TSOTSI: I am available in a consulting capacity.

CHAIRPERSON: Thank you very much. It is two minutes to nine, we adjourn, thank you to everybody for all your cooperation. Again I am sorry to those who did not know that we were going to end up working so late, next time we will try and make sure everybody knows well in advance.

We adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS TO 30 OCTOBER 2020

Witness Mr Reenen Teubes