

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

09 NOVEMBER 2020

DAY 302



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 09 NOVEMBER 2020

CHAIRPERSON: Good morning Mr Kennedy, good morning everybody.

ADV KENNEDY SC: Good morning Chair.

CHAIRPERSON: Are we ready?

ADV KENNEDY SC: Yes we are thank you Chair.

CHAIRPERSON: Yes thank you.

ADV KENNEDY SC: Chair we propose to call three witnesses today.

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: The first is Mr Pieter Knoetze; the second will be Mr Mkwazazi and the third will be ...

CHAIRPERSON: One second. I think the – the air conditioner noise makes it difficult to hear you properly. They will – they will slow it down a bit. Okay alright continue.

ADV KENNEDY SC: Thank you. The second will be Mr Mkwazazi and the third will be Mr Mhlontlo. Chair Mr Knoetze is currently in George and has – and has some
20 difficulties in coming up to Johannesburg which have been conveyed to you Chair by the legal team and you have directed that he should be given leave to give evidence by way of video link. So he is...

CHAIRPERSON: Yes I have approved that ja.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So Mr Knoetze is available and he is visible on the screens before you and before us.

CHAIRPERSON: Yes, no, no that is fine. You might just for the benefit of the public spend a minutes just to say what the evidence – how the evidence that will be led this week connects with maybe last week but the week's evidence of – just give a summary so that they can follow much better as each witness give evidence. Or what
10 transactions will be covered and so on.

ADV KENNEDY SC: Yes. So – thank you Chair if I may do that? We will be picking up the threads of the evidence that was led the week before last before you Chair for the whole week and we will be dealing with particularly the issue of the contracts that were awarded to VR Laser by Denel and its various entities.

The extent to which individual officials may or may not have been involved in that whether or not there was compliance with procurement requirements and the like and
20 who took the – who took the leading role in each of those transactions.

We will also deal this week apart from the three particular three contracts that were awarded to VR Laser for South African operations we will deal also with an attempt to develop business in Asia in which VR – there

was also a connection with VR Laser.

And we will also deal briefly Chair with the award of a contract to the entity known as LMT which ultimately we – was – became part of the Denel stable of operations when a majority shareholding in it was purchased by Denel. The evidence will relate to the business subjective to try and bring in-house capacity.

There were financial difficulties the evidence will show in relation to LMT and they were then given a
10 financial assistance which was dealt with as if it were an advanced payment on a contract. We will have evidence dealing with possible irregularities in relation to that – that funding.

So that will be essentially the main focus of the evidence this week. In addition we will take further the issue of how three senior executives at the board level of Denel were firstly suspended and later left the service or were dealt with in a manner which involved the termination of their employment one way or the other.

20 Mr Saloojee is scheduled to give a bit of evidence later this week. He have evidence on the previous occasion that is the former Group Chief Executive and was suspended and ultimately resigned in terms of a settlement after a lengthy process was attempted to discipline him. You will also hear the evidence of Mr Mhlontlo inter alia

dealing with the circumstances in which he came to be suspended by the board.

What we have also arranged Chair is for the chairperson of the board of Denel Mr Mantsha to give evidence at the end of this week to deal with a number of allegations that have been made in relation to how he handled the – his role as chairperson and particularly in relation to the way in which executives were suspended and also in relation to specific contracts that were awarded
10 to VR Laser.

CHAIRPERSON: Okay no that is fine.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: I read I think Mr Mhlontlo's affidavit last night. I think it was him ja and I noted that when it came to the offer that Denel made to him which he ultimately accepted which he said was substantially better than I think another one that may have been made before. I do not know if it was three months that it had been made before.

20 1. I did not – I did not see any settlement agreement that may have been signed being attached to his affidavit.

2. He did not disclose how much the offer was that made him agree to leave. If we do not have the settlement agreement I would like to have it.

But I would also like to have the settlement agreements signed with the – with Mr Saloojee because I do not remember that – when Saloojee gave his evidence he also covered that.

But also I think he too might not have disclosed to the commission how much he was given. I have not seen is Ms Africa or Mr Africa? The other executive who was suspended together with Mr Saloojee and Mr Mhlontlo. Is it Ms or Mr Africa, do you know? Ja I seem to think it was
10 Ms but I may be mistaken.

I do not know if we have an affidavit from him or her because if he or she also left under similar circumstances I would like us to – I would like to see what settlement agreement was signed with them – with him or her and how much was offered. Ja – and I have no doubt that the current chairperson of the board who testified here can facilitate that quickly as well as whoever the CEO is because they would have – they should have records of...

Now that is important because the – it may well be
20 that how things were done in relation to these executives have got similar features with how executives at Eskom were dealt with those who were suspended and then offered money to go.

Now in regard to Eskom the board members who have testified may have struggled to explain or justify why

Eskom offered them money to go.

Of course the context there at Eskom is that the board – the board members who have testified say that they did not have any problems with those executives and actually wanted them back or would have been happy for them to be back – at least some of the board members. So there is the question of, why did you offer them money if they wanted to leave why did you not let them leave like everybody resigns from a company?

10 So there is that part. Now here at Denel it would seem that over a long period the board had the opportunity to – to come with evidence of misconduct or the charges and substantiate charges against these executives. And then instead of subjecting them to a disciplinary hearing and let the outcome thereof determine whether they would continue at Denel or not it seems that they then subjected them to long suspensions and at a certain stage offered them money.

20 So I would like to know how much were they offered because I will want to know what the justification for that is. Why they did not allow the disciplinary process to take its course?

 But one would like to know to have the settlement agreements and to have the amounts that were offered as well.

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

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Thank you Chair unless there is anything else may we then with your leave call by way of the virtual hearing Mr Pieter Knoetze? May I ask that he be sworn in?

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

10 **REGISTRAR:** Please state your full names for the record.

CHAIRPERSON: It looks like he cannot hear you. Mr Knoetze can you hear us?

MR KNOETZE: Is he – Chair I can hear you. There is a little bit of slow interruptions but otherwise I can hear you yes. Thank you Chair.

CHAIRPERSON: Okay alright. You can continue.

REGISTRAR: Please state your full names for the record.

MR KNOETZE: Pieter Karel Johannes Knoetze.

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

MR KNOETZE: Not at all no.

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

MR KNOETZE: 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 KNOETZE: So help me God.

CHAIRPERSON: Thank you very much. Yes you may start.

ADV KENNEDY SC: Thank you Chair. Good morning Mr Knoetze.

MR KNOETZE: Morning Chair.

10 **ADV KENNEDY SC:** Is it correct that you have assisted the commission with its investigators and its legal team and that affidavits have been produced by you following that intervention?

MR KNOETZE: Yes it is correct Chair.

ADV KENNEDY SC: Now I understand you have – you are sitting in George I believe, is that right?

MR KNOETZE: No I am at my house in Pretoria.

ADV KENNEDY SC: Oh is it in Pretoria I beg your pardon. Mr Knoetze is correct that you have a copy of your main
20 affidavit?

MR KNOETZE: Yes I have it electronically and a hard copy next to me.

ADV KENNEDY SC: Right thank you. If you could please as you were directed by one of our colleagues at the commission earlier if we could refer to page numbers on

the top left hand side you will see there is a Denel-08-04.

Do you have that?

MR KNOETZE: Yes I am going to it – I am just going through it quickly Chair. Yes Chair I am at 04.

ADV KENNEDY SC: And this appears to be an affidavit bearing your name, is that right?

MR KNOETZE: That is correct.

ADV KENNEDY SC: And it runs in its text to page 32.

MR KNOETZE: Correct.

10 **ADV KENNEDY SC**: And is followed by a number of annexures. On page 32 is that your signature?

MR KNOETZE: I am just going through to make sure Chair just let me...

CHAIRPERSON: That is the signature on the page there because there are two or three signatures.

ADV KENNEDY SC: Yes. I will direct if I may Chair? Do you have page 32 Mr Knoetze?

MR KNOETZE: Close to I am just going to make sure to confirm. Yes Chair it is my handwriting and my signature
20 and the affidavit with it – yes Chair.

ADV KENNEDY SC: Is that the signature at the top?

MR KNOETZE: Yes Chair.

ADV KENNEDY SC: And below it appears that you signed in front of a Commissioner of Oaths and you took the oath?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: Right. Have you been through this affidavit and are you able to confirm that the contents are true and correct?

MR KNOETZE: I have gone through it and I can confirm it is correct and true.

ADV KENNEDY SC: Chair there is a supplementary affidavit may I just ask formerly for this affidavit first to be admitted. Chair it forms part of Denel Bundle 08 and Exhibit W21 and we would ask your leave to have it
10 admitted as an Exhibit before this commission?

CHAIRPERSON: You say W21?

ADV KENNEDY SC: Yes Chair.

CHAIRPERSON: The affidavit of Mr Pieter Knoetze starting at page 4 of Bundle – of Denel Bundle 08 is admitted as Exhibit W21.

ADV KENNEDY SC: Thank you Chair. Now Mr Knoetze it appeared during the consultations between members of the legal team and yourself that certain annexures were missing from the – what was attached to your original
20 affidavit that we have just looked at and you have filed – you have signed a separate supplementary affidavit to correct that, is that so?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: May I take you please in the same bundle to page 298?

MR KNOETZE: Okay let me just go through it here quickly – through the drawings. Just a moment Chair I am just going to it. It takes a little bit of time Chair going through the pages. Let me get it just now. Okay Chair just the numbering again?

CHAIRPERSON: 298.

ADV KENNEDY SC: 298.

CHAIRPERSON: Page 298 the black numbers on the left hand corner.

10 **MR KNOETZE**: Yes. I am on it Chair thank you.

ADV KENNEDY SC: Is that your supplementary affidavit?

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: And if I can take you to the second page that is page 299. Is the first signature in the middle of the page your own?

MR KNOETZE: Yes Chair.

ADV KENNEDY SC: And again you had this – this affidavit sworn and attested before a Commissioner of Oaths, is that correct?

20 **MR KNOETZE**: That is correct Chair.

ADV KENNEDY SC: And have you been through this affidavit and satisfied yourself as to its truth and correctness?

MR KNOETZE: I am thank you Chair.

ADV KENNEDY SC: And is it correct that you have

attached to that affidavit the relevant annexures that were missing from the attachments to your main affidavit?

MR KNOETZE: Yes after my request it was given lastly to me by – by the team and it was attached as such. Thank you Chair.

ADV KENNEDY SC: Thank you. As I understand it Mr Knoetze you did not have those documents originally when you prepared the main affidavit that is why you did not attach them to your affidavit but the commission was able
10 to source copies of those documents which your supplementary affidavit confirms are in fact the documents that are referred to in your main affidavit, is that correct?

MR KNOETZE: It is correct Chair. It is correct Chair and you will also see in those paragraphs I refer specifically to – to those documents because I was – I left already Denel at that point so I referred to those specific annexures as I – as far as I can recall this was the following attachments and – and specifically referenced to those attachments. But I did receive them last week and it was now included.
20 Yes thank you Chair.

ADV KENNEDY SC: Right thank you. Chair may we then ask leave formerly to have the supplementary affidavit with its annexures admitted. It is still in bundle, Denel Bundle 08 and it appears from page 298 and I assume that Chair you would have that admitted as Exhibit 21.1.

CHAIRPERSON: Can I – 21.1 or 21. – I mean W22 depending on what seems to be fine in terms of the arrangements of the bundle – arrangement of the bundle.

ADV KENNEDY SC: Yes W22 has already been allocated.

CHAIRPERSON: Oh.

ADV KENNEDY SC: To a different exhibit I am afraid Chair.

CHAIRPERSON: Yes but does – does Exhibit W22 appear before the supplementary affidavit or after?

10 **ADV KENNEDY SC:** No after.

CHAIRPERSON: Oh okay so we will make it 21.1.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: The supplementary affidavit of Mr Pieter Knoetze starting at page 298 is admitted as Exhibit W21.1. Before – before Mr Kennedy begins with his questions Mr Knoetze I see that there seems to be a vast difference between your signature at page 296 on the supplementary affidavit and your signature at page 29 of your main affidavit. What can you say about that?

20 **MR KNOETZE:** If I followed the question Mr Chair it is a difference between the signature of two different pages.

CHAIRPERSON: Ja the signature that you say is yours on the supplementary affidavit is very different from the signature that you have said is yours on the main affidavit.

MR KNOETZE: I must say Chair I found it difficult – the

electronic copy does not have the signatures on. The one that I have opened does not have the signatures on my side. I do have all the signatures of the primary affidavit so I cannot see unfortunately on the electronic one it did not have the signed – the signature on the supplementary ones. It is difficult to respond there.

CHAIRPERSON: Okay maybe a way can be found to let you see exactly what I see and then you can deal with it later. Mr Kennedy do you know how that can be done in
10 terms of technology? Or does he have a hard copy – hard copies with him?

MR KNOETZE: I believe the witness indicated he had a hard copy available to him. Mr Knoetze do you have a hard copy available there?

MR KNOETZE: Mr Chair unfortunately at the – [00:22:49] picked up last night very late the supplementary one and it was the only one. I did not make copies for me after the signature so he has taken the only one that had the original in with him to be handed in.

20 **CHAIRPERSON:** Yes.

MR KNOETZE: But we can definitely as Chairperson through you is asked we can do the comparison at any time. I am more than willing it is accepted we can do.

CHAIRPERSON: Do you – well I need to know when you might be able to have with you hard copies so that we- you

can deal with it. What logistical arrangements need to be made to achieve that? Mr Kennedy do you know?

ADV KENNEDY SC: Chair I think that we may be able to find a technological solution to this perhaps a photograph can be taken on a camera phone.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Of the two signatures and sent to him.

CHAIRPERSON: Yes okay.

ADV KENNEDY SC: So that he can then look at it on the
10 phone.

CHAIRPERSON: Okay. Okay.

ADV KENNEDY SC: I will not ask him for his phone number in public here.

CHAIRPERSON: Ja. Ja.

ADV KENNEDY SC: But I am sure we have the phone numbers and perhaps one of my colleagues – may I just have a moment?

CHAIRPERSON: Hm.

ADV KENNEDY SC: Thank you very much. I understand
20 that – that my colleague will send him a photograph of each of the two signatures so that he can compare.

CHAIRPERSON: Okay, okay alright.

ADV KENNEDY SC: Perhaps we can stand down once we have dealt with the rest of his evidence.

CHAIRPERSON: Ys.

ADV KENNEDY SC: And then it will be complete with that.

CHAIRPERSON: Ys.

ADV KENNEDY SC: But I do not imagine it – we should require a standing down of more than a few minutes.

CHAIRPERSON: Yes okay.

ADV KENNEDY SC: Thank you Chair. Unless – unless you would prefer me to deal with that upfront now?

CHAIRPERSON: I am happy for us to continue in the meantime if you are happy to do that.

10 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: On the basis that he has said both are his signatures.

ADV KENNEDY SC: Yes.

CHAIRPERSON: But I just see a vast difference and – so he can...

ADV KENNEDY SC: They are indeed.

CHAIRPERSON: He can come in later but if maybe it might be better to get this cleared before we start and if it is going to take a few minutes I am happy to stand down
20 for that purpose. Which one do you prefer?

ADV KENNEDY SC: Well perhaps let us stand down now Chair.

CHAIRPERSON: Ja okay alright.

ADV KENNEDY SC: Let us get this out of the way before we begin with the rest.

CHAIRPERSON: Yes. Okay alright.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Okay I will – I will stand down probably five minutes will be more than enough?

ADV KENNEDY SC: I believe so.

CHAIRPERSON: But you – oh you will let me know – you will let me know once it has been sorted out but certainly it should not go to ten minutes.

ADV KENNEDY SC: No thank you Chair.

10 **CHAIRPERSON:** Ja okay we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

MR KNOETZE: Jerry, if you can still hear me. I am ready whenever you are ready on that side.

ADV KENNEDY SC: Thank you. If you could just wait for the Chairperson, Mr Knoetze.

MR KNOETZE: I am ...[intervenes]

ADV KENNEDY SC: Thank you, Chair. We are ready.

20 **CHAIRPERSON:** Yes. Has Mr Knoetze been able to look at both signatures?

ADV KENNEDY SC: Yes, Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Thank you for the opportunity. We apologise. The legal team did not pick up the discrepancy.

So he has clarified to us. What he has been sent Chair by members of the team are photographs both of the signature page of the main affidavit at page 32 and the signature page of the supplementary affidavit at page 299. So may I just ask him a few questions?

CHAIRPERSON: The other... Now, the first signature is on page 29, hey? Oh, no, no. Page 32 in terms of the black numbers.

ADV KENNEDY SC: Thirty-two.

10 **CHAIRPERSON**: Yes, I forgot we use the black numbers. Yes. So he has seen both now?

ADV KENNEDY SC: He has seen both. If I may just ask him a few question on the record Chair?

CHAIRPERSON: Yes, okay alright.

ADV KENNEDY SC: So he confirms it for the record.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: Mr Knoetze, is it correct what I have just said to the Learned Chair that you have been sent a photograph of the signature page at page 32 which relates to
20 the main affidavit. Is that correct?

MR KNOETZE: That is a hundred percent Chair.

ADV KENNEDY SC: And also the signature page of the other affidavit, the supplementary at page 299. Did you receive that/

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: And you have looked at what appears there, hey?

MR KNOETZE: [No audible reply]

ADV KENNEDY SC: May I just ask you? On page 31... Just let us look at page 31, please.

MR KNOETZE: I am quickly going to 31. Just give me a moment Chair. It is the wrong version. I am quickly going through.

ADV KENNEDY SC: [No audible reply]

10 **CHAIRPERSON:** Will it be quickly if Mr Knoetze uses hard copies maybe if he uses his computer?

ADV KENNEDY SC: Mr Knoetze, do you have a hard copy of the main affidavit in front of you?

CHAIRPERSON: Ja, we may ...[intervenes]

MR KNOETZE: Yes, I do. I also have... But that one does not have the... Mr Chair, that one does not have numbers. So I am going through the electronic.

CHAIRPERSON: Oh, is that so.

MR KNOETZE: I am at number 32 there.

20 **CHAIRPERSON:** Yes, I am just scared... There is quite some delay before you get to a page ...[intervenes]

ADV KENNEDY SC: I am afraid there is ...[intervenes]

MR KNOETZE: ...and after an hour or two hours, we might have lost quite some time.

ADV KENNEDY SC: I think this will be the only instance.

The witness referred me to his initials on the previous pages.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: Mr Knoetze, did you... have you looked at the initials that appear on the earlier pages of the main affidavit at the bottom right hand ...[indistinct]

MR KNOETZE: Yes, I have Chair.

ADV KENNEDY SC: And whose initials ...[intervenes]

MR KNOETZE: [Indistinct] [transmission not clear –
10 speaker unclear]

ADV KENNEDY SC: Sorry Chair. Whose initials appear at the bottom right hand of each of the pages before we get to 32?

MR KNOETZE: Each of them, are myself. My signature on the right hand side. The left-hand side is the commission of oaths' one.

ADV KENNEDY SC: When you say your signature, do you mean signature or initials?

MR KNOETZE: My initials.

20 **ADV KENNEDY SC**: Initials. Now on page 32, the Chairperson has referred you to the fact that above the word, the typed word deponent is the name P C J Knoetze. Who wrote that in? Did you write that in?

MR KNOETZE: It is my handwriting. It is exactly correct. Yes, Chair.

ADV KENNEDY SC: Okay. Is this your normal... is this a signature or is this merely the handwriting of your name?

MR KNOETZE: It was my handwriting. As my understanding was, this was necessary to put my handwriting in there.

ADV KENNEDY SC: Right. And then, you have looked at the other photograph sent to you by phone which is on page 299. It is in the supplementary affidavit.

MR KNOETZE: 299, is that correct?

10 **ADV KENNEDY SC:** Yes. Do you have that?

MR KNOETZE: [No audible reply]

ADV KENNEDY SC: And you have been sent a photograph of this, this as the signature page. There is typed half-way down the name Pieter Knoetze. That is your name, correct?

MR KNOETZE: I am close to that. I am just going to go to 299 quickly.

ADV KENNEDY SC: [No audible reply]

MR KNOETZE: I am close to 299 Chair. Just a moment.

20 **ADV KENNEDY SC:** Mr Knoetze, in fact, my question was directed at the photograph that you have sent just a few moments ago.

MR KNOETZE: Ja, the photograph ...[intervenes]

ADV KENNEDY SC: Perhaps ...[intervenes]

MR KNOETZE: A hundred percent ...[indistinct]
[transmission not clear – speaker unclear]

ADV KENNEDY SC: Sorry, please do not talk over me when I am asking questions. We must each give each other a chance to finish. The photograph that was sent to you of this page, the signature page for the supplementary affidavit. Is that correct?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: And if you can look at that. Is that your signature that appears above the typed name Pieter Knoetze?

10 **MR KNOETZE:** It is my handwriting of my... It is my handwriting P C J Knoetze in my handwriting.

ADV KENNEDY SC: Yes, but is it handwriting where you are simple writing out your name or signing it?

MR KNOETZE: It is just writing out my name Chair.

ADV KENNEDY SC: On page 299?

MR KNOETZE: On 299, it is just my handwriting and my name ...[indistinct] [transmission not clear – speaker unclear]

ADV KENNEDY SC: May I just take some guidance?

20 **CHAIRPERSON:** [No audible reply]

ADV KENNEDY SC: Mr Knoetze, I am sorry. We need to try and get through this quickly. We have seen already that at the earlier page 32, what you did there was, you did not sign it. You wrote out your name in your handwriting which is not your normal signature. Is that correct?

MR KNOETZE: That is correct Chair. I did not the signature but it was as deponent my initials and my surname.

ADV KENNEDY SC: Yes, but at page 299, what we have and we have sent you a photograph of it, is where we see somebody has apparently signed above the typed name Pieter Knoetze. What I see above that, is what appears to be somebody has signed it rather than writing out his or her name. If you could please look at the photographs that you have been sent by your phone.

10 **MR KNOETZE:** I am look at this 32 that has been sent on the Whatsapp. There is no – and my ...[intervenes]

ADV KENNEDY SC: [Indistinct]

MR KNOETZE: ...Whatsapp I received ...[intervenes]

ADV KENNEDY SC: I am sorry to interrupt you. We are finished with page 32. I am looking at page 299 now.

MR KNOETZE: [No audible reply]

ADV KENNEDY SC: Please look at the Whatsapp photograph that you have been sent of page 299.

20 **MR KNOETZE:** Okay I got that one. Is it the first one Chair?

ADV KENNEDY SC: Yes, just before the looked at the first one. Can you just confirm? At the foot of the page, you will see the commission of oaths has signed and his – her or she has inserted the date the 8th of November 2020. Are we looking at the same document?

MR KNOETZE: I am looking at the same one Chair.

ADV KENNEDY SC: Right. Thank you. Now above where the commission of oaths has signed, half-way down that page, the very first signature that appears on this page, above the typed name Pieter Knoetze. Do you see that?

MR KNOETZE: I see that.

ADV KENNEDY SC: Is that a signature or is that your name?

MR KNOETZE: This is my signature.

10 **ADV KENNEDY SC**: Your signature?

MR KNOETZE: Yes.

ADV KENNEDY SC: Right. So we have in the main affidavit it – although it has your initials throughout, you did not put your signature, you wrote your name. But in this affidavit we have this page which shows your signature. Is that correct?

MR KNOETZE: Hundred percent correct Chair.

20 **ADV KENNEDY SC**: Right. Is there any reason – I am not trying to catch you out or criticise you but there is any reason why you signed – you used your signature on the supplementary affidavit, on this page we are looking at, but instead of putting your signature to the main affidavit, you put your name in handwriting.

MR KNOETZE: Chair, if I must be honest. I think it was done late last night. I had to rush through this. And I had it

done at the specific commission of oath's house to quickly get this done and I could have probably also have signed that page where I did my P J C Knoetze in. And then we had to quickly rush it to get through advocate ...[indistinct] to the part(?), ja. [transmission not clear – speaker unclear]

ADV KENNEDY SC: Okay thank you, Mr Knoetze. But do you confirm again that each of these two affidavits, the main one in which you simple initialled and wrote your name and the supplementary one which you initialled and signed, both
10 of those, in fact, are your affidavits and you confirm under oath, that you have taken this morning, that their contents are true and correct?

MR KNOETZE: Hundred percent Chair. I confirm that is the case.

ADV KENNEDY SC: Alright. Thank you. Now ...[intervenes]

CHAIRPERSON: Okay. No, that is fine. But you see, this first one was signed in – was deposed to in September, not yesterday. September 2003. Was it just your understanding
20 that all you were required to do is just put your initials and surname or did somebody say that is what you needed to do?

Because you see the commission the certificate of the commissioner of oaths underneath your name there, says: Thus signed and sworn to before me. So it is supposed to

be signed.

But obviously, some people sign in such a way that it is just initials and surname. So the commissioner of oaths will not know whether that is your signature or not.

Was it your understanding that you should just put in the initials and the surname or what was the position? Because that one is not the one.

It is the supplementary affidavit that you did yesterday where you may have rushed but this was September 2003.

10 **MR KNOETZE**: Yes, Chair that was my understanding and... but I can again Chair. I can confirm these are part of my statements and ...[intervenes]

CHAIRPERSON: Yes.

MR KNOETZE: ...signed by me myself Chair.

CHAIRPERSON: No, that is fine. Let us continue You may continue.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Ja.

20 **ADV KENNEDY SC**: If you would like it, we could, of course, ask the witness to resign the original affidavit with a proper signature but I do not know if you require it after the evidence has been given?

CHAIRPERSON: Ja. No, no. I think it is fine because he is confirming under oath that the contents are true and correct.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: Ja.

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

CHAIRPERSON: It is just that when I picked it up, it seemed very strange.

ADV KENNEDY SC: Yes, it is quite a striking difference.

CHAIRPERSON: Ja, ja.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Right. Mr Knoetze, thank you. We
10 have got that issue out of the way now. If we can now deal
with some of the things that you say in your affidavit. You
previously worked for ...[intervenes]

CHAIRPERSON: Just one second Mr Kennedy. It is very
dark where Mr Kennedy is. I do not know whether something
must be done with that light. You may continue Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: It is just that... That is much better.

ADV KENNEDY SC: I think last – the previous weeks, the
curtains were open so that we got a bit more natural light
20 which seemed to ...[intervenes]

CHAIRPERSON: Oh, okay. Well, let ...[intervenes]

ADV KENNEDY SC: But the light that has just been
adjusted seems to help me but thank you for looking out on
my behalf.

CHAIRPERSON: It might help but if the curtains can be

attended too as well, that would be helpful.

ADV KENNEDY SC: Thank you very much, Chair.

CHAIRPERSON: Okay alright. Thank you.

ADV KENNEDY SC: Mr Knoetze, you were previously employed at Denel Land Systems. Is that right?

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: We are going to call it DLS for short in these proceedings as you have in your affidavit. When did you start in the Denel Group as an employee?

10 **MR KNOETZE:** Chair, I started in 1989 Chair.

ADV KENNEDY SC: And when did you leave?

MR KNOETZE: I left Denel two years ago, 2018 in May 2018 Chair.

ADV KENNEDY SC: As on what ...[intervenes]

CHAIRPERSON: But that sounds like you had one employer throughout [laughing] all those years. Is that correct? From 1989.

MR KNOETZE: Chair, just – I heard one part

20 **CHAIRPERSON:** It looks like you had one employer from 1989 to when you left two years ago. That is quite a long time.

MR KNOETZE: Yes, Chair. Previously, I was with Transnet before that but since 1989 until I left Denel I was with Denel.

CHAIRPERSON: Ja, okay. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: I just... Ja, h'm.

ADV KENNEDY SC: Now you mention in your affidavit that you hold a Bcom degree. I understand in consultation with my learned colleagues, you indicated you have an additional degree as well. What is that?

MR KNOETZE: I also... Through Mr Chair, I hold an MBA at the University of Pretoria Chair.

ADV KENNEDY SC: Right. Thank you. Now when you left in 2018 Mr Knoetze, what position did you hold at DLS?

10 **MR KNOETZE:** I was the Executive of the Business [transmission not clear – speaker unclear] Excellence Chair.

ADV KENNEDY SC: And your affidavit refers to you as being the Chief Financial Officer. Is that correct?

MR KNOETZE: I was the Chief Financial Officer until March 2015 and then I was through a mentoring programme appointee a young, new, innocent Xhosa person into the role of CFO and I was then given a position as Business Excellence within DLS in March 2015.

20 **ADV KENNEDY SC:** Right. Now you have dealt in your affidavit with your responsibilities. Can I take you to page 6, please? Double o six. May I just call it six?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: And you refer to your responsibilities as CFO being financial planning, financial reporting, general ledgers, bank transactions and petty-cash. Did you still

have responsibilities for those issues when you became Executive for Business Excellence?

MR KNOETZE: No, Chair. No.

ADV KENNEDY SC: On the previous page zero, five. It indicates that you were reporting to various people. Mr Dircke(?), Mr Ellers, Mr Welroete(?), Mr Burger, Mr Mhlonthlo and Mr Sadik(?). Was that at different times of your employment.

MR KNOETZE: That is correct sir, Chair.

10 **ADV KENNEDY SC**: And then you say:

“I reported to the last two managers. That is Mr Mhlonthlo on a dotted line to Denel Corporate Office.”

Just explain what you mean by that.

MR KNOETZE: At the time of this process that we were – that the investigators were going through, I was reporting on a guided line within the division where the CEO was Mr Burger, directly to him, but my dotted line as a functional also responsibility on finance, I reported to Mr Fikile
20 Mhlonthlo.

And also to on a dotted line to Mr Sadik as the CEO and it could be that he was still the acting CEO at that point. And that was my alternative responsibilities and to make sure that there is proper peer processes in place on functional issues Chair.

ADV KENNEDY SC: Right. Once you were made Executive for Business Excellence, did you still report to anybody?

MR KNOETZE: Also to Mr Burger still. Yes, Chair.

ADV KENNEDY SC: I see. Now while you were CFO, were you familiar with the requirements of the Supply Chain Management Policy of Denel?

MR KNOETZE: Yes, Chair. I was not personally responsible for it but I was in the al. the management meetings where we had discussions with regards to the
10 Supply Chain Process and where they were applicable, interactions between Finance and Supply Chain where it needed to be followed. All that interactions, I was part of in the Management Team, Chair.

ADV KENNEDY SC: Was that what was called the DLS Exco?

MR KNOETZE: That is correct, Chair.

ADV KENNEDY SC: And you formed of that?

MR KNOETZE: I was part of the Management Team, Chair. Yes.

20 **ADV KENNEDY SC:** Yes. Were you part of that Management Team throughout your period as CFO?

MR KNOETZE: If I recall correctly. I think so Chair. It is a long time ago but I think probably most of the time I would have been part of the Management Team. Yes, Chair.

ADV KENNEDY SC: And you were still part of that

Management Team when you seized to be CFO and you became Executive for Business Excellence. Correct?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: Did you carry on sitting on the Exco once you changed your role from CFO to Executive for Business Excellence?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: And so, were you still on the Exco throughout that period that you were the Executive for
10 Business Excellence until you left the employ of Denel in mid-2018?

MR KNOETZE: Yes, Chair. I have to actually qualify that, as the last year of my service before – and as I started to get specifically more ill with my chronic condition, I was nominated as part of, I think it was a group of four or five people, to assist DCO in Corporate Affairs to help with the end-stake of Denel at that point, where I did some work for almost a year or close to six months and later or longer to actually help and see where we can take Denel on strategic
20 matters and going forward on the end-stake Chair.

ADV KENNEDY SC: Right. Now in your affidavit, you have indicated that you would provide an advisory support role to the CEO and the SCM Unit, Supply Chain Management Unit, at the DLS. Can you explain to the Chair please, briefly, what that entailed? Why did you play such a role and what

sort of role did you in fact play?

MR KNOETZE: Ja, I think Chair if we can just with the financial one. It was always my responsibility to make sure that all financial matters should be reported and be directed to the CEO to update him in terms of every – the latest developments and also big decisions to be made with regard to the Delegation of Authority.

But also then on Supply Chain, through my interactions with the Management Team and as an Executor, we also had
10 a Project Financial Office where we had interaction with Supply Chain from a financial point of view just to make sure that the support to Supply Chain was price – possible price negotiations or on track conditions if needed in certain cases
Chair.

ADV KENNEDY SC: Right. Now in your main affidavit, you deal with LMT, the entity known as LMT, correct?

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: And ultimately, LMT had a majority shareholding in that company purchases by Denel. Is that
20 right?

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: Now what was your involvement in relation to the period to when it was being acquired, when the shares were being sold to Denel, the majority shares? Were you involved in the background that led up to the

contract being signed that sold those shares to Denel?

MR KNOETZE: Chair, it is a short question with a long answer. I can – to make it a bit brief. I can state that during the 2008/2009 period, the courts(?) for the contract, for the Triennium Contract, we will talk about maybe later, was going through with regards to the Hoefyster Contract to production order that was anticipated to be placed on DLS to the value of approximately R 10 billion.

And my involvement was on management level, to make
10 sure that when we get the order, we will be ready for production.

And that going forward, we need to have the governance in place and with the different board meetings on DLS and Denel side, we need to adhere to the delegations as well as the good governance to be able to make sure there is either or, as will become later visible, securities and whatever is needed in the option agreements when we acquired LMT later on.

But at first, during 2008/2009/2010, my involvement was
20 mainly to get involved through the request by the CEO and Denel and board members, to get involved in the financials of LMT and to make sure that they had a sound financial situation going forward.

And specifically if we want to acquire the majority 51% shares, we should make sure that there is a sustainable

financial business.

Later on, when the share option, which was a different process started, it was mainly driven by Mr Morris who previously worked for DPE and he was the person who really instigating the execution of the share option.

Although I was very much involved in all of the different discussion on the option agreement and support to wherever I had to, whether it was management or to Mr Morris with an application to DPE.

10 And Mr Morris was actually the single point accountability person to do the full share option execution by that time Chair.

ADV KENNEDY SC: Okay so Mr Knoetze, before the shares were actually bought by Denel in LMT. Was LMT's financial strength considered by you? Did you look at the financial position of LMT?

MR KNOETZE: Yes, I was requested to make sure that, due to, at that time, they were a critical capability, strategic capability that we needed to have security of supply. And I
20 was requested to intervene and see what the financial position are and whether they will be able to sustain the business going forward for the Hoefyster Contract, Chair.

ADV KENNEDY SC: Now, LMT before its majority shares were sold to Denel, was already a long existing supply to Denel. Is that right?

MR KNOETZE: Just repeat Chair. I missed the first part.

ADV KENNEDY SC: LMT. Before a majority share in LMT was sold to Denel. LMT, for some years, had already been a supplier of items of equipment to Denel. Correct?

MR KNOETZE: I understand so Chair. I was not so involved previous years with LMT. I know they were a supplier for some time. I really became involved in their financial affairs really when I was asked to do so in 2008/2009. That is so, ja.

10 **ADV KENNEDY SC**: And what did you understand the purpose be to buy the shares, for Denel to buy the shares in LMT?

MR KNOETZE: Yes ...[intervenes]

ADV KENNEDY SC: What was the business objective?

MR KNOETZE: Sorry, Chair. The business objective, all the way, was that DLS had a strategic objective to combine capabilities for the industry to have a total integrated system level approach to our clients.

20 What that means Chair is that, we wanted to do a one-stop, a single source supplier to any client local or overseas. And for that Chair, we really wanted to have all capabilities of a Level 5 business from start to end into one business.

And for that reason, we have always presented to the DLS and Denel Boards and also specifically on our budget presentations, the position that we wanted to have, the

integrated capability that includes also the capabilities at LMT Chair and that was our objective.

ADV KENNEDY SC: Right. Now that you say you have acted on the request of your management, you did look into the financial past(?) of LMT before the shares were sold to Denel. What, overall, was your conclusion? What was the outcome of your findings?

MR KNOETZE: Chair, I think the two main issues that came out was. The one was that there was not a big or good oversight over the financials in LMT as they had not have a
10 specific financial person looking after the financials as it was a business that was done by a few individuals or run by a few individuals with not much financial knowledge.

And the other one sir, Chair would be to have made sure and to have seen the risk of being then sustainable going forward and having had the financial backing to executing the Hoefyster Contract for the parables, Chair.

ADV KENNEDY SC: Now you have dealt in your affidavit with monies that were paid over to LMT as advance
20 payments. Are you aware of any advance payments being made by DLS to LMT during the period you were CFO?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: Okay. Now how much was paid and when?

MR KNOETZE: It was R 12.7 million on a work-on-risk

procurement, work-on-risk order which was placed the 29th of April 2010. And the monies that was paid, the R 12.7 million was a 25% pre-payment on ...[indistinct] [transmission not clear – speaker unclear] R 52 million rand work-on-risk order to LMT. And the monies were paid from up the 29th of April 2010 and a few weeks later, the full complement update.

ADV KENNEDY SC: Now some witnesses have given evidence to the Commission that the advance payments
10 made to LMT were something out of the ordinary, that they were not truly advance payments, they were actually really just disguised as advance payments. To try and channel money to LMT because it was in financial difficulty. What is your own view of it?

MR KNOETZE: Chair, my view is that after the interaction with Denel, DLS and Denel members of the board, various reports were given of the situation at LMT with regards to security of supply and possible penalties on the Hoefyster contract as well as the IP that was vested in LMT and they
20 were seen as a very critical strategic asset and supply and for that reason we have various presentations and discussions which is attached as some of the annexures and discussion whereby we presented the care where a work on risk situation order which does not out of the norm, it happened in other cases for long leave items as

well, if it was needed to place that order to start making prepayments so that there is stability in the financials and that it is a sustainable business when the Hoefyster does start with the production of 10 billion that we have security of supply and that should be able to protect Denel in the case of possible late deliveries, Chair.

ADV KENNEDY SC: Was it – is it not correct, though, that LMT was at that stage facing serious financial difficulties?

MR KNOETZE: They were facing financial difficulties,
10 Chair, yes.

ADV KENNEDY SC: To what extent - was there just a shortfall in cash flow or was it a matter far worse than that, that its own survival was at stake?

MR KNOETZE: Chair, I think if recall correctly, I think I had still a good order book. I think there was good business. It was mainly I think that the past where they had a very growth in business and actually I think, if I recall correctly, they were going too fast to be able to fund specifically all the working capital requirements for the
20 growth in business and for that reason they ran out of specifically capital to be able to turn their working capital into cash to be able to pay their creditors for the short term and then the longer term sustainable, Chair.

ADV KENNEDY SC: Now if I can take you in your affidavit to page 13, just bear in mind the guidance given to you

earlier, the top left hand page number, page 13.

MR KNOETZE: Yes, sir, Chair. Correct, I am there, Chair.

ADV KENNEDY SC: Now you refer in paragraph 7.1 to approval being given for an at risk production order and you realised that a payment of R1.1 million would need to be paid before the end of April 2010. That was 1.1, payable before the end of April, correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: Then you go in 7.2 to say this:

10 “During this process of discussion with regards to
 the first payment to be made to LMT to pay off
 Busisa Investments/Bowden and Company.”

Who were they?

MR KNOETZE: Chair, I missed the last part, who were they?

ADV KENNEDY SC: Yes, who was Busisa Investments/Bowden and Company?

MR KNOETZE: It was, as far as I can recall, a company
20 that had given money and loaned money to LMT and were
 requesting pay back or alternatively they had clauses
 where they can actually get their fingers within LMT and
 take some specific actions against LMT and also demand
 some specific probably share going, if I recall correctly.
 They had a hold on LMT, Chair.

ADV KENNEDY SC: So LMT owed them money, correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: Sorry, just speak clearly please, say it again?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: And what was that money for?

MR KNOETZE: I cannot recall, Chair, probably also cash for working capital to pay creditors or the normal run of the business, cash requirements.

ADV KENNEDY SC: Yes. So Busisa Investments and
10 Bowden and Company had made funds available to LMT which now owed it back. That was a separate transaction, was it not, from the work that LMT was doing for Denel.

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: Correct. So I can understand a R1.1 million being payable as for at risk production in terms of the normal arrangements by the end of April 2010 but why was Denel looking at LMT and its obligation to Busisa Investments/Bowden and Company? Why was there consideration being given to Denel money being made
20 available to LMT which would then pass it on to Busisa and Bowden?

MR KNOETZE: Chair, the decision was always made and we did the presentations and discussions is that there were not just this 1.1 but there were a few critical payments that had to be made by LMT to be able to on the short to

medium term to be on the right track in terms of the cash flow from working capital perspective. As far as I can remember there were also SARS payments that they were in default, so there was specific amounts that were discussed on our board meetings and management meetings where there were monies to be paid to take them through the difficult to get to the point where they can start unlocking some of the working capital in stock and debtors to be able to go forward again and execute the rest of their
10 business sustainably, Chair.

ADV KENNEDY SC: So you would have had a contract – DLS would have had a contract with LMT for the production of the particular items concerned, correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: And that would have involved agreement on the price, what amount had to be paid, correct?

MR KNOETZE: Right, Chair.

ADV KENNEDY SC: And at what stage different portions
20 of the price would have to be paid. So much would be paid on x date, so much would be paid on y date, etcetera. Correct?

MR KNOETZE: That is the norm to have in a contract, yes, Chair.

ADV KENNEDY SC: Indeed. Now why did you not simply

make funds available to LMT taking account of what Denel had to pay LMT in terms of that order or contract? Why was there even discussion about LMT's problems in relation to its creditors and its suppliers and Busisa/Bowden and its take liability, etcetera, why was that being taken into account by Denel in deciding on an advance payment?

MR KNOETZE: The only possible solution in such a case with security of supply, supplier that were in difficulty, was
10 on this exact method of placing a work on risk and then later then the approval, which is the security, which is the placement of the production order of R10 billion from Armscor and for that reason we used the process to do the work on risk as discussed through all the executives and peers within the environment to do it on a proper way in which it can be accounted for later and not just sending money from left to right but to have a proper discussion in terms of which is the best way to channel payments in a proper way and then if the Hoefyster production order does
20 arrive it could be handled appropriately and properly, Chair.

ADV KENNEDY SC: So am I right in this understanding of the approach that was adopted, because LMT was financially in some difficulty and there was a danger that continued supply from LMT for your very important

Hoefyster project could be in danger due to their financial difficulties you and your colleagues agreed to structure the payments to them in a way which would go beyond what the contractual terms for payment were, it was really to assist them to get payment earlier than they might otherwise have got so that they did not collapse financially and then the supply to Denel would be in danger. Is my understanding correct, Mr Knoetze?

MR KNOETZE: It is correct, Chair, with also – just a little
10 bit to add to that is, and during this discussions having the process of work on this approval and the upfront security of supply, the idea was also then when later when we get the – or parallel to getting the production order for Hoefyster of 10 billion, we need to secure an option to purchase then to also safeguard and put the security in place to actually execute the option agreement later on as specific purchasing whereby our money would be safe with the necessary securities to be put in place by that time also, Chair.

20 **ADV KENNEDY SC:** So is my understanding correct, there were two ways that Denel identified as securing the supply to try and minimise the danger of financial collapse of LMT, the one was to restructure the arrangements so that it would get some money upfront, in advance, on the basis that we have already dealt with, at risk production

order. And the other was to purchase a majority shareholding in LMT itself, is that correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: Okay, thank you. Now if you look still at page 13, your paragraph 7.2, you deal with the discussions that took place in relation to the first payment had been to LMT to pay off Busisa and Bowden, which we have discussed already, it says that yourself and Mr Teubes had discussions with Mr Burger to explore the
10 option of a first payment to be made before the end of April 2010. Now is it correct that you and Mr Teubes together with Mr Burger played in a leading role in relation to this arrangement for early payment of LMT to try and help it out of its financial difficulties?

MR KNOETZE: Yes, Chair, but as I also stated somewhere in my affidavit that we always kept the management team part of this discussions and it was really deliberations at our management team but we also involved definitely the legal person in DLS at that point in time, as
20 well as the legal and planning executives from the corporate office continuously, Chair.

ADV KENNEDY SC: Right. In fact, I understand ...[intervenes]

CHAIRPERSON: Mr Kennedy?

ADV KENNEDY SC: Sorry, Chair?

CHAIRPERSON: I see we have just gone by two minutes past the tea break. Shall we take the tea break now?

ADV KENNEDY SC: Thank you, Chair, yes.

CHAIRPERSON: We will take the tea break and resume at twenty five to twelve.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Okay, let us continue.

ADV KENNEDY SC: Thank you, Chair. Mr Knoetze, are you able to hear us?

MR KNOETZE: I can, Chair.

ADV KENNEDY SC: Thank you. Can I take you to page – Mr Knoetze, I understand that there was one annexure that was not fixed up through your supplementary affidavit but has now being fixed up. If I can take you to what Mr Kunene has sent you, I understand. It is the board meeting extract from the 15 April 2010 that is referred to in
20 your affidavit and I understand, Chair, that it has been sent to the witness and now appears at page 52.1.

CHAIRPERSON: Yes.

MR KNOETZE: Sorry, Chair, is that the board meeting of – Chair, board meeting of when?

ADV KENNEDY SC: 15 April 2010.

CHAIRPERSON: 15 April 2010.

MR KNOETZE: As yet, until today, I have not seen that, I have requested it from Denel previously, Chair, but I have not seen - the recollection I had in my affidavit is what I could remember or recall from those meetings but I have not seen it until today. I have requested for it.

ADV KENNEDY SC: Have you ...[intervenes]

CHAIRPERSON: Have you received it from the Commission now?

10 **MR KNOETZE:** I have not.

CHAIRPERSON: You have not received it?

MR KNOETZE: No, Chair.

ADV KENNEDY SC: Chair, I have been told it has been sent to the witness, perhaps it has not come through the email yet.

CHAIRPERSON: Yes.

ADV KENNEDY SC: But perhaps, Mr Knoetze, will you please after the hearing – may I suggest this Chair, subject to your guidance?

20 **CHAIRPERSON:** Yes, ja.

ADV KENNEDY SC: May I suggest to you, Mr Knoetze, that after the hearing you go through what has just been recently to you by email and just confirm that what has been sent to you is in fact the minutes of that board meeting of the 15 April 2010 and if it is correct then you do

not need to come back to – well, perhaps you should email the legal team and say yes, I confirm that what Mr Kunene has sent me is in fact the correct document. If it is not, if you can tell us, please, and then we will have it corrected. Chair, I hope that that will be in order.

CHAIRPERSON: That would be in order but I see that it is really what, three pages?

ADV KENNEDY SC: Yes, I think it is four or five pages, Chair.

10 **CHAIRPERSON:** But it seems that the substantive page is only actually one – can I say substantively a full page?

ADV KENNEDY SC: Yes.

CHAIRPERSON: It may be that depending on where we will be by lunchtime, it may be that it might be convenient if during the lunch break he has a look at it, when we come back he confirms or whatever.

ADV KENNEDY SC: And he ...[intervenes]

CHAIRPERSON: Or if we finish with him much earlier maybe if we take five minutes, seven minutes, he can look
20 at it and we come back and he can confirm and then he is done.

ADV KENNEDY SC: Yes. Thank you, Chair, that should work well.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Thank you very much.

CHAIRPERSON: Okay, alright.

ADV KENNEDY SC: Right, Mr Knoetze, when you are finished with your evidence if you can just look at what has been sent just to confirm and we will be in touch with you as well during that period. You may have to come back online today just for a minute or so to tell the Chairperson that this is the document that you were referring to in your affidavit. Is that okay?

MR KNOETZE: It is correct with me, Chair.

10 **ADV KENNEDY SC:** Fine, thank you.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Alright, thank you. Now I would like to go back, if I may, to the discussion we were having about the prepayments to LMT and the reason why these were made. Was it appropriate and was it regular – was it in accordance with the law and with the processes at Denel, as you understood them, to make an early payment to LMT earlier than what it was entitled to in terms of the contract or order so that you could assist it in its financial
20 difficulties?

MR KNOETZE: Chair, if in this case on the delegation of authority it was quite clear after having discussions with the board members and Mr Fukile Mhlontlo and Mr Tully, it was quite clear that in the case of a work and risk approval for a situation like this that is order in advance of receiving

a sales order for a contract like Hoefyster, the requirement or the condition would be that they needed to be then specifically securities in place to cover the company or to protect the company if the supplier or, in this case, LMT would go down and it was accepted and it was a delegation of authority that was within the DLS board mandate on operational matters to go through this way of prepayment but with proper securities like we have done for the different payments to LMT, Chair.

10 **ADV KENNEDY SC:** Did you discuss the risks that were attached to the early payment that was made? Did you discuss that with your colleagues on Exco, the financial risks that there may have been?

MR KNOETZE: Yes, Chair, in actual fact we had various discussions on the different risks as is also – can be seen from the 7 May 2010 minutes of the DLS board meeting but we also had discussions - when the due diligence was done by KPMG, it was presentations made by KPMG to diverse team from DLS and from corporate office and DCO meaning
20 the legal people were presented and/or present and also the financial people from DCO to understand that situation around LMT and the risk involved so that we take an informed decision with management in that regard, Chair.

ADV KENNEDY SC: May I take you in the papers to page 89?

MR KNOETZE: 89, Chair.

ADV KENNEDY SC: Now am I correct in understanding that what follows from page 89 is a report from KPMG.

MR KNOETZE: Just to make sure, are we on 39 or 89?

ADV KENNEDY SC: 89, sorry, 89.

MR KNOETZE: I am just going to go to 89. It is correct, Chair, it is the KPMG – one of the reports from KPMG that was given to Denel on our integrated meetings on the finances, Chair.

10 **ADV KENNEDY SC:** Sorry, on your integrated what?

MR KNOETZE: When we discussed and requested KPMG to do the financial due diligence, they have to make presentations to a multi-functional team of DLS and DCO and this was the report that was presented to all of the people that was present in the meetings when we discussed the different points from KPMG, Chair.

ADV KENNEDY SC: Was this a due diligence report prepared by KPMG at the request of Denel to check the due diligence of LMT to see whether it was suitable to have
20 its majority shareholding purchased by Denel?

MR KNOETZE: That is correct, Chair.

ADV KENNEDY SC: Alright. And do you agree that the KPMG report in fact identified a number of factors, a number of issues that were of some concern in relation to the financial strength of LMT.

MR KNOETZE: That is correct, Chair.

ADV KENNEDY SC: For example, they identified concern that there had been a distortion of gross profitability and as a result one could not rely on the reported profitability. Are you aware of that?

MR KNOETZE: That was mentioned, Chair, and that was where we had various discussions on how we could get involved to understand the financials better to make sure we take an informed decision, Chair.

10 **ADV KENNEDY SC:** Yes and then they referred to a prepayment from Denel of 14.5 million and another 1.2 million from Patria. They dealt with that. Was there in fact 14.5 million made as a prepayment by Denel?

MR KNOETZE: None, Chair. I assume that could be VAT included maybe on the 12.7, it could be the VAT portion, Chair. I am not sure, it could be the VAT portion included.

ADV KENNEDY SC: I see, yes. And they identified concern that this was included in LMT's books as being deferred income. You are aware of that?

20 **MR KNOETZE:** I cannot recall that, Chair, I am sorry, no, I cannot recall.

ADV KENNEDY SC: Right. And they also identified a concern that LMT would require a capital injection of at least R43.4 million.

MR KNOETZE: That is correct, Chair.

ADV KENNEDY SC: Yes. I am sorry, Chair, may I just have a moment?

CHAIRPERSON: Okay.

ADV KENNEDY SC: Thank you. So, Mr Knoetze, these concerns that you acknowledge were put in the due diligence report by KPMG, surely they raised some alarm bells on your part as Chief Financial Officer at that time of DLS, correct?

MR KNOETZE: Correct, Chair.

10 **ADV KENNEDY SC:** And, nonetheless, you approved and motivated – sorry, you recommended, rather, for approval the purchase by Denel of a majority shareholding in LMT.

MR KNOETZE: Chair, just a correction on that. I was mostly involved directly in the prepayment and the work on risk specific order which was investigated by or requested by the team but specifically on the 51% option shareholding I was part of – only one person as part of a much bigger team than actually made the decision to acquire the option and to execute the option later on that
20 had to follow a total different process which had to go to Denel board and to the minister for approval, Chair.

ADV KENNEDY SC: Yes, I certainly accept, Mr Knoetze, that you were not the only person and in fact you did not have the power at your level to make any final decision on the purchase of those shares in LMT, correct?

MR KNOETZE: It is correct.

ADV KENNEDY SC: But you did play a role in looking into the financial strength of LMT, not so?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: And that was for purposes of considering whether it was a good idea from a business and financial risk point of view for Denel to purchase the majority shareholding, is that right?

MR KNOETZE: Correct, Chair.

10 **ADV KENNEDY SC:** And you in fact, I understand, in fact signed the letter of engagement with KPMG for them to do the due diligence report, is that right?

MR KNOETZE: It is correct, Chair.

ADV KENNEDY SC: I understand that Investec were also involved as transaction advisers for purpose of the transaction for the purchase of the LMT shareholding, is that right?

MR KNOETZE: Correct, Chair.

20 **ADV KENNEDY SC:** And were you involvement in the appointment of Investec then for that role?

MR KNOETZE: As far as I can recall, Chair, the Investec had gone through a supply chain process at DLS and within that process we had present the legal team from DCO, the finance and also the different representatives from DLS and they were subsequently appointed as the advisers,

Chair.

ADV KENNEDY SC: Yes. Now, I understand – you have told the Chairperson about why you felt at the time that the advance payments of about R12 million were LMT was justified and the risks were properly addressed but later – have you now, as you sit now, giving evidence before the Learned Chairperson of the Commission, you now feel that in retrospect, with hindsight, it was actually a good acquisition for Denel to have purchased a majority
10 shareholding in LMT from a financial point of view?

MR KNOETZE: Chair, if I was in the same position today as I was at that time with all the evidence in front of me, with all the advice I had from Investec, my peers, my supervisors, the DCO specialist in terms of the strategy of Denel and DLS going forward, the execution of a R10 billion contract with subsequent penalties for – and starting off with the late delivery which would be ten times or more worse than having invested some money in a critical strategic supplier I will probably do the same and make the
20 same decision today, Chair.

And then, secondly, I think if Denel had thereafter, after acquiring the option or acquiring the 51%, Chair, have done what we needed to do in terms of proper integration and management of the integrated facilities and what needed to be done, like we envisaged, I think it would have

been a big success story forever thereafter. That is my current statement on that, Chair.

ADV KENNEDY SC: But that in fact did not happen, did it? LMT has actually continued to struggle, not so?

MR KNOETZE: Chair, difficult to say. I got less involved after the PFMA approval, they were still a business, they were operating, they were doing – they were actually keeping their orders in the years 2012/'13 but I got much less involved and when the integration took place and the
10 option was then acquired or executed, the integration took place at DCO and it was subsequently managed from thereon further. So my involvement was very, very less thereafter after the acquisition, Chair.

ADV KENNEDY SC: May I take you in your affidavit to page 25?

MR KNOETZE: I am just quickly going to 25, Chair.

ADV KENNEDY SC: Do you have that? Do you have that, Mr Knoetze?

MR KNOETZE: I am almost there, yes.

20 **ADV KENNEDY SC:** Okay.

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: You say in 12.1 under the heading:

“How was the prepayment used by LMT? The R12.7 million prepayment was a decision by the DLS board as an at risk production order placed on LMT

to ensure security of supply on the Hoefyster contract.”

Now the DLS board is different from the Exco, is that right?

MR KNOETZE: That is correct, Chair.

ADV KENNEDY SC: Were you sitting on the DLS board at this time?

MR KNOETZE: I was, Chair.,

ADV KENNEDY SC: In your capacity as Chief Financial Officer you sat on the board, correct?

10 **MR KNOETZE**: Correct, Chair.

ADV KENNEDY SC: I understand that at the level of Exco you – sorry, Mr Burger your CEO and yourself as CFO and Mr Teubes as your co-executive, you were really the main players, as it were, on Exco, is that correct?

MR KNOETZE: That is correct, Chair, and probably because of our interaction as this was the three of us who were representing the management team at the board level of board meetings as invitees.

20 **ADV KENNEDY SC**: Right. So am I correct in understanding you played a leading role along with the two other men that I have just mentioned in taking the decision to recommend to the board that this advance payment be approved?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: Correct? And then you sat on the

board itself that then did approve the transaction, is that correct?

MR KNOETZE: Correct.

ADV KENNEDY SC: And Mr Teubes, was he also sitting on the board at the time?

MR KNOETZE: As an invitee, as far as I can remember, correct, Chair.

ADV KENNEDY SC: And Mr Burger was too, not so?

MR KNOETZE: Correct, Chair.

10 **ADV KENNEDY SC:** Right. And then at page 26 your affidavit refers in paragraph 12.3 to the cash injection how it was used by LMT. It was used to pay their creditors and to fund current operations for maximum production, is that correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: That is how LMT used the payments. Would you agree that if LMT had not been facing serious financial difficulties you would have not arranged the R12 million advance payments. The only reason why you were
20 making available the 12 million upfront as an advance payment, the so-called advance payment was because they were in financial difficulties. If they had not been in financial difficulties there would have been no need to pay them the 12 million, is that correct?

MR KNOETZE: Chair, the main objective was that we

needed to have a sustainable business in them to be able to protect the IP that was vested in them and to have the security of supply and for that reason I was requested by not just the management team and the CEO of DLS but also by DCO and the board members after careful discussions and considerations to get involved and to determine the risk associated with this and the payment was merely a method of getting to the ultimate objective that we needed to get for security of supply. That was the
10 main objective all the way along, Chair.

ADV KENNEDY SC: if I understand you correctly and please correct me if I am wrong, because I understand it, when it became apparent that LMT was in financial difficulties there was a concern on the part of head office and DLS management that if LMT fails financially because of its wider financial problems, then we are at risk, correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: And one of those risks would be an
20 IP risk, correct, and intellectual property risk, correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: And other risks too. There would be a continuity of supply. There would be an interruption in supply problem, not so? Is that right?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: But if they had been financially strong and at no risk of financial collapse, these concerns about interrupting supply and intellectual property would not have arisen, not so?

MR KNOETZE: Most probably, Chair, yes.

ADV KENNEDY SC: Okay, thank you. Chair, may I just have a moment to confer with my team?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Right. Thank you, Chair. Just a few
10 questions, if I may, just to conclude your evidence, Mr Knoetze. Can I take you in your affidavit – just find the page – yes, it is at page 10, zero one zero.

MR KNOETZE: Going, Chair, to page 10. Yes, Chair.

ADV KENNEDY SC: Now I would like to just read into the record a paragraph or two of your affidavit so we get the context. You are here dealing with the advance payment to LMT. In 6.15 you say:

“The whole process of placing an order on LMT was discussed with Mr Morris.”

20 It is the same Mr Morris you mentioned earlier, is that right?

MR KNOETZE: That is correct, Chair.

ADV KENNEDY SC: And Mr Mhlontlo, he was then Chief Financial Officer of the group at head office level, is that right?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: As is evident through communications – and you refer to annexures.

“Mr Morris was comfortable with the process followed.”

Mr Morris was the strategy PFMA compliance and equity transaction specialist. That was also at head office, correct?

MR KNOETZE: Correct, Chair.

10 **ADV KENNEDY SC:** And then it says:

“He worked with DPE.”

That is the Department of Public Enterprises, correct?

MR KNOETZE: As far as I can recall, that he was his – he was at DPE previously.

ADV KENNEDY SC: So he had been there for many years, your affidavit says.

MR KNOETZE: Yes.

ADV KENNEDY SC: And he made it clear and here I am reading in 6.16:

20 “Mr Morris made it clear that the LMT prepayment was to be secured with LMT assets and not only the share option. He also separated the two matters or the order placements and the exercise of the share option. He made it clear in his email that there is no PFMA process that needs to be followed for the

placement of the R51 million at risk order on LMT and its subsequent prepayment and that it is a matter that can be dealt with by the DLS board. The exercise of the share option was a different matter and further due diligence needed to be done according to him and that Denel board approval and PFMA approval was needed in this regard.”

That is the share option part. But the prepayment, the at risk order placement you say he said you did not need to –
10 you had no difficulties in relation to the PFMA, is that right?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: There is no PFMA process. Now ...[intervenes]

CHAIRPERSON: Hang on one second? Where you say in that paragraph, namely 6.16, at the end thereof, you said:

“The exercise of the share option was a different matter and further due diligence needed to be done according to him and that Denel board approval and
20 PFMA approval was needed in this regard.”

Is that approval meant to be process because if it is meant to be approval, I would like to know whose approval would it have been.

ADV KENNEDY SC: Yes, thank you, Chair. Mr Knoetze, at the end of paragraph 6.17 you refer to approvals being

required for the share option part. Do you see that, right at the end of 6.16?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: And you said that according to him, that is Denel – sorry, Morris, according to him:

“..that Denel board approval and PFMA approval was needed in this regard”

Now Denel board approval we understand but who would have to give approval under the PFMA?

10 **MR KNOETZE:** Chair, as stipulated previously or discussed, the work on risk approval was separate process that had to be dealt with at DLS board and with interaction with all the different representatives from the group but specifically on – stating in 6.17, the option and specifically the exercising of the option was a PFMA approval that had to go to the Denel – not DLS but Denel board with proper presentation and then an application thereafter to DPE or the minister for a formal ministerial approval before the option can be executed to acquire the 51% shareholding,
20 Chair.

ADV KENNEDY SC: So that – sorry, Chair?

CHAIRPERSON: So is the position that the reference to approval in that last line of paragraph 6.17 was intended by you, as you understood what Mr Morris said, was intended to refer to approval, not process? Can you see

the last line of paragraph 6.16?

MR KNOETZE: Yes, Chair, that was revealed to us by Mr Morris specifically since he has been aware – he was aware of the process that had to be followed on Denel board, after approvals, on delegations as well as the PFMA approval that was in his opinion the way to go ahead in the formal approval of that, Chair.

CHAIRPERSON: And- that PFMA well the first thing that attracted my attention to that last part of paragraph 6,
10 point 16 is that earlier in the paragraph you said Mr Morris said there was no PFMA process that needed to be followed for the placement of the R51million at risk order on LMT and its subsequent pre-payment. Is that, is what you are talking about in that last line as PFMA approval, does it not relate to the same transaction, because if it does it would seem to create some inconsistency between what you understood Mr Morris to say because if there was no PFMA process needed there could not be any PFMA approval required I would imagine.

20 Did you understand what I say, you understand?

MR KNOETZE: Chair the paragraph should be read in two parts of two different processes as the first part which I referred to as the R51million risk and order with the appropriate or the subsequent pre-payment of R12.7million was on the delegation of authority no Denel Board

approval, no PFMA process and could be decided and approved by the DLS Board with interaction from all the different stakeholders on DCO.

That was not linked and actually two total separate processes although they could rank parallel it was a total separate process that could be approved on DLS Board level to put the risk on order and also to make the pre-payments. The second portion which is the last part, the latter part of 6.16 refers specifically to the options
10 specifically the 51% shareholding option which was altogether a total different process because what needs to happen there is there needs to be a proper motivation to the Denel Board and recommended to the Denel Board to be approved by the Denel Board to go to the Minister that needs to give a formal approval but specifically under share option agreement to be executed Chair.

CHAIRPERSON: You see I understand all of that but only if you go up to Denel approval before and PFMA approval was needed in this regard actually of course I am not an
20 expert of PFMA but it sounds odd to me that for in regard to exercising a share option you would need PFMA processes but I maybe misunderstanding something. I do not know Mr Kennedy is there something I am missing here?

ADV KENNEDY SC: There may be some requirement on

the PFMA that Chair I do not propose to deal with that in cross examination with Mr...[intervenes]

CHAIRPERSON: But there may be some requirement.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Yes, okay Mr Knoetze so your understanding for – is that what Mr Morris said because it is what he said that you are relaying here is that what he said was that for the exercise of the share option one of the things that would be required is that what he referred
10 to as PFMA approval, is that right?

MR KNOETZE: That seems to be correct, Chair.

CHAIRPERSON: But you yourself do you know what that is and under what provision it applies or is that something you do not know is not your understanding of what he said?

MR KNOETZE: Chair I was aware of the fact that buying of any shares, buying or selling of any shares within any transaction within Denel at that stage was definitely for sure a PFMA approval and that would be approved by the
20 government and Department of Public Enterprise, Chair.

CHAIRPERSON: So was your understanding that, what is referred to as PFMA approval related to approval by the relevant Minister?

MR KNOETZE: Yes, first of course it had to go through the Denel Board in my opinion for sure Denel Board had to

approve or recommend them to the Minister for approval from the BEE side definitely, Chair.

CHAIRPERSON: Oh okay now I think I may have come across some provision in relation to maybe Denel maybe in the application that was brought by the Denel Board against the then Minister of Finance Mr Gordhan I do not know if it was for Section 54 application.

ADV KENNEDY SC: Yes.

CHAIRPERSON: I think I may have come across
10 something that might indicate what you are saying.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Okay no at least now I have an idea of what the PFMA approval the reference to PFMA approval may have been a reference to, thank you Mr Knoetze, thank you Mr Kennedy.

ADV KENNEDY SC: Thank you Chair Mr Knoetze for clarification you refer in your affidavit to an annexure which is an email from Mr Morris. Can I ask you please to turn to page 38.

20 **MR KNOETZE:** Going to page 38, Chair.

ADV KENNEDY SC: Thank you. If I can take you on page 38 the email in the middle of the page it comes from Mr John Morris dated 22nd of April 2010 and it is addressed to you with copies to various other officials including Mr Teubes, Mr Mhlontlo, Mr Sadick and Mr Van Wyk and Mr

Stefan Burger, correct?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC: I just would like to read into the record the brief email if I may:

“Thank you for the draft Board paper we have decided not to subject this to the Denel Board meeting on 4 May 2010 in line with your discussion with Fikile.”

Now that is with Mr Mhlontlo, is that correct?

10 **MR KNOETZE:** Correct Chair.

ADV KENNEDY SC: “The advanced payments to LMT needs to be secured by adequate LMT assets which are currently unsecured. This is something we would want to see at the DLS Board meeting next week and your paper will be useful for that meeting. I believe that this mechanism identified by Fikile will enable DLS to achieve its objectives.”

So he was saying it would need to go to the DLS Board but only subject to assets of LMT being becoming secured in
20 order to secure assets to minimise the risk of advanced payments, is that right?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: And then he continues:

“Regarding the share option this will only be exercised subject to an in-depth due diligence on

LMT.”

Now that is what was done by KPMG, correct?

MR KNOETZE: Correct.

ADV KENNEDY SC: Correct, and they indicated the consequences...[intervene]

CHAIRPERSON: Do you confirm Mr Knoetze, did you confirm?

MR KNOETZE: Correct.

CHAIRPERSON: Yes, okay you will just need to speak up
10 a bit so that we can hear and also the recoding can capture what you say.

ADV KENNEDY SC: Just bear that in mind when you speak I could see your nodding very clearly but your voice was very soft then just please just bear in mind the Chairs guidance. And then to continue:

“We would obtain Board and PFMA approval in this regard.”

This regard being the share option. So he is referring there to the Board of what, of DLS or to the main Board of
20 Denel?

MR KNOETZE: That was the Denel Board, Chair.

ADV KENNEDY SC: The Denel Board at head office, correct?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: And also PFMA approval, is that

right?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: But only in relation to the share option portion not the advanced payment issue because that was in terms of the delegation you referred to subject to DLS Board approval not head office Board approval and not PFMA approval, correct?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: Can I just have a moment to confer
10 with my colleague. I just want to take you now to what you say in your affidavit it is page 11.

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: Paragraph 6.17 you say:

“At some point Mr Mhlontlo also said that this at risk procurement order with the pre-payment of R12.7million should be dealt with at the DLS Board level because it is an operational matter. The option to acquire shares was meant to serve as security for this at risk procurement order.”

20 Is that what he told you?

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: And in fact you then referred to Annexure PK05 and if I can take you to that document you will find it at page 49, four nine.

MR KNOETZE: I am going to page 49 Chair, go ahead

Chair.

ADV KENNEDY SC: Is that an email from Mr Mhlontlo on which you rely for the advice that you just referred to in your affidavit?

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: Right. Now if you can turn to page 13 again in your affidavit.

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: You referred to a special meeting of
10 the DLS Board held on the 7th of May 2010 where you say Mr Taliep Sadick the Denel Group CEO was present amongst others present was Mr Fikile Mhlontlo, Group CFO and Mr John Morris the strategic PFMA compliance and equity specialist and then you referred to an annexure and if I can ask you to look down now to Annexure PK07, I will get you the page number in a moment, so it I 53, 54 is that correct?

MR KNOETZE: 52, 53.

ADV KENNEDY SC: Yes, 53 in fact 54 is when the actual
20 body of the minutes is reproduced, correct?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: And it shows the individuals present to include yourself, is that right? Management representatives together with Mr Burger, Mr Naidoo and Mr Teubes, correct?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: And then at page 55 that deals in paragraph 4.1 with the option on strategic sourcing of a vehicle capability that is referring to LMT, is that right?

MR KNOETZE: It is correct Chair.

ADV KENNEDY SC: Okay, and it appears that initially what was discussed was that Denel would acquire 70% ultimately what was decided upon was a 51% purchase, is that right?

10 **MR KNOETZE:** That is correct Chair.

ADV KENNEDY SC: And there was also reference made to the R12.7million as a pre-payment, correct?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: And the intention there was to give some short term alleviation of the financial challenges that LMT was experiencing so this was to try and assist it in its time of financial need, correct?

MR KNOETZE: Correct Chair.

20 **ADV KENNEDY SC:** Now you refer – it appears from your affidavit that Mr Mhlontlo asked you about the financial status of LMT and you explained creditors and debtor's balances were R17million for the creditors and for R14million for the debtors and LMT would be using the DLS and debtor's payments to get projects going and to pay its creditors.

You also said that the LMT overdraft was going to improve. It does seem that although you felt that things could be saved at LMT you and your colleagues were going into the decision to purchase the 51% shareholding in LMT with your eyes wide open you were aware that LMT was financially under huge strain, correct?

MR KNOETZE: Chair at that point when they had various discussions at the different Board levels and interactions with management and DCO it was felt that for this amount
10 of money to flow to LMT to take them out of the short term crisis, short to medium term we should have at least an option to purchase as security together with the different securities for the different payments that you also had to obtain. So in my opinion that was more from a request for sure that we have securities in case something goes wrong with LMT that was one of the biggest intentions of the options and it was requested specifically by management to have that in place Chair.

ADV KENNEDY SC: Right, and if we can look again at the
20 minutes at page 55.

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: That reflects the discussion which includes some of the points that I have already summarised about the creditors and debtors and so forth. If I can ask you, please go to page 56.

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: The second line:

“Mr Knoetze reported that the overdraft facility of LMT has been reduced from R12.8million to R10million currently and it is anticipated to be R9million soon the cash requirement will keep LMT’s overdraft at this level and improving towards July and August 2010.”

The cash requirement was that the upfront payments the
10 R12.7million earlier?

MR KNOETZE: Yes, that was the cash R12.7million Chair as well as different opportunities that they had to improve there also from their own side the overdraft facility, Chair.

ADV KENNEDY SC: Yes and then it continues:

“Mr Teubes also explained the reason why the stock that was written off was bought as this was the assignable cause for the cash strain in LMT.”

Then the minutes of your meeting say as follows:

20 “The meeting discussed the mitigations on paragraph 2.3.1 of the proposal.”

And the proposals in fact attach to the minute:

“Mr Burger explained that this is not a risk free decision that management will endeavour to put controls in place to improve the business situation specifically with respect to their financial affairs.

The meeting decided that even more stricter controls should be put in place to get the company out of the current dilemma.”

The current dilemma is LMT’s current financial dilemma, not so?

MR KNOETZE: Correct, Chair.

ADV KENNEDY SC:

10 “The legal share option agreement should have tight control over the company with respect to process improvements technical and financial control and management control.”

MR KNOETZE: Correct.

ADV KENNEDY SC: And then there is the next paragraph I will skip that is dealing with certain visits that were to take place and the following two the foot of the page:

20 “The approval process from DPE of acquiring the 70% shares from LMT could take long and therefore this option agreement will be valid for three years the process is to running comparisons with the equity selling process.”

Then we have various other discussions about the risk and drawback clause of 5 to 10% etcetera and then the second last paragraph on page 57, are you there?

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: The second last paragraph says:

“Mr Knoetze gave his full support to the commitment of the Board to make this agreement work.”

MR KNOETZE: Yes, Chair.

ADV KENNEDY SC: Now the previous paragraph I should have started there:

“Mr Palatsi went around the table to get everyone’s final input to the proposal. Every member supports this proposal with the conditions relevant to this to protect Denel. Mr Mhlontlo reported that he supported this as long as the risks as indicated are mitigated as discussed.”

Now do you believe that those risks were in fact mitigated as they were discussed?

MR KNOETZE: Yes, Chair I believe so through all the different security assets and stock that we had to secure to make sure we were – it was not risk free we did exactly that Chair.

ADV KENNEDY SC: Now may I just ask you a few questions in conclusion and I will then ask the Chair for an opportunity just to caucus with my team just to see if there is anything further and we still have the issue of the annexure to sort out over the lunch break.

CHAIRPERSON: Yes maybe when you caucus with your team he could take this opportunity to have a look at that annexure and maybe when you are finished he might be

finished and then you cover that as well.

ADV KENNEDY SC: If that is possible, yes thank you.

CHAIRPERSON: I think it is short it should be possible.

MR KNOETZE: Thank you Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Mr Knoetze were you still in a position a senior position at Denel when contracts were awarded to VR Laser?

MR KNOETZE: Chair I was not much involved in VR Laser
10 discussions or contracts of any sorts. We did from time to time at the management meeting of course had discussions with regards to contracts and follow up contracts and possible future business but I was personally not very much involved in the VR Laser process and contracting of that at all Chair.

ADV KENNEDY SC: Now I understand that and in fact you indicated as much in your affidavit to. Did you have any understanding when LMT was being acquired or the majority shareholding was being acquired by Denel. Did
20 you have any discussions with your colleagues at EXCO or Board level as to whether LMT now that it would be subject to the majority shareholding held by Denel would now be given preferential treatment in the award of any further business for which it was qualified because it would be as it is an in-house group entity?

MR KNOETZE: Chair not specifically but in my opinion it would have been proper consideration to have, it was to be in-house and if there is an option agreement it would have had to receive preferential treatment as a specific supplier if the option agreement was not acquired yet, Chair.

ADV KENNEDY SC: So it would have been given special treatment if it was in-house?

MR KNOETZE: I would believe so and I think the policy also is stipulated as far as I can recall Chair.

10 **ADV KENNEDY SC:** Yes, and the policy that you refer to though says:

“There can be a deviation from that if there is a good reason from a business point of view for going outside the group rather than keep it in-house and it would have to be sent to the group executive for supply chain management.”

Who at that stage was Mr Mlambo. Are you aware of that as part of the rule?

20 **MR KNOETZE:** Not that I was that part of the process but I think that was the norm if I recall correctly, Chair yes.

ADV KENNEDY SC: Right, thank you but you were not involved directly in the process in which Mr Mlambo was asked for his approval or were you?

MR KNOETZE: No Chair not at all.

ADV KENNEDY SC: May I just have a brief moment to

talk to my team.

CHAIRPERSON: For purposes of allowing him to have a look at the annexure shall I adjourn for five minutes?

ADV KENNEDY SC: If you could thank you Chair.

CHAIRPERSON: I think let me give you that chance.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Mr Knoetze I am going to adjourn for about five minutes or seven minutes to enable you to look at the annexure that you have not received earlier on when
10 we talked about it and to enable Mr Kennedy to consult with his team. So when we come back I am sure you will be in a position to indicate whether you confirm the contents of that annexure. So five or seven minutes or there about you will just let me know once you are ready.

ADV KENNEDY SC: Thank you very much Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Kennedy.

20 **ADV KENNEDY SC:** Thank you Chair for that opportunity. We managed to speak to Mr Knoetze and he has given clarity which I would like to place on record if we may?

MR KNOETZE: Yes.

ADV KENNEDY SC: In relation to this annexure and then we just have one or two final questions.

CHAIRPERSON: Hm.

ADV KENNEDY SC: Mr Knoetze thank you for assisting us earlier in the clarification. Your affidavit – your main affidavit referred – wanted to refer to minutes as being attached as an annexure and that is the minutes of the board meeting of the 15 April 2010. Is that correct?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: And you were hoping to get those minutes from Denel and if they had been obtained they
10 would have been attached as annexures to your supplementary affidavit, correct?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: Now you have indicated to me that you have asked for those minutes and not been provided with them. If I can just place on record the advice that the legal team gave you recently which is that we have still not been given the minutes of that meeting from Denel. They have indicated that they have problems in relation to some of their records so we still do not have those minutes to be able to
20 give you Mr Knoetze or with respect to the Chair either – to the commission.

Now I am told Mr Knoetze and I want you to confirm this or correct it if it is wrong. I am told that my colleagues in the legal team made available to the only documents that they were given in relation to this aspect and the board

meeting on this date. Can I take you in the bundle the latest version of electronic bundle that you have in front of you to page 52.1?

MR KNOETZE: Yes Chair.

ADV KENNEDY SC: Now can you identify the document that starts at page 52.1?

MR KNOETZE: It was the heading of a board meeting number 15; 15 April 2010 and if I read it correctly Chair I think this is the one that I – exactly the one that I referred to
10 as a possible annexure to have been added which I could get not hold of – the minutes Chair.

ADV KENNEDY SC: Yes. Now what is clear from page 52.1 to 52.5 is that the minutes themselves are not included, correct?

MR KNOETZE: Correct Chair.

ADV KENNEDY SC: But what is the document? Was this the presentation part of a slide – a slide presentation at the board meeting?

ADV KENNEDY SC: Yes Chair it was one of the
20 presentations that was made to the board Chair.

ADV KENNEDY SC: And this dealt specifically with the issue concerned being the cooperation between DLS and LMT, is that right?

MR KNOETZE: It was one of the presentations yes Chair.

ADV KENNEDY SC: Yes. And then at page 52.3 we see a

status report on that topic with a signature and title of Mr Burger as Chief Executive Officer, correct?

MR KNOETZE: I do not see a signature – oh sorry Mr Chair I do see the signature on the page 52.3 of Mr Burger yes.

ADV KENNEDY SC: Right thank you. And paragraph 1 says:

10 “The purpose of this submission is to seek approval regarding the recommendations tabled on the possible cooperation agreement between DLSA and LMT.”

And then paragraph 2 refers to the report as being attached and 3 seeks the board approval and the report – was that Mr Burger’s report from page 52.4 to 52.5?

MR KNOETZE: It was a management report. It was a combination of inputs from management and in – as the tradition was in DLS and the Denel the CEO if there were anything that were presented to the board in this case the DLS board Mr Burger would have signed and it was under his signature yes Chair.

20 **ADV KENNEDY SC:** Yes. So did you give your input for example at page 52.4 under the heading Financial Analysis?

MR KNOETZE: That is correct Chair.

ADV KENNEDY SC: And then near the end of that paragraph under the heading Financial Analysis three lines from the bottom it says:

“A cash flow analysis however indicates that this is a short term problem. To solve this problem LMT has to acquire additional cash in April. It appears that a cash injection of R10 million will solve their short term problem.”

Is that the basis on which the recommendation was made to go ahead with approval of the 12.7 million advance payment?

MR KNOETZE: That is correct Chair. Just to add to that it was seen as a very more short to maybe medium term but
10 short term solution. There were also talks of additional capital investment and IDC funding to be acquired which they were busy regularly to acquire IDC support and also then possible other equity partners or option agreements with other shareholding as well in future Chair.

ADV KENNEDY SC: Right. If I might just have a moment
Chair? Yes. Now in relation to the acquisition of the majority shares in LMT when you were discussing with your colleagues at the level of EXCO or the DLS board did you have a discussion as to what role DLS would be expected to
20 play in the future management of LMT? In other words you were now going to – your company – your group was going to buy the majority shareholding in LMT who was going to control the management?

MR KNOETZE: Chair the opinion of management as an integrated approach was that the capabilities of DLS and

specifically the strategic capabilities of LMT should be incorporated into under one roof and integrated within one organisation. Which meant that over time our idea was to make sure that where there were synergies between the two companies that it gets properly integrated and in all probability then integrated under the management in future of DLS that was the objection or the thinking at that point in time Chair.

ADV KENNEDY SC: And was that discussed to your
10 knowledge with LMT's then owners as to how it would – how
it would be managed after the acquisition?

MR KNOETZE: I think some of the – Chair sorry to you – I think some of these discussions did take place between Mr Burger specifically and Mr – Dr Stephan Nell who was the CEO of LMT and in my opinion I – if I can recall or I can relate I think there were some discussions with that – with regards to that yes Chair.

ADV KENNEDY SC: Were you aware of any change in
20 thinking at any stage that initially it was intended that DLS
would run the management of LMT but later it transpired that
in fact DLS would not take an active role in that?

MR KNOETZE: Chair I was not at that time – up to – close
to up to the point where the PFMA approval was sought and
also [00:08:52] approval was given I was still under the
impression and from – on the view from the view that that

would have been the way going forward until and up to the process where the integration took place at DCO and then it was a different reporting specifically then from the LMT as a supplier directly into DCO and obviously that was maybe the thinking of the leaders at that point in time but ja that was as far as I can remember Chair.

ADV KENNEDY SC: Now I would like to move to page 49.

MR KNOETZE: Yes Chair.

ADV KENNEDY SC: 49 appears to be an email from Mr
10 Mhlontlo to yourself with various others copied in, correct
and that was date the 22 April 2010? And Mr Mhlontlo says
this – I am just going to read a few lines if I may Chair from
the relevant portions. He says:

“Dear All yesterday I was taken through the
DLS management proposal. Some key points
based on DLS management are:

DLS intends placing an order of R52 million
and pay R12 million upfront to LMT for turret
hulls needed in Hoefyster production phase.

20 The upfront payment could be scaled down
but not less than R4 million initially
etcetera.”

And then he refers to various other concerns about the
Hoefyster production phase not being confirmed and then the
issue of security etcetera. And then he says – after all the

bullet points he says:

“Response the proposal cannot be implemented as proposed by DLS management particularly considering the DLS dealing with public funds and other considerations becomes relevant. Relevant aspects are production at risk in a division decision up to a set limited referenced down to delegation of authority document. The division or division board will have to consider all pertinent aspects including but not limited to the fact Hoefyster has not been secured to date. Pre-payments are divisional considerations and are not specifically dealt with in the delegation of authority. Payment risk identified needs to be mitigated adequately as the current proposal security is weak. Sorry the current proposed security is weak and cannot be acceptable. DLS would need to have a valid guarantee or securities or attach LMT assets IP and other key systems rand for rand etcetera.”

And he continues to set out various other concerns that he has. So the bottom line of Mr Mhlontlo’s email seems to be that he cannot accept the – the proposal that was being put

forward because it would have meant too much risk to DLS and to the Denel group partly having bearing in mind that DLS is using – is dealing with public funds as a state owned entity.

Now you received this email did you?

MR KNOETZE: Yes Chair.

ADV KENNEDY SC: And how did you deal with it?

MR KNOETZE: Chair if I – I can take you to the annexures just before we go to the other annexures that I added. After
10 this specific mail from Mr Fikile Mhlontlo to everyone involved in – you can see basically the biggest portion of Denel management I after the previous board meeting also after 15 April – 15 April 2010 where it was decided to go ahead and it was a DLS board meeting I arranged a meeting with Mr Fikile Mhlontlo and we discussed all these different conditions before we could go ahead. And as you quite rightly said Mr Fikile Mhlontlo was very correct in having certain specific securities and conditions to be in place which I had a discussion with him with all the related other
20 parties previous – and in fact the previous mails that I have attached between Investec, myself and Mr Morris and Mr Mhlontlo whereby we agreed the different conditions that had to be adhered to by Mr Mhlontlo and that was all put in place all the conditions relating to the paragraphs that you had mentioned. The paragraphs relating to mitigated adequately

in terms of all the other to be current for both securities which is LMT assets and IT and other key systems and after that discussion with Mr Mhlontlo we were then given the go ahead if all those conditions were in place and the mail of that is in the annexure that I can refer you to where it was said if all those are like the minutes of 7 May 2010 the same words from Mr Mhlontlo that he was happy if those conditions are met we can go ahead and it “stays” in his words it stayed a DLS board risk decision and they have to
10 apply their minds but he is happy if all securities have been adhered to Chair.

ADV KENNEDY SC: Right may I just have a moment? If we look at again at page 50 I took you to the ...[speaking over one another]. Page 50.

MR KNOETZE: 50 yes Chair.

ADV KENNEDY SC: I took you through some of the earlier points but you see the last three solid bullet points you see starting taking the Group Financial position into account. Do you see that?

20 **MR KNOETZE:** Yes Chair.

ADV KENNEDY SC: Right let me read those three bullet points into the record if I may?

“Taking the Group Financial position into account a lower amount and the gross amount proposed of R12 million will have to be considered. Additional measures to protect

company assets will need to be considered like DLS management accessing monthly accounts etcetera. If limits are exceeded as delegated and or options – and or option is considered to be exercised the matter will need to be referred to the Denel board. DLS board and its management take full responsibility for any issues that may arise positive or negative regarding this proposal.”

Would you agree that those are quite serious concerns that you raised?

10 **MR KNOETZE:** It was Chair and for that specific reason I had several discussions and interactions with respective board members and specifically with Mr Burger and I had with Investec detailed discussions which is referred to in the above annexures where Mr Mhlontlo eventually agreed to all the securities and on the minutes of 7 May 2010 I refer to again to minutes attached 7 May of 2010 which he agreed to that after all those securities have been put in place he will – he will be happy from his side with proceedings Chair.

20 **ADV KENNEDY SC:** Right thank you. Mr – Chair may we just deal with two final aspects? I want to correct something that I misunderstood earlier.

CHAIRPERSON: Ja.

ADV KENNEDY SC: In relation to why Mr Knoetze is – was not able to attend in person. I thought he was a gentleman stuck in George. In fact I am mixing him up with somebody

else.

CHAIRPERSON: Ja.

ADV KENNEDY SC: I am sorry about that misunderstanding.

CHAIRPERSON: I think that one is a lawyer is it not?

ADV KENNEDY SC: I am sorry.

CHAIRPERSON: The one in George is a lawyer.

ADV KENNEDY SC: That is correct.

CHAIRPERSON: Ja.

ADV KENNEDY SC: That is quite correct. Mr Knoetze just
10 for the record you put in an application to be heard on a – in
a virtual platform on the computer line today. I just want to
correct and I am sorry that I made a mistake earlier. I was
confused. You actually speaking to us from Pretoria East not
so?

MR KNOETZE: I am in Centurion Pretoria.

ADV KENNEDY SC: Centurion right. And I understand that
there was a medical reason which you provided proof of to
the legal team which has been forwarded to the Chairperson
to indicate that there was a risk if you had to travel to
20 Johannesburg today, is that correct?

MR KNOETZE: Ja it is all medical related for Covid-19.

ADV KENNEDY SC: Yes.

MR KNOETZE: Chronic risk.

ADV KENNEDY SC: Right.

MR KNOETZE: Chair yes.

ADV KENNEDY SC: Okay thank you for clarifying that. And then the final issue of clarification I just want to confirm I think you indicated this earlier. You have an MBA in Marketing. As I understand it the B.Com is also – you also majored in Marketing is that right?

MR KNOETZE: It was a B.Com Marketing with related financial accounting subjects but the MBA is the general Masters in Business Administration correct.

ADV KENNEDY SC: Thank you very much Mr Knoetze.

10 Chair we have no further questions of this witness.

CHAIRPERSON: Thank you very much Mr Knoetze for availing yourself to give evidence before the commission. We appreciate it. Should we need you to come back we will ask you but for now you are excused. Thank you very much.

MR KNOETZE: Thank you Chair much appreciated.

CHAIRPERSON: Thank you. It is one o'clock so we will take the lunch adjournment.

ADV KENNEDY SC: As you please Chair.

CHAIRPERSON: And resume at two.

20 **ADV KENNEDY SC:** As you please Chair.

CHAIRPERSON: I just want to talk about starting times for the rest of the week. Does – how does it look like? Does it look like we might need to start at nine – half past nine or earlier than normal and when would you like that to be? I just want to see what mornings are available that I can give

to – time for meetings with different sections of the commission who always want to see me about different things.

ADV KENNEDY SC: Yes.

CHAIRPERSON: But the priority is to make sure that we finish the Denel evidence this week.

ADV KENNEDY SC: Indeed Chair.

CHAIRPERSON: So – but we would also from my side I am available to sit later than four o'clock on each day if
10 necessary. There might be a slight problem for Wednesday this week because I may have promised Mr Seleka that we could in the evening session – we could have an evening session and do one short witness relating to Eskom. But I am told by him that we might need only about thirty minutes certainly not more than an hour.

ADV KENNEDY SC: Right.

CHAIRPERSON: So – so if that were to happen that would simply deprive you of thirty minutes or one hour but otherwise we would use all the other time for an evening
20 session if we need to use it.

ADV KENNEDY SC: Yes.

CHAIRPERSON: But for the other days there is no problem. Of course Friday is an exception.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: But tomorrow, Wednesday, Thursday we

can start – we can sit till late.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: We can start early if need be. I know there is a section of the – of the commission that I have said they can see me tomorrow at half past eight. I might have to change that if we start – if we decide to start at nine. Or what is your situation?

ADV KENNEDY SC: Chair I would like to just confirm this with my colleagues but my understanding is that tomorrow is
10 not – is not too problematic because we have had to shift witnesses around and so forth and it looks like tomorrow will not take longer than the normal.

CHAIRPERSON: We will not need to start early?

ADV KENNEDY SC: So – no I think that if we start at ten tomorrow that should be fine.

CHAIRPERSON: Okay.

ADV KENNEDY SC: But I would like to check with my colleagues.

CHAIRPERSON: Yes.

20 **ADV KENNEDY SC:** Wednesday I think in light of the possible need to accommodate my learned friend Mr Seleka that might be an idea to start at nine because we have quite a – quite a number of ...[intervenes]

CHAIRPERSON: Yes.

ADV KENNEDY SC: Witnesses to deal with then.

CHAIRPERSON: Okay.

ADV KENNEDY SC: And I think Friday in order to – not to overrun.

CHAIRPERSON: Yes.

ADV KENNEDY SC: We can start early on Friday at ...

CHAIRPERSON: Yes.

ADV KENNEDY SC: May I just have a quick moment?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Thank you. Yes thank you for that
10 Chair. My colleagues confirm that tomorrow should not be
an issue so we are happy to start at ten rather than nine.
And you will then be able to see the other people at eight
thirty.

CHAIRPERSON: Yes.

ADV KENNEDY SC: What they have suggested is we can
ask your indulgence to start early at nine o'clock on
Wednesday and Thursday and Friday.

CHAIRPERSON: Okay no that is fine.

ADV KENNEDY SC: If that is possible.

20 **CHAIRPERSON:** No, no that is fine. And in terms of
evenings what is your – what is your assessment? How
much time or would it depend on each day how much time do
you think we might use after four? An hour – two hours?

ADV KENNEDY SC: I would think an hour. We should – we
should be able to finish by five o'clock latest.

CHAIRPERSON: Oh.

ADV KENNEDY SC: On those days if we starting at nine.

CHAIRPERSON: Okay.

ADV KENNEDY SC: But it always depends.

CHAIRPERSON: Ja. No, no that is fine.

ADV KENNEDY SC: A witness may take longer than we expect as has already happened today.

MR KNOETZE: No, no that is helpful enough. So then tomorrow we will start at ten and go up to five but if we need
10 to go beyond five we will go beyond five.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Thursday we will start at nine go up to five if necessary – go beyond – beyond five. And Friday we can start at nine as well.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Ja. Okay alright. Let us adjourn for lunch and then we will resume at five past two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES:**

CHAIRPERSON: Are you ready Mr Kennedy?

ADV KENNEDY SC: [No audible reply]

CHAIRPERSON: Yes.

ADV KENNEDY SC: Okay. With your leave may we now call our next witness, Mr Sipho Mkwanazi?

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

REGISTRAR: Please state your full names for the record?

WITNESS: Siphon Mkwanazi.

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

WITNESS: No.

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

10 **WITNESS:** Yes.

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

WITNESS: So help me God.

SIPHO MKWANAZI: (d.s.s.)

CHAIRPERSON: I see Mr Kennedy that this affidavit does seem to be an affidavit because there is a commissioner of oaths at the end.

20 **ADV KENNEDY SC:** I am sorry, Chair. I cannot hear you.

CHAIRPERSON: Oh. I am saying, I see that this does seem to be an affidavit because there is a commissioner of oaths at the end but it does not start the way an affidavit normally starts.

ADV KENNEDY SC: No.

CHAIRPERSON: Namely: I hereby state under oath.

ADV KENNEDY SC: That is so Chair.

CHAIRPERSON: Ja, but it is so okay. I think he will confirm it under oath today.

ADV KENNEDY SC: Yes, if may? Thank you, Chair.

CHAIRPERSON: Ja, it is just that these things - sometimes you never know if they will have any legal impact.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: Ja, okay alright.

10 **ADV KENNEDY SC**: Thank you, Chair. I will seek to address that point.

CHAIRPERSON: H'm.

ADV KENNEDY SC: Chair, so just for the record. May I just indicate that Mr Mkwanzazi's affidavit appears in Denel's Bundle 07.

CHAIRPERSON: Yes.

ADV KENNEDY SC: As Exhibit W19.

CHAIRPERSON: H'm.

20 **ADV KENNEDY SC**: Chair... Sorry, may I just have a moment?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: Chair, the affidavit originally provided by Mr Mkwanzazi had all the annexures referred to in his affidavit, including some extremely voluminous annexures which appeared to – my colleagues within the legal team, to

be sometimes necessary, sometimes relevant but sometimes not.

So in order to try and reduce the volume of documents but to still keep what was relevant, some documents, as the Index page indicates, have not been attached in the copy that serve before you Chair but they are available should they be required.

CHAIRPERSON: Okay. But does that mean there are some annexures that are being referred to in the affidavit of – in
10 the affidavit but which are not attached to it?

ADV KENNEDY SC: Yes, not attached in this copy. Yes, Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Some of it had been attached but simply in a form of extracts, although, originally, he gave us the entire document.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So we – my learned colleague trimmed it down to just the relevant extract. But in some cases,
20 some documents, as will appear from the context, really do not appear to be relevant for your purposes of the Commission.

CHAIRPERSON: Ja.

ADV KENNEDY SC: So my learned friend took the liberty of excluding those but they are available should they be

required Chair.

CHAIRPERSON: Okay alright. What I am trying to establish is whether, when one reads the affidavit, one might think that an annexure is here but it actually is not here.

ADV KENNEDY SC: There is an index. If I can take you to page 2 which – in which my learned colleague has – Anfred(?) has reflected in a note in the index what is attached and what is not or whether it is an extract. So for example, if you see at page 2, Annexure A really comprises
10 extracts, Annexure B. It has not been attached. And what you will find then, is simply a page to that in the relevant order.

CHAIRPERSON: I think what will be necessary in addition to us mentioning in the index that a particular annexure is not attached, if it has not already been done, is that where the annexure is supposed to have been attached, where it is supposed to have appeared in the – among the annexures, there should be a note that is saying this annexure has been – has not been attached because if – it seems irrelevant.

20 **ADV KENNEDY SC**: I agree.

CHAIRPERSON: So in other words, when somebody reads the affidavit, I want to know that if they come across an annexure and they think they want to see the annexures, when they go to the annexures, there must be something that tells them if it is not there.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Here is the reason why it is not there. But obviously, any annexure that has not been included, which is not referred to in the affidavit, that is fine.

ADV KENNEDY SC: Yes.

CHAIRPERSON: So I am only concerned about situations where the affidavit does refer to an annexure and maybe saying the annexure is attached but if you go to where you would expect it to be, you do not find it.

10 **ADV KENNEDY SC:** Yes, I am afraid that has not appeared so far in this bundle but my learned friend will attend to it.

CHAIRPERSON: Ja, they can do that so that there is a page ...[intervenes]

ADV KENNEDY SC: Indeed.

CHAIRPERSON: ...which says this annexure has not been attached for reason A, B, C, D.

ADV KENNEDY SC: Yes. Alright. Thank you, Chair.

CHAIRPERSON: Okay alright.

20 **ADV KENNEDY SC:** So even with the exercise my learned friend has rather laboriously been able to do, to her credit.

CHAIRPERSON: H'm.

ADV KENNEDY SC: But the annexures that have to be before you ...[intervenes]

CHAIRPERSON: H'm.

ADV KENNEDY SC: ...are still fairly voluminous but there

were many thousands of pages already and we wanted to spare you.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Spare you that.

CHAIRPERSON: Yes, okay alright.

ADV KENNEDY SC: Thank you, Chair. May I then put the formal questions to the witness to then lead up to my asking for leave to have it admitted?

CHAIRPERSON: [No audible reply]

10 **EXAMINATION BY ADVOCATE KENNEDY SC**: Good afternoon, Mr Mkwanazi

MR MKWANAZI: Good afternoon.

CHAIRPERSON: We have done the oath, right?

REGISTRAR: [No audible reply]

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Thank you for joining the Commission and assisting us as the legal team previously. Is it correct that you have assisted the Commission previously by providing an affidavit?

20 **MR MKWANAZI**: Yes, it is correct.

ADV KENNEDY SC: And if I can take you in this bundle, Denel 07 at page 003. If you look at the page numbers on the top left, not the top right but the top left. You go to... left three. Do you have that?

MR MKWANAZI: [No audible reply]

ADV KENNEDY SC: Is that the first page of your affidavit?

CHAIRPERSON: Look at the black number, not the red numbers.

MR MKWANAZI: Yes.

ADV KENNEDY SC: And if I... And so you confirm this is your affidavit?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And if I can take you to page 24.

MR MKWANAZI: [No audible reply]

10 **ADV KENNEDY SC:** Do you have that?

MR MKWANAZI: Yes, I have got page 24.

ADV KENNEDY SC: Yes. About half-way down there is a signature above the typed word deponent. Is that your signature?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And did you sign this in front of a commissioner of oaths?

MR MKWANAZI: Yes, Chair.

20 **ADV KENNEDY SC:** Right. Now, the Commissioner has signed and put in a rubberstamp below a notation that says:

“Thus sworn and signed before me at Pretoria the 23rd of October 2020.

The deponent has acknowledged that he knows and understands the contents of this affidavit.

He has no objection to taking the prescribed oath

which he considers binding on his conscience.”

Did you, in fact, take the oath on that occasion?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And the Learned Chair has already pointed out that the affidavit does not start with the normal few words that an affidavit introduces the affidavit. But can I just ask you to confirm.

I just remind you, you are under oath again now, having had the oath administered to you this afternoon by the
10 Learned Chairperson’s registrar. Do you confirm under oath now that you are familiar with what is contained in this affidavit?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And you confirm that you are satisfied that the content are true and correct as far as your knowledge goes?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: Right. Thank you. Chair, we would then ask formally for leave to introduce the affidavit of
20 Mr Mkwanazi that appears in Denel Bundle 07 from page 3 with its annexures and that should be admitted as Exhibit W 19.

CHAIRPERSON: The affidavit of Mr Sipho Mkwanazi starting at page 3 is admitted as Exhibit W19.

AFFIDAVIT OF MR SIPHO MKWANANZI IS ADMITTED AND

MARKED AS EXHIBIT W19

ADV KENNEDY SC: Thank you, Chair. Now Mr Mkwanazi, I am going to be brief as I can so that we do not spend too much time on detail that is all in your affidavit. We do not have necessarily have to go into fully in oral evidence because your oral evidence will be focused on particular areas of interest to us. You are currently employed... If I may lead the witness on what should be non-controversial items Chair?

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Ja.

ADV KENNEDY SC: You are currently employed by Armscor, is that right?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And your current title? Do you still hold the current title of acting Group Executive Acquisition and Supply Chain Management?

MR MKWANAZI: Correct Chair.

20 **ADV KENNEDY SC:** And how long have you been acting in that position?

MR MKWANAZI: Since 2015.

ADV KENNEDY SC: As Acting Group Executive?

MR MKWANAZI: Yes.

ADV KENNEDY SC: Right. And ...[intervenes]

CHAIRPERSON: Sorry, acting since 2015?

MR MKWANAZI: Yes, around 2015/2016.

CHAIRPERSON: Oh, that is a long time of acting. I guess that is not your fault. [laughing]

MR MKWANAZI: [laughing]

CHAIRPERSON: Yes.

ADV KENNEDY SC: And what is your normal current job title apart from Acting Group Executive? In other words, if you leave out the acting position, what is your normal
10 appointment title?

MR MKWANAZI: I am responsible for the Acquisition Department and Supply Chain Management.

ADV KENNEDY SC: Right.

MR MKWANAZI: Which is composed of a number of divisions in Acquisition starting from the landlord system right up to the aeronautics as well as the novel system and the common systems.

CHAIRPERSON: Just one second. Where the witness is, it is a little darker. If there is a way of making it a little light.
20 The relevant people can try and do that. Yes, okay let us continue.

ADV KENNEDY SC: Can I just ask you Mr Mkwanazi? When you speak, just speak up clearly.

MR MKWANAZI: Okay.

ADV KENNEDY SC: And try and sit fairly close to the mic.

And may I ask you to do something which may be a bit difficult but will help the Chair a great deal and also the recording.

And that is, although I am going to be asking you most of the questions, the Chair may want to ask you his own questions at times.

But even when I am asking you questions, can you try to direct your face and your voice towards the Chair?

So rather look at the Chair and try and speak into the
10 microphone rather than looking sideways as you are at the moment. If you can try and remember that.

MR MKWANAZI: Okay.

ADV KENNEDY SC: Okay thank you.

CHAIRPERSON: And another advice, when you agree, a nod is not good because the recording machine will not record that. So you need to say yes when you agree. Okay let us continue.

ADV KENNEDY SC: Right. Thank you, Chair.
Mr Mkwanzazi, now in your affidavit you have set out your
20 own involvement related to matters that are of interest to the Commission and you deal first with a background and history relating to the Hoefyster Contract.

If I can take you to page 4. I am sorry, to page 6. And that is your background section, dealing with the Hoefyster Project.

The Chair has already heard some evidence about this. So it will be familiar to him. But I would like you to just confirm in relation to Armscor and SANDF, my understand – and please correct me if I am wrong – is that Armscor is state-owned. Is that correct?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And it is... Just explain what it is? What role it plays in relation to the National Defence Force and the Republic as a nation?

10 **MR MKWANAZI**: Armscor is an acquisition agent for the Department of Defence. We do acquisition as well as the procurement on behalf of the Department of Defence on all their military requirements. We do not do acquisition for common, you know, items. Only anything that is military what we call Category 1 Military Equipment.

CHAIRPERSON: And what is the difference between Armscor and Denel? Because as I understand it, Denel's existence is largely connected with the South African Defence Force as well, the National Defence Force.

20 **MR MKWANAZI**: Armscor is an acquisition agent. Meaning, that we do the procurement as well as the acquisition. While Denel is a state-owned company that does manufacturing.

CHAIRPERSON: Manufacturing?

MR MKWANAZI: The manufacturing, yes.

CHAIRPERSON: Oh.

MR MKWANAZI: So the relationship between us and then and they are our supplier.

CHAIRPERSON: H'm. You work closely together?

MR MKWANAZI: We work closely together as far as them being our supplier or service provider.

CHAIRPERSON: So most of the times when Armscor seek to acquire military equipment of the South African National Defence Force, most of the times, Denel would feature?

MR MKWANAZI: Yes, Chair. Denel would feature in terms
10 of our order book ...[intervenes]

CHAIRPERSON: Yes.

MR MKWANAZI: ...Denel is composed of about 42\$ of my order book.

CHAIRPERSON: Yes, okay alright. Thank you, Mr Kennedy.

ADV KENNEDY SC: Thank you. Now, Mr Mkwanazi. You deal in paragraph 4 with pre-contracting processes and you deal with a general process that has to be followed. Is that in terms of Armscor own way of procuring.

20 **MR MKWANAZI:** Chair, under paragraph 4. The first – the part of that which is the required operational capability. It is done by the SANDF. That is when they state their requirement. Then 4.2 which is the soft target. It is also the Department of Defence.

The above requirement is the Department of Defence but

then our involvement also starts in that particular one where we start receiving the requirements from the Department of Defence. And then we start with our process of doing acquisition.

ADV KENNEDY SC: Now you have focused in what follows, particularly on page 9. You have dealt with the process that was followed specifically between Armscor and Denel Land Systems relating to the Hoefyster Project.

And you refer to the first phase, Phase 1. And there was
10 to be a Phase 2 as well. Can you tell the Chair please what your own role was in relation to this procurement process for the Hoefyster Project?

MR MKWANAZI: For the first phase in terms of time when the whole process took place, right up to the process of placing the order, I was not participating. I was not in the Department of Acquisition. I only came to Acquisition around 2006. That is when I joined Acquisition. And then meaning that I then start in 2006 when the project already now was in the process of being contracted.

20 **ADV KENNEDY SC:** Right. Now you then also deal with the Tarot Contract. Were you involved in the procurement of Tarot Equipment?

MR MKWANAZI: No, I was not. That was before my time.

ADV KENNEDY SC: Right. So if we can take you, for example, to page 11. You deal in paragraph 5 with the

request for offer for the so-called RFO Process. And what does that relate to specifically?

MR MKWANAZI: A Request for Offer is when a tender is being sent out where it effectively says the Request for Offer.

ADV KENNEDY SC: Right. Now you said that you were not involved until a certain stage at Armscor. When you deal in this Request for Offer Process and here, of course, we are dealing with Armscor procuring from a supplier. And we
10 know, ultimately, it procured or awarded a contract for the supply to Denel. You refer to various options being explored in 5.2. Were you part of that process?

MR MKWANAZI: No, I was not part of that process.

ADV KENNEDY SC: So when you deal with this section, are you just dealing with your knowledge that you acquired after you joined Armscor? You were not personally involved but you picked that knowledge up from other sources.

MR MKWANAZI: Yes, that was mainly from the documents within the organisation.

20 **ADV KENNEDY SC:** Right. Now you deal in paragraph 5.3 with the RFO having gone out and then you had a bid – and then Armscor had a Bidders Conference. Would this be the sort of meeting when potential bidders are invited to come and attend a session with the entity, in this case Armscor, that wants to put out the tender.

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And you mentioned that some of the potential bidders raised concerns. What did that relate to?

MR MKWANAZI: According to the documents, some of the suppliers raised a concern Chair that they could not gain access to some of the documents that they are required to be able to submit a tender.

ADV KENNEDY SC: And what in particular were they concerned that they were not having access to?

10 **MR MKWANAZI:** They complained that when they required the information that is within Denel, Denel refused to supply the information to them.

ADV KENNEDY SC: Now there is a reference in these pages to data packs. Are you aware of any concerns relating to data packs?

MR MKWANAZI: Yes, Chair. The data packs will be the kind of information that was produced during the time when Denel was doing the concept phase of the tarot.

20 **ADV KENNEDY SC:** And so some of the potential bidders were expressing concern that they were not having access to data packs. Is that right?

MR MKWANAZI: Yes. Yes, correct.

ADV KENNEDY SC: Did you understand from your investigation or from what information you had available to you, who was granted access to the data packs and who was

not?

MR MKWANAZI: What transpired was the fact that Denel was in an exclusive agreement with the EX company which is a foreign company. So as a result of that, Denel was not in a position now to disclose that information to other potential bidders.

ADV KENNEDY SC: So it was an intellectual property issue?

MR MKWANAZI: It was the information that they require to
10 be in a position to submit a tender.

ADV KENNEDY SC: What ...[intervenes]

MR MKWANAZI: Such as the data packs and some of the technical information that is required.

ADV KENNEDY SC: Yes. Now Denel, we know ultimately, go the contract but you mention in your affidavit that ultimately only one offer – if you look at 5.4, notwithstanding the open-bid process, only one offer was received from Denel.

MR MKWANAZI: Yes, Chair.

20 **ADV KENNEDY SC:** Now Denel had the information. If we can go back to paragraph 5.4. This is what it says. If I may read it briefly into the record.

“During the Bidders Conference, various potential bidders raised a concern that they did not have access to the data packs and information of the

tariffs that have been developed by Denel during the concept stages.”

So Denel had developed the actual concept. Is that right?

MR MKWANAZI: Correct, Chair.

ADV KENNEDY SC: And Denel was now one of the potential bidders, correct?

MR MKWANAZI: Correct.

ADV KENNEDY SC: And then you say:

10 “The IP (The Intellectual Property) is jointly owned by Armscor and Denel. The matter was reported to the Board of Directors of Armscor who instructed that a letter be written to Denel, requesting them to avail the documents to potential bidders. Indications at that stage were that Denel had entered into an exclusive agreement with European Astronautic Defence and Space Company, EADS and Patria which included the data packs.”

And then you proceed to say:

20 “Notwithstanding the Open Bid Process, only one offer was received form Denel.”

Now your affidavit does not indicate whether Denel carried out the request or instruction that it should, as you put it, avail the documents to the potential bidders.

You simply say that there were indications that Denel

had an exclusive agreement relating to the data packs. What did you understand the outcome of the Armscor requested Denel to release the information to be?

Did they release the information to other potential bidders?

MR MKWANAZI: From the look of things, it was not released Chair.

ADV KENNEDY SC: It was not...?

MR MKWANAZI: It was not released.

10 **ADV KENNEDY SC:** It was not released?

MR MKWANAZI: Yes.

ADV KENNEDY SC: And did you, in fact, have information to the effect that gave an explanation as to why they did not release it?

MR MKWANAZI: I could not find the information. Although, according to the information there was a letter that was written From Armscor to Denel requesting that Denel releases the information but I couldn't find any letter information that responded to that specific letter.

20 **ADV KENNEDY SC:** In other words, the response from the now back to Armscor?

MR MKWANAZI: Yes.

ADV KENNEDY SC: So on what basis do you say there were indications at that stage that Denel had entered into an exclusive agreement with EADS and Patria which included

the data packs? where did you get that information from?

MR MKWANAZI: That Information was a submission that was prepared by the Acquisition Department to the board informing the board that it looks like there is going to be a single source in view of the fact that Denel is refusing to supply other potential bidders with the data packs and technical information.

ADV KENNEDY SC: Do you ...[intervenes]

MR MKWANAZI: And the board took note of that.

10 **ADV KENNEDY SC:** Did the board disagree with the attitude of Denel as far as you are aware?

MR MKWANAZI: The board disagreed to an extent that the board instructed the CEO that he writes a letter that Request to Denel to release all the information that is required by other potential bidders.

ADV KENNEDY SC: Yes, but it appears that that may not have happened and did the board not follow up as far as you are able to say from your knowledge of the documents and the information?

20 **MR MKWANAZI:** From the documents it was reported that the letter was seen but I couldn't find any information to the Effect of the fact of what was Denel's response to the letter.

ADV KENNEDY SC: Yes. And then you proceed at 5.4 to say that the Open Bid Process then went ahead At anyone offer what received and that is from Denel.

Do you believe that there is a possibility is that in fact the reason why Denel was the only horse in this race, the only party that submitted an offer even though other potential bidders had shown an interest was because they had not been given information that they could meaningfully tender on?

MR MKWANAZI: Yes, Chair. But I could find two reasons. the other reason was the fact that two local suppliers requested that the closing date be extended but that was
10 submitted also to the Steering Committee. and according to the minutes of that Steering Committee, that request was refused by the client which is the SANDF(?) in view of the fact that requirement, it was felt that it is urgently required.

They cannot afford to extend the closing date for another year. So those two companies also they couldn't submit their tender plus the fact that that the others had complained as a result of not having the technical information.

ADV KENNEDY SC: Right. Then you refer to the
20 evaluation at paragraph 5.5 and you have attached various documents or refer to various documents. and then you refer specifically to the tarot specifications and the vehicle specifications and then specific specifications having been send out, at the foot of page 12. Do you see that?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And then you set out in paragraph 5.7.1 to 9 these specific approved specifications that was set out. Again, Were you involved personally in that?

MR MKWANAZI: No, Chair.

ADV KENNEDY SC: Again before your time?

MR MKWANAZI: Yes.

ADV KENNEDY SC: Are you able to help the Commission with any comment as to whether you believe the process that was followed was proper and fair as far as you were
10 able to pick up?

MR MKWANAZI: I think this was during the earlier stages of the tendering process when they were preparing in terms of the specification. So as it was – the process was fair in terms of – the only company that was having that capability at the time, it developed a concept of the turret as well as the platform were those two companies that were contracted to do the work.

ADV KENNEDY SC: Yes. But is there not a possible view to be formed in relation to this that it was unsatisfactory,
20 the result that came out that there was effectively no competition because Denel could only be the – could be the only bidder in light of the fact that it had the intellectual property with Armscor? Armscor, initially, as we know, the board said that they should make their data packs and the information in that available to the other

competitors.

MR MKWANAZI: I think at the time when this was done, Chair, it was not, you know, envisaged that there is going to be a problem of Denel getting into an exclusive agreement with the company.

ADV KENNEDY SC: At the time it may not have been envisaged.

MR MKWANAZI: Ja.

ADV KENNEDY SC: And in fact you were not involved at
10 the time yourself but you then took up a senior position
within Armscor and have picked up information and
formulated a view. You may not at the – you would not
have at the time have envisaged there might be a problem
but looking backwards, the benefit of hindsight and with
the fact that we are asking you this question as an expert
in the field of procurement management, do you have any
view as to whether in fact there was any irregularity?

MR MKWANAZI: Chair, I would not say there was any
irregularity because the reason being that when such has
20 happened, normally then when we go out on a tender you
would make it a point that the information is available to
potential bidders. One way of doing that would be to put it
as part of the request for offer that the information will be
customer furnished information meaning that it will be
supplied to whoever requests for it but that was not done.

ADV KENNEDY SC: But the question is, should – I beg your pardon?

CHAIRPERSON: Yes, no, no.

ADV KENNEDY SC: Thank you, Chair. The question is, should it not have been done?

MR MKWANAZI: I would say it should have been done to avoid this situation.

ADV KENNEDY SC: Yes, presumably are well-aware as an expert in the field of supply chain management of
10 Section 217 of the constitution and the PFMA, not so?

MR MKWANAZI: Yes.

ADV KENNEDY SC: And they, of course, require that when there is procurement of any goods and services in the public sector that entity, in this case Armscor, should have in place a system which it then gives effect to which ensure the constitutional objectives that the process be lawful there, competitive, cost effective and equitable. It just seems, Mr Mkwanazi, and I am just going to put to you a possible view that can be placed on an outside observer
20 on the situation that the result of what was being done, denying that information in the data packs action or omission on the part of those involved at Armscor before you were involved, seriously prevent or undermined the possibility of it ever being competitive, not so?

MR MKWANAZI: Correct, Chair.

ADV KENNEDY SC: Let alone transparent and cost-effective, correct?

MR MKWANAZI: Correct.

CHAIRPERSON: Do you know based on the documentation that you have had access to whether Denel furnished Armscor with any grounds or reasons for them not availing the packs to the other potential bidders and if you are aware what the reasons were, are you able to say whether they were valid reasons for them refusing?

10 **MR MKWANAZI:** I am not aware, Chair.

CHAIRPERSON: Not aware what their reasons were?

MR MKWANAZI: No, Chair.

CHAIRPERSON: And this might just go back to the point that Mr Kennedy was making to you and I think you agreed with it but it is just that earlier on I understood you to have thought that – to have expressed a view that the process was fair. If Armscor had taken the view that this was a case where if at all possible different potential bidders should have the opportunity to bid then if they ended up
20 with one bidder, namely Denel because Denel refused to act in accordance with the request or instruction or request from Armscor then definitely from the point of view of Armscor the process must have – should have been seen as unfair. Would you agree with that or would you like me to repeat it?

MR MKWANAZI: Repeat it, Chair.

CHAIRPERSON: Ja. If Armscor had taken the view that they wanted to make a decision on this tender with the benefit of different leaders having put in their bids and they had instructed or requested Denel to make the data packs available to other potential bidders so that Armscor could have the benefit of different bidders and Denel refused to make the data packs available to the other potential bidders then unless Armscor had been given good
10 reasons by Denel then Armscor should have viewed the process as unfair.

MR MKWANAZI: Chair, relying on the document information that I was relying on, I was not in a position to get to that conclusion.

CHAIRPERSON: Yes, but there were no reasons that you found furnished by Denel, is it not?

MR MKWANAZI: Yes, Chair.

CHAIRPERSON: So my proposition is, assuming that Armscor had not been furnished with any valid reasons by
20 Denel for not making the data packs available to the other bidders, potential bidders, then Denel should be expected to have regarded the process as unfair because no valid reasons had been provided. Obviously if there were valid reasons that were provided by Denel, the picture might change but if Armscor has the same information that you

have had access to then one would expect them to also have formed a view that this process was unfair.

MR MKWANAZI: Correct, Chair.

CHAIRPERSON: You would agree with that.

MR MKWANAZI: Correct.

CHAIRPERSON: Okay, alright. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. You see, it just strikes one as an outsider not involved in the process just as you came into Armscor not having yourself been
10 involved in the process, it just looks rather strange that Armscor understands that there is a problem initially, it understands quite correctly that only Denel has the information and but it would like competitive bids from a whole lot of other suppliers. They need the information and what seems to be to its credit, Armscor says well, Denel provide that information but then Denel does not seem to provide it, you are not aware of any reasons that were raised by Denel to justify that but most importantly, that no reasons seemed to have been raised with Armscor
20 for it to say okay, we accept you are not going to supply the information and what seems to be strange about the whole thing is that one bidder, Denel, that could stand to make millions of rands out of this contract is able to effectively stop anybody else even putting in a tender because they lack information that they have to get from

Denel, Denel is told by Armscor provide the information and Denel do not and they never go back to Armscor and justify it. And Armscor, in the process, seem to have allowed the situation to develop where one tenderer is able to eliminate the entire range of competition. Do you have any comment on what I have just put to you, whether you think it is a fair comment or not?

MR MKWANAZI: I would say it is a fair comment, Chair.

ADV KENNEDY SC: Yes. Thank you.

10 **CHAIRPERSON:** Tell me, have you had access to the minutes of the Armscor board? I am assuming it would have been the Armscor board that was to make a decision on this. Have you had access to the minutes of the meeting where they made the decision to grant this to Denel or access to the minutes of some of the meetings that happened after they would have expected Denel to have complied with their request or to have furnished reasons for not complying? What I am looking for is whether you have had access to a meeting where the

20 Armscor board would have discussed the issue to say what happened to the request we said should be conveyed to Denel to share the information with other potential bidders? What has Denel said - if they have not done so, what is the reason? Have you had access to those minutes?

MR MKWANAZI: No, Chair.

CHAIRPERSON: Would it be somebody else who would have easy access to those minutes and not you or you could also have access if you wanted to?

MR MKWANAZI: Chair, I would then have to go back and check from the archives all the minutes that followed that particular one.

CHAIRPERSON: Yes.

MR MKWANAZI: And I am not sure whether I will find
10 anything.

CHAIRPERSON: Ja, it would be good to look at the minutes of the meeting where the board, if it was the board, where they made the decision that Denel must be requested to avail this information to other potential bidders and to look at the minutes that followed up to whatever time made where the decision was taken to grant the tender to Denel and see whether at any stage this issue was revisited to say why did Denel not comply with our request because I would imagine that a bidder would
20 want to comply with the request from a company where they seek to get business from particularly if they do not have valid reasons. So, in other words, it would be good to know whether was this issue ever followed up by Armscor, what did they do about it, what did they find in terms of information or is it something that was swept

under the carpet because I would imagine that even at the time of them taking the decision whether to award Denel the tender I would expect that the board will say hang on, before we can award this tender, why did you not comply with our request? Why did you not comply with our request? And, I mean, I do not know but I can imagine that with some boards they might say well, you know, we are not going to award it to you because you are preventing other competitors and we want competition, we are not
10 going to award it to you unless you give us valid reasons why you did not comply and if you do not have valid reasons we are not going to give this award to you without competition. You understand that?

MR MKWANAZI: I do, Chair.

CHAIRPERSON: Ja and you say you can follow up and check minutes?

MR MKWANAZI: Yes, Chair.

CHAIRPERSON: Okay, ja. No, that would be helpful. Unless, Mr Kennedy, there is another witness who covers
20 what I was talking about.

ADV KENNEDY SC: Yes, thank you. My attention is drawn to page 453. If I can ask the witness to turn to that?

CHAIRPERSON: Page?

ADV KENNEDY SC: 453. Do you have it?

MR MKWANAZI: 453, yes.

ADV KENNEDY SC: Now this appears to be a submission to the Armscor board.

MR MKWANAZI: Yes.

ADV KENNEDY SC: And if you look at the following page 454, paragraph 5, that referred to the current status of the procurement process at that stage.

MR MKWANAZI: Yes.

ADV KENNEDY SC: The report is in fact headed:

“Notification on project status”

10 And near the bottom it says – sorry, in fact the second unnumbered paragraph in paragraph 5 – or in fact the first, the first three.

“RFA being issued 23 companies, not all have responded. Various people such as Brazilian Army has shown interest.”

Etcetera. In the next paragraph:

“At this stage the consortium consisting of Denel, EADS and LMT is the only consortium that has confirmed its intention to participate.”

20 Are you familiar with this report?

MR MKWANAZI: Yes, Chair, that is the document I said I looked at.

ADV KENNEDY SC: Yes. And then on the next page, paragraph 7, it says at the foot of the page, heading:

“Action taken by Armscor.

A letter was sent by the Chief Executive Officer of Denel requesting Denel to make the LIW turret available to potential offerors who want so submit offers based on vehicle systems equipped with the LIV (sic) turret. See copy of letter attached.”

We will look at that in a moment. Does that relate to the information that would have been contained in the data packs?

MR MKWANAZI: Yes, Chair.

10 **ADV KENNEDY SC:** And the paragraph – at page 456. It says:

“Conclusion. Armscor acquisition department wishes the Armscor board of directors to take note of the possible single offer situation that may arise on the grounds of the foregoing report.”

Was that somebody who was in the department before you joined it in acquisitions?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: The general manager. Do you know
20 the name of that person?

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: Do you recognise his or her signature? Who is that?

MR MKWANAZI: Mr Gideon Smith was the general manager of ...[intervenes]

ADV KENNEDY SC: Smith?

MR MKWANAZI: Smith, ja.

ADV KENNEDY SC: Okay. And then if I can take you to page 462? Do you have that?

MR MKWANAZI: Yes.

ADV KENNEDY SC: Now that appears to be a letter from Armscor as far back as July 2004.

MR MKWANAZI: Yes.

ADV KENNEDY SC: From its general manager acquisition, that is the very same Gideon Smith you referred to, correct?

MR MKWANAZI: Yes.

ADV KENNEDY SC: And it is addressed to the CEO of Denel.

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: And that refers to the vehicle of relevance. If I can just pick up on – on page 462. Yes, the second paragraph:

20 “A potential contender for this new vehicle product system has written an official letter to Armscor to inform us that it has come to their attention that the LIW two man turret would, as a principle, be solely dedicated to EADS Patria acting as the Denel partner in the Hoefyster project.”

It appears to be a quote from the potential bidder who has

raised this query and then the – then Mr Smith continues, the third paragraph:

10 “The potential contender therefore requested us, Armscor, to provide them with the initial 2 man 30 mm turret developed with defence funding, i.e. the turret which was exhibited at the September 2002 Aero Africa Defence Show in order for them to verify whether this turret could fit into their vehicle platforms and could be developed to comply with the project Hoefyster requisitions. Armscor is, however, strongly opposed to the idea that any locally developed intellectual property which could give our local industry and/or South African National Defence Force a winning edge is transferred to a foreign entity without full protection of rights.”

And then it queries whether the potential contender’s statement is correct, asks for clarity and then at the foot of the page, the last paragraph:

20 “Should any single offer situation arise from our current request for offer and it is not considered to be the optimum solution, Armscor may well consider entering into another round of tender invitations in order to select the most cost effective system. I must also mention...”

This is the top of page 463:

“...that Armscor has placed orders for millions of rands in creating and maintaining the capabilities at LIW and recently placed orders with Denel (Pty) Ltd trading as LIW to the value of R28 765 000 for project Hoefyster turret concept development and turrets demonstrators as well as orders to the value of 8.6 million for medium turret technology. Intellectual property that was created in LIW through these investments is extensively used in a prototype turret currently being prepared by LIW for physical evaluation purposed in terms of our request for offer. Armscor also provided authorisation to LIW for the borrowing of certain hardware from Armscor in order to assist LIW in the preparation of this prototype turret. In view of the above, Armscor kindly requests that Denel make the LIW prototype turret available to potential contenders who wish to include this turret in an offer for the new generation industry combat vehicle product system to Armscor.”

It says:

“Please note the request is directed to you without prejudice to any of Armscor’s rights.”

So is it based on this that you have said in your affidavit

that you are aware that a letter was sent before you time by Armscor to the Denel CEO specifically asking him to make available this information?

MR MKWANAZI: Correct, Chair.

ADV KENNEDY SC: And the purpose of that information to be supplied would be to enable other potential bidders to see can we manufacture this? Now we know that it involves, can we manufacture it and put in a tender?

MR MKWANAZI: Correct.

10 **ADV KENNEDY SC:** And that would have then have ensured a competitive process.

MR MKWANAZI: Correct, Chair.

ADV KENNEDY SC: But the upshot of whatever happened or did not happen here is that it seems the marketplace were not given information that would have enabled them to take part in this competition and that Denel alone then submitted an offer.

MR MKWANAZI: Yes, Chair.

20 **ADV KENNEDY SC:** And that was after Denel, it appears, decided not to accede to the request made by Armscor itself that it should make that information available.

MR MKWANAZI: Yes, Chair.

ADV KENNEDY SC: It just seems to possibly suggest an interpretation and that is that was this not a predetermine process? Was this not just a sham or a façade aimed at

ensuring that Denel would get the business at least from Denel's side in not making available the information and then perhaps assisted by Armscor in not following up to see whether they had made available the information?

MR MKWANAZI: I would not say that, Chair, in view of the fact that I could not find information to the effect that they did not respond to this particular letter.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Well, there is something I find strange
10 here. I do not know whether you also find it strange, namely that the letter to Denel, to which Mr Kennedy has drawn our attention, from Armscor which requested Denel to make the information available to potential – other potential bidders, is dated 20 July 2004 and the submission to the board of Armscor which sought to alert the board that although the board wanted a multi-source of a process, it could end up with a single source offer which is – that is the submission at page 453 that Mr Kennedy referred us to earlier, 453. Whoever prepared this
20 submission, it is strange that after stating in paragraph at page 455 the fact that Denel was asked to make available to – the information available to potential – other potential bidders, it does not tell the Armscor board what has happened, has Denel complied with that request? If Denel has not complied, what explanation or reasons they have

given, it just moves or he or she, I do not know, moves quickly after stating that very important fact to saying – to the conclusion and the conclusion is Armscor acquisition department wishes the Armscor board of directors to take not of the possible single offer situation that may arise on the grounds of the foregoing which is – what he leaves out, what he omits seems to me to be something very important because the board – he should have expected that the board would want to know was the letter sent out
10 to Denel, have they responded, what did they say? And if they do not comply with our request, what reasons have they given? That is not done in this memo. Do you see that?

MR MKWANAZI: Yes, Chair.

CHAIRPERSON: Did you find that also strange or not really?

MR MKWANAZI: I find it strange as well but, like I said, when I checked the information in terms of the response, I could not find any information, you know, that they
20 responded to that.

CHAIRPERSON: Yes because the purpose of this submission, it says right at the top, at the beginning of the submission:

“The aim of the submission to notify the Armscor board of directors of the possibility that the current

multi-source offer process may materialise in a single source offer.”

So the most important thing that they would want to know is we know that if Denel refused to make information available to other potential bidders we would end up in this situation, that is why we requested that Denel should make the information available. If we are now going to – if there is a possibility we are going to end up with a single offer situation, a single source offer, the board surely would
10 want to know why has the board – has Denel not complied with our request? If so, why?

And whoever was writing the submission should have checked because that must be the most important information they would have wanted to know so that if they were not convinced of the soundness of Denel’s reasons for not making the information available, they could decide what action to take. Indeed, in the letter that was sent to Denel which – to which Mr Kennedy has drawn our attention, they make it clear to Denel that if we have a
20 single source offer we could rerun the tender. That is how important it was to the board that there be a multi-source process of a process. You understand where I am coming from?

MR MKWANAZI: Yes, Chair.

CHAIRPERSON: And it just seems very strange to me

that the person who is telling them about the possibility of them ending up with a single source offer does not say – does not deal with this very important aspect. Okay, Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair, just to – if we can just pick up on that line of questioning. If I can ask you please to turn to page 229? 229 is the start of a set of minutes that you have referred to in your affidavit. Do you have 229?

10 **MR MKWANAZI:** Yes, Chair.

ADV KENNEDY SC: These are minutes, it seems, of a meeting of the project Hoefyster steering committee meeting, number 17, held on the 9 September 2004 and there are various generals and rear-admiral and colonels and so forth and various officials of Armscor. If I can take you to page 231, paragraph 2.5.

MR MKWANAZI: Page 221?

ADV KENNEDY SC: 231, still in the same minutes, paragraph 2.5, do you have it? Mr Mkwanazi?

20 **MR MKWANAZI:** Paragraph 2.5? Yes I do Chair.

ADV KENNEDY SC: It says notice to Armscor Board of Directors, I will read out if I may the relevant portions.

“Armscor Acquisition Department made a submission to the Board regarding a possibility of a single source offer being submitted by the 24th of

February 2005, the following were mentioned or discussed. The CEO of Armscor, Mr H S Thomo, discussed the turret issue with Mr V Moche from Denel, Mr Moche confirmed the agreement with EADS as well as the involvement of local companies like Alphas OMC and LMT as part of the Denel offer. The value system does not provide for a single offer since price cannot be assessed in a comparative manner. Cost could be a problem but can be addressed through comparison with historical data as well as through negotiations with the contractor. Mr Goosen stressed that it was never indicated to any foreign contenders that LIW Turret would be supplied CFI.”

And then Colonel Kotze referred to the influence of slippage in time scales etcetera, but what some people seem to have been alive to is a serious concern that if you only have, if it turns out to be only one supplier or potential supplier that puts in a tender it is obviously impossible to compare prices if there is no comparison, there is nobody, only A submits a tender, B, C and D haven't submitted a tender so you can't compare A's price with anything. Would you agree with me Mr Mkwanazi that competitiveness, if in fact the market place is such that other people can make a particular item is very important.

MR MKWANAZI: Yes Chair.

ADV KENNEDY SC: And then there's the concern raised that foreign bidders were not invited. Can I ask you, we are asking these questions because you are the current acting head at Armscor and we appreciate it is difficult for you because you have inherited a situation that has been created by others and we simply ask you to comment on what you have found since you got there, but on that score could I ask you what would you say would be the correct
10 approach for Armscor procurement people such as yourself in a position that you now occupy, if you had occupied it at the time and you had been advising senior officers within Armscor as to the correct process, what should have been done here do you believe in relation to the turret procurement?

MR MKWANAZI: In view of the fact that Denel was involved in terms of development the turret and the development was paid by Armscor, meaning that Denel and Armscor were sharing the IP. What I would have done was
20 to make it a point that as part of the RFO they include the information that was required by the other suppliers, even if we don't include it in the documents but we refer in that documents that it will be customer furnished information meaning that as and when requested we will supply it to them.

ADV KENNEDY SC: Could it be possible that Denel may have had a legitimate reason not to because it was the part owner of the IP?

MR MKWANAZI: That was the background IP that Denel had and then the foreground IP it is owned by Armscor in terms of having paid for it, so I would have strongly negotiated that with the part that we have paid for that information should be made available to other potential bidders.

10 **ADV KENNEDY SC:** Alright, now I have just read out a portion that is in fact referred, costs, costs could be a problem, would you understand a comment such as that to mean if we only have one bidder putting in its tender there will be no competition and they may of course charge quite a high price because they will know nobody else or potentially know that nobody is able to compete and this might exceed budgets.

MR MKWANAZI: Correct.

20 **ADV KENNEDY SC:** You have referred in your affidavit, and I would like to take you back if I may, to paragraph 4.8.1 in your affidavit, I will give you the page in a moment, it is page 9. You see in 4.8 your affidavit says development plan, the DP was approved by the AAC what does that stand ...[intervenes]

CHAIRPERSON: Sorry what page is that Mr Kennedy?

ADV KENNEDY SC: 009, it is number 9.

CHAIRPERSON: 79?

ADV KENNEDY SC: No 09.

CHAIRPERSON: Oh page 9.

ADV KENNEDY SC: Simply page 9 yes.

CHAIRPERSON: You must just for consistency not mention the zero otherwise sometimes who read the transcript will think they must look for a zero whereas if we say – we don't say the zero.

10 **ADV KENNEDY SC:** Apologies Chair.

CHAIRPERSON: Okay, alright thank you.

ADV KENNEDY SC: Page 9 paragraph 4.8.

“The development plan was approved the AAC ...”

What does that stand for?

MR MKWANAZI: It is Armaments Acquisition Council.

ADV KENNEDY SC: Is that of the Defence Force or of Armscor?

20 **MR MKWANAZI:** No that one is for the Department of Defence, it is a Council that is chaired by the Minister of Defence.

ADV KENNEDY SC: So they of course would be the client in this whole project, correct?

MR MKWANAZI: I beg your pardon?

ADV KENNEDY SC: They would be the client for this project?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: The development plan approved by the AAC on the 27th of October 2006 authorising the following, and then it gives funding, funding for the development of deliverables, would be within a ceiling amount of R1.2billion at 2006 Rand value, the development be completed by November 2011 and funding for industrialisation and production of the level 5 product system to a ceiling amount of R7.288billion, I rounded off
10 the figure, and that would again be a 2006 Rand value. So would Armscor's officials, including the people who took – who held your position before you joined them would they have had to work within those maximum amounts that were budgeted for by the defence force, the department of defence?

MR MKWANAZI: Yes Chair by taking it into account that is now at the time, meaning that it is excluding escalation and the rate of exchange.

ADV KENNEDY SC: Yes, indeed. Now I would like to turn
20 if I may please to turret specifications There were specific technical specifications for the turret for the items of armoured vehicles to be supplied by Denel to Armscor which in turn would supply those to the defence force, correct. Sorry Mr Mkwanazi?

MR MKWANAZI: Would you please repeat the question, is

it not based on my affidavit?

ADV KENNEDY SC: We are going to look at your affidavit again in a moment, just bear with me.

MR MKWANAZI: May you please then repeat the question.

ADV KENNEDY SC: I am just giving you an introduction. There were certain technical specifications for the turrets that had to be put into the RFO, the Request for Offers not so?

10 **MR MKWANAZI:** Yes Chair.

ADV KENNEDY SC: Whoever was to put in a tender would have to know what the specifications were so that it could meaningfully [a] decide whether it could make it at all and [b] if it wanted to, if it was able to make it and wanted to tender it at what cost would it be able to do so, correct?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: And the data packs would they have enabled a prospective tenderer to know what the turret
20 specifications were?

MR MKWANAZI: Yes Chair.

ADV KENNEDY SC: Right, so that the problem that relates to the data packs we have dealt with I believe fully, what I would like to move onto now is were you involved at any stage in the actual signing off of turret specifications?

MR MKWANAZI: No Chair.

ADV KENNEDY SC: So again your comments in your affidavit, are they based on what you have picked up from your position as Head of Acquisition that you have mentioned to the learned Chair, and you are self-acquainted with the relevant documents.

MR MKWANAZI: Yes Chair.

ADV KENNEDY SC: Now you have dealt with some very helpful detail in relation to the turret specifications and particularly phases and baselines and the Chair has
10 already heard evidence from some of your colleagues from Armscor which have expressed – who have expressed some different views it seems to yours in relation to baselines for purposes of the specifications. Can you very briefly explain to the Chair what your view is in relation to whether or not the specifications that were approved for the particular contract that was ultimately awarded were correct regular or not?

MR MKWANAZI: They were correct.

20 **ADV KENNEDY SC:** From a technical point of view.

MR MKWANAZI: From the technical point of view in view of the fact that they come from the user requirement of the client.

ADV KENNEDY SC: Right, were you made – sorry was a copy made available to you of the affidavits of Mr Malepa

and Mr Nkozi, your colleagues from Armscor?

MR MKWANAZI: No Chair.

ADV KENNEDY SC: Were you alerted though to the fact that they had a certain view?

MR MKWANAZI: Yes Chair.

ADV KENNEDY SC: Yes how were you alerted for that?

MR MKWANAZI: I was alerted when I looked at – firstly I was alerted when I was told that they have submitted their statement and then also when they were presenting in that
10 before this Commission Chair.

ADV KENNEDY SC: So you were able to hear their evidence, is that correct?

MR MKWANAZI: Yes.

ADV KENNEDY SC: Right, I would like you please if you would Mr Mkwanazi just in very brief terms bearing in mind that we have all the detail in your affidavit, bearing in mind also that there is a lot of technicality here that you are going to need to explain but we would like to keep it at a very broad level. What is the crucial point on which you
20 disagree, if you disagree at all, with their evidence on the specifications?

MR MKWANAZI: Where I differ is on the basis of the fact that the product baseline, which was split into two was not in accordance with the document which they are referring to as Mill Standard 3, because Mill Standard 3 indicates

that the different baseline can be tailored to the programme, depending on how complex the programme is or how simple the programme is, and in this case what happened it looks like they have taken the product, the Eastline, which is a baseline just which indicate the completion of the development phase. However they split it into two, to a baseline called PBLA and that ...[intervenes]

ADV KENNEDY SC: Okay, my apologies for interrupting
10 you, may I just ask you to stop for a moment, just so that we get the complete picture in relation to what a baseline is. Can I take you in your affidavit to page 18.

MR MKWANAZI: Will you please repeat, page?

ADV KENNEDY SC: 18, one eight. Do you have that?

MR MKWANAZI: Yes.

ADV KENNEDY SC: Right, now in paragraph 7.6 this is what your affidavit says the product baseline and the manufacturing baseline or defining project Hoefyster contract 1161's supporting annexures, these supporting
20 annexures cover *inter alia* the deliverables, work breakdown and statement of work and prices.

“7.7 The product baseline is a milestone where all requirements have been functionally verified. This baseline is used to define the start of the industrialisation phase. Project Hoefyster product

baseline is broken down into a produce baseline, a BPLA and a final product baseline 1, BPL1, for each variant.”

Right, so let’s just stop there, so that is a helpful definition of what a product baseline is so that defines the standards that have to be met before one can move out of the design phase into the industrialisation phase, is that right?

MR MKWANAZI: Correct.

ADV KENNEDY SC: Now you have referred to two product
10 baselines, it was broken down into these two, the one is PBLA and a final product baseline PBL1, for each variant. Now you will recall herein the evidence presented to the Commission previously just over a week ago to the effect that PBL1 in fact corresponds with the standard baseline that the SANDF has adopted, would you agree with that?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Right. But then there was disagreement as to what – as to whether it was appropriate to determine PBLA as a variation of PBL1 for purposes of
20 this contract. Now you have indicated you disagree with the evidence, in what respect?

MR MKWANAZI: I disagree in the sense that if you look at PBLA and PBL1 they form PBL which is a product baseline, so what happened was they took the PBL and split it into two, meaning that you take all the activities

that are supposed to be achieved by PBL, then what they did as shown on my affidavit on page 19 they took a PBLA and have those activities, amongst those activities, the activities that are stated there and then have PBL1 which are those activities that – some of the activities that are listed.

Now if you take the ...[indistinct] it forms PBL it forms baseline achieved. So what they then did was to split these two as according to the standard, because the
10 standard indicates that it can be daylight to the complexity of the project and if I look at the document here it indicates that the reason why they wanted to split it was to be in a position to have a triggering point of the industrialisation phase so that there is a seamless transition of a development phase to the manufacturing and to the industrialisation and manufacturing phase, so that you don't have a gap because if you had to complete PBL completely then you will have to stop and then now you start an industrialisation.

20 So they wanted to have a point at which the risk have been reduced sufficiently to be in a position to start an industrialisation so they split it then into two, PBLA and then PBL1 and if I look at current documents you even see – it is even in the current document in terms of the improvement of the baseline management. They refer to

that PBLA as the initial PBL, they call it PBLi and then they call PBLA1 a verified PBL, so currently if you look at the standards now it is divided into two, so which they did it at that time for the similar purpose.

CHAIRPERSON: Was the reason why they did a legitimate reason in your view?

MR MKWANAZI: Chair in my view I think it was legitimate, looking at the complexity of the project.

CHAIRPERSON: Okay.

10 **ADV KENNEDY SC:** You disagree with their view that the difference between the two baselines and the complications that this has brought about has resulted in part of the difficulties that the Hoefyster Project is facing?

MR MKWANAZI: Chair I would disagree that it has resulted because at the point in time when it was done it was a means of managing the risk. The fact that we have realised some of the risk is not due to the fact that it was split it into two. It is – for a number of reasons that Denel is experiencing.

20 If you look at PBLA for instance I think they achieved it around 2011, and if you look at what is now outstanding in terms of them to achieve PBL1 it is a number of things that are faint in terms of the system that has been designed, which they need to go back, correct, and retest again.

ADV KENNEDY SC: Now if I can ask you to look again at page 19, so 7.8 sets out particular deliverables, 7.8.1 to 7.8.10 is that correct?

MR MKWANAZI: Yes Chair.

ADV KENNEDY SC: And then 7.9 from 7.9.1 to 7.9.19 on the top of the following page gives a different list of deliverables and in fact that PBL1 list is not exhaustive, in other words it is only *inter alia* the following.

MR MKWANAZI: Yes Chair.

10 **ADV KENNEDY SC:** In fact under 7.8 it is also *inter alia* those that are listed there, so there are some marked differences between the two lots of requirements, not so?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: And in your 7.10 you say the industrialisation phase establishes the manufacturing process, it is fixed at the manufacturing baseline thereafter the manufacturing and production commences.

20 So I understand from your affidavit you earlier distinguished between a design development phase, which is distinguished from the industrialisation phase, very briefly and I hope I don't over-simplify it, the design development phase is really a stage of preparation before you as a supplier can actually start manufacturing, you have to get the design perfectly correct, is that right?

MR MKWANAZI: Correct.

ADV KENNEDY SC: And part of that means that you have to meet certain thresholds in this context one of those thresholds being the PBL, correct, the product baseline?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Whether it be PBLA or PBL1 you have to meet either or both of those, correct?

MR MKWANAZI: Both of them.

ADV KENNEDY SC: Both of those. And before you can them move on to the industrialisation phase you must
10 satisfy Armscor as a supplier that you have met all of the requirements of both PBLA and then PBL1.

MR MKWANAZI: Correct.

ADV KENNEDY SC: Together of course with a whole lot of other baselines and other requirements, is that right?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Yes, now if we can just return to 7.1 on page 20, apparently the PBL1, or at least at the stage that you signed this affidavit the PBL1 and MBL are currently delayed.

20 **MR MKWANAZI:** Correct Chair.

ADV KENNEDY SC: Is that still the position today, it hasn't improved or been solved since you signed the affidavit in – just a few weeks back?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Can you tell the Chair please why

these PBL1 and MBL levels are delayed.

MR MKWANAZI: I will focus on the PBL1 Chair because it is the one that needs to be completed before one gets to the PBL, sorry the MBL.

ADV KENNEDY SC: Yes.

MR MKWANAZI: PBL has been delayed for a number of – PBL1 has been delayed for a number of reasons. It was the problems, the technical problems ...[intervenes]

CHAIRPERSON: How long was the delay, just start there,
10 before we go to the reasons?

MR MKWANAZI: Chair the completion should have been around 2012.

CHAIRPERSON: Yes, so it is eight years delay?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Perhaps if I may Chair, may I take the witness to page 22 where there's some useful details he gives in relation to dates. Nine deals with the project status and you say in 9.1:

20 “DLS is late on many of the deliverables on project Hoefyster. This has had a snowballing effect. To this end financial liquidity challenges are not allowing DLS to acquire critical components and pay suppliers and sub-contractors for supplies and services.”

Is that because of DLS's own financial problems or is it

because Armscor is causing DLS financial problems?

MR MKWANAZI: It is because of DLS own financial problems chair.

ADV KENNEDY SC: Okay, may I just ask before I proceed, I should have asked you this before, is part of our role in your capacity as the Acting Head of Procurement at the moment, is part of our role to monitor the implementation of contracts that have already been awarded to suppliers like DLS?

10 **MR MKWANAZI:** Correct Chair.

ADV KENNEDY SC: Okay, and then in 9.2 you say Phase 1 development, 9.2.1 and I think this may give – confirm the answer that you have given to the learned Chair a moment ago, the original date for completion of Phase 1 development of all variants was May 2012. Variance being different models not so of the same armoured vehicle?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: And so Phase 1 would have been completed once the supplier satisfied what the PBLA and
20 he PBL1, is that correct?

MR MKWANAZI: Correct.

ADV KENNEDY SC: And when would MBL have to be satisfied, during the Phase 1 development or Phase 2 industrialisation?

MR MKWANAZI: MBL is Phase 2.

ADV KENNEDY SC: Phase 2.

MR MKWANAZI: Post-industrialisation.

ADV KENNEDY SC: Yes, that's manufacturing baseline.

MR MKWANAZI: Manufacturing baseline yes.

ADV KENNEDY SC: Right, so then you have under 9.3 Phase 2 industrialisation, the delivery of the first section variant pre-production model is currently approximately sixty months behind schedule and continues to slip.

MR MKWANAZI: Correct.

10 **ADV KENNEDY SC:** The contracted delivery date of the first SVPPN was August 2015?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Yes, so it is now 60 months, that is five years behind.

MR MKWANAZI: Correct.

ADV KENNEDY SC: If South Africa was – God forbid – at war presumably this would have material impact on its capacity to defend the nation, the Defence Force, correct?

20 **MR MKWANAZI:** In the sense that they require this capability I would say correct, although they have got ...[indistinct]

ADV KENNEDY SC: Yes.

CHAIRPERSON: But these kinds of delays reflects nothing else but simply a disaster isn't it? It is a disaster to have these kinds of delays, isn't it?

MR MKWANAZI: Correct Chair, in the sense that the capability that is supposed to be delivered is not delivered.

CHAIRPERSON: That is completely unacceptable. That is completely unacceptable. How can something that was required in 2012 and it had been promised to be delivered in 2012 eight years later it has not been delivered. And you may or may not be the right person to tell me what has been done over the years, why – what has happened why is this situation allowed to continue. Has anybody
10 been fired for not doing their job, has anything happened, it is just unthinkable.

I mean you might not be able to say anything but it is just unbelievable how something like this can be allowed to continue for so long. I mean I was saying, I don't know if it was last week or the other week, it must be the other week when we were, when I was hearing evidence relating to Denel, when I was saying that – when I said there is another project relating to SABC and telecommunication, I think they call it digital migration, that has been delayed
20 maybe worse than this, maybe more or less the same thing, and quite frankly I think I keep myself reasonably informed, I have not heard of any heads that have rolled, everything just has moved on, it is like there is nobody who supervises that Ministers do their jobs, DG's do their job, Heads of SOE's do their job, people under CEO's do their

job, Boards of SOE's do their job.

How can this kind of situation be allowed to happen? Well you might know how – since you got involved in the position have you come across any information of any heads that have rolled.

MR MKWANAZI: Chair when the mechanism that we have on our side as an acquisition agent for such a supplier all we do is to levy penalties, we put pressure on them, but it is Denel itself you know that should improve the situation
10 in terms of ensuring that the delays are not as bad as they are right now.

CHAIRPERSON: Yes but Denel is an SOE. Denel is an SOE. The executive must be able to do what they can if that thing is in an SOE that don't seem to be working the Board should be able to do something if the Board cannot do its job something should be done about that Board and there must be a CEO. I mean you just cannot have a situation where something that was supposed to happen so long ago has not happened and from what you say in your
20 affidavit it looks like these deliveries that should have happened in 20 – May 2012 not only have they not happened in 2020 there is no certainty as to when they will happen.

Denel has suggested 2023 I do not know how long ago they made that suggestion and I do not know what the basis was for choosing 2023 as opposed to 2021 or 2022 or

why is not 20 – will it ever happen? And why is it allowed to just continue like that?

The Chairperson of the board of Denel was here giving evidence that other week. If I am not mistaken she said I am paraphrasing now. This is one of their – I mean this Hoefyster Project is one of their nightmares you know. It is something that is really causing huge difficulties and problems.

10 But maybe other witnesses who will come will tell me something that will give me comfort that there is a clear direction as to how to solve the problem.

Because leaders are put in leadership positions, managers are put in management positions so that they can make decisions. They can lead.

Ja okay.

ADV KENNEDY SC: What appears to be particularly troubling is that these problems can arise and get so serious that it is only when the judiciary in a judicial commission..

CHAIRPERSON: Yes.

20 **ADV KENNEDY SC:** Deals with it that only then ...

CHAIRPERSON: Yes.

ADV KENNEDY SC: The public can and government seem to become aware of it.

CHAIRPERSON: It is just – it is like – it is like the story of the SOE's. So many of them appear to be in serious trouble

and you ask yourself the question; did somebody not see from a long time ago that there was trouble coming and took steps to make sure that we did not – these SOE's did not get to where they are now.

Were there not – no people – were there no politicians who were responsible? Were there no Ministers; was there no President? Were there no Presidents who were supposed to make sure that their Ministers did the job that they were supposed to do? Were there no Ministers who
10 were supposed to see to it that the CEO's or the boards did their job?

If they did not do their job they got fired and proper – and members of boards who knew what they were doing were brought in. And boards of these SOE's what did they do if the CEO's the CFO's seemed not to be doing their job? These things do not just happen overnight.

There is a process – there is a time that happens and if you know what you are doing and you act in the best interest of the SOE's you can see that there is going to be a
20 problem in the future unless we arrest this situation. And you either know how to arrest it or if you do not know you should get out of the way.

Let somebody else who knows how to do the job get and arrest the situation. These SOE's are – they are tax payers SOE's. So when you see a problem like this just

going on and on and on for years you cannot understand why there is no leadership to say whether at political level or management level to say, this cannot be allowed to go on. Serious decisions must be taken one way or another and then those decisions are taken. Or you do not know whether people are afraid to make wrong decisions.

But if you are a leader or you a manager you must be able to take decisions whether you are wrong or not wrong you – you must take a decision. You know. The worst thing
10 is for you not to make a decision because you are scared of making a wrong decision. You must make a decision. I mean eight years and five years. Just seems really intolerable. Yes Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. I am not sure that the next bit of evidence is going to give you any comfort. I need to complete the pictures to...

CHAIRPERSON: Yes.

ADV KENNEDY SC: Completion dates.

CHAIRPERSON: Yes. So well the one thing we should get
20 is to get the true picture.

ADV KENNEDY SC: The facts. Absolutely.

CHAIRPERSON: Of the situation ja.

ADV KENNEDY SC: If I – if I may then take you Mr Mkwanazi to page 23? We see that there is a table in which as I understand the DOS has – has given proposed dates for

completion of certain milestones, is that right?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: These are not dates proposed by Armscor, your company? They are proposed by DLS the supplier.

MR MKWANAZI: Yes it is the supplier Chair.

ADV KENNEDY SC: Now we know from your earlier evidence that the development stage – the phase 1 development should have been completed by May 2012 that
10 is eight years ago – more than eight years ago. If we look at this table we see the fourth item completion of development in – under the heading 2018.

CHAIRPERSON: I am sorry Mr Kennedy I did not hear the page number?

ADV KENNEDY SC: I am sorry Chair it is page 23.

CHAIRPERSON: Okay thank you.

ADV KENNEDY SC: We at the table Chair and the witness has indicated this sets out the – the proposed dates for completion. Mr Mkwanazi before we look at the detail as I
20 understand the description column just deals with the various stages to be achieved – the milestones as it were, is that correct?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: So SVPBL1 turret – SVPBL1 platform and SVL5PBL1 those all relate to the production baseline 1

for different variations, is that right? Or the different elements so the turret on the one hand the platform on the other, correct?

MR MKWANAZI: No Chair it is not production it is development.

ADV KENNEDY SC: No not production development it is achievement of the PBL, correct.

MR MKWANAZI: Yes achievement of PBL1.

ADV KENNEDY SC: PBL yes. And that has still not been
10 approved?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Is that correct? And the second column 2018 proposed dates. Am I right in understanding that those were dates proposed in 2018 as to when it was expected in 2018 it would still be completed?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: So for example if we look at the first item the SVPBL1 turret in – we know that all of that should have been completed before May 2012 but when there was a
20 delay already apparently in 2018 it had not been achieved. In 2018 it was proposed and planned that it would be completed by May 2019, is that correct?

MR MKWANAZI: Correct.

ADV KENNEDY SC: In other words seven years after the original intended completion date. Now your last column

Current Proposed Dates is to be determined. Is that what DLS have indicated? At the moment they do not have a proposed date that they can give with any measure of confidence.

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: And the same applies to the next items.

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: And then the completion of development the fourth item can only take place after the
10 first three items are completed, is that right?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: In 2018 it was proposed that the completion – the development would be by June 2021 that is not far to go – that is just about six/seven months – eight months maybe to go. Now what DLS is saying is that their current proposed dates – date for the completion of the development is December 2023.

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: Eleven years late after the intended
20 completion date of May 2012

MR MKWANAZI: Correct.

ADV KENNEDY SC: But can we – can you at Armscor have any confidence in December 2023 as being the completion of the development where they still have to determine what they propose as a date for completion of the first three items

which have to be completed before development is completed – development stage is completed?

MR MKWANAZI: It is very difficult to say that one has got a good level of confidence in view of the fact that when they submit such a revised completion dates it is all subject to Denel getting a bailout. So if they do not get a bailout they are not in a position to – to buy critical parts; they are not in a position to pay suppliers so literally there is minimal that is taking place in Denel.

10 **CHAIRPERSON:** So if Denel does not get any bailout this – these – this will remain where it is?

MR MKWANAZI: The probability of achieving it is minimal Chair.

CHAIRPERSON: And in terms of financial loss to Armscor up to now if this was not to be achieved for whatever reason do you have an idea how much financial loss that would mean more or less in terms of whatever it may have spent already trying to get these if then we were to be in a situation where Denel is not bailed out and therefore it
20 cannot continue with – it cannot actually do this?

MR MKWANAZI: In terms of what has been spent Chair I think somewhere I touch on it.

ADV KENNEDY SC: Is it at page 21?

MR MKWANAZI: Page 21.

ADV KENNEDY SC: I am not sure if this is what you

referring to. Just have a look at page 21 will that help you?

MR MKWANAZI: Yes.

ADV KENNEDY SC: Table 1.

MR MKWANAZI: Page 21.

ADV KENNEDY SC: Just explain to the Chair please what that – what that sets out?

MR MKWANAZI: What sets out there Chair is that what has already been paid it is for phase 1 we have paid R1.5 billion. And if you look at phase 2 what we have paid if about R5
10 billion. And then if you look at ...

CHAIRPERSON: Should you not be looking at the total at the bottom of the...

MR MKWANAZI: Ja maybe let us look at the total Chair.

CHAIRPERSON: Ja.

MR MKWANAZI: It is about 7.6. But the reason why I wanted to just look at the breakdown is that some of the things that have been paid for it is things that have been delivered. Like the radios.

CHAIRPERSON: Oh okay.

20 **MR MKWANAZI:** And – and the ammunition has been delivered.

CHAIRPERSON: Okay.

MR MKWANAZI: So...

CHAIRPERSON: No you can – have gone through...

MR MKWANAZI: That is why I just wanted to explain it.

CHAIRPERSON: You can go through like that if that is a legitimate reason to do it that way.

MR MKWANAZI: For instance if you look at the radial significant amount of it has been achieved. You can see that the total order is about R353 million we have paid about R348 million.

If you look at the other order as well for radial that has also been R225 million has been paid. You look at the Ingwe there is not much that was – that we have paid there
10 is the Ingwe missile.

And then if you look at the development of Ingwe also we have paid about R7 billion. So what I am trying to show Chair is that if you look at also the other part which is the parts closed order those are orders where – that we have achieved on them.

So the area that is of – the area that is of risk Chair I would say it is the area of R1.5 billion which is the development. In the event that is not completed then we would not be able to show any design. We will not be able
20 to show any data pack for it. So I would say that is the area that is at high risk. And then if you look at...

CHAIRPERSON: And that is the – that is R1 billion – that is R1. What billion?

MR MKWANAZI: R1.5 billion.

CHAIRPERSON: Right at the top?

MR MKWANAZI: At the top phase 1.

CHAIRPERSON: That is R1.5 billion.

MR MKWANAZI: Yes. If you look at the composition of phase 2 Chair. Under phase 2 Chair we have got about advanced payment that has been paid of about – I think it is about R2 million – R2 billion. So if one deducts that we will be left with about – I beg your pardon?

CHAIRPERSON: R12 billion or R2 billion?

MR MKWANAZI: R2 billion Chair.

10 **CHAIRPERSON:** I am trying to see where that is. I can see...

MR MKWANAZI: I am saying it is included in there Chair.

CHAIRPERSON: Oh okay.

MR MKWANAZI: Ja I am just – I just want to sort of give a bit of an explanation there.

CHAIRPERSON: Ja.

MR MKWANAZI: And then – so what you would find Chair – what is at risk in terms of the phase 2 it will be the work in progress that we have paid for. Those vehicles and the
20 parts and the systems – sub-systems that have been bought. But the other R2 billion that I referred to is covered by the – about R1.5 billion or so is covered by a bank guarantee meaning that we can call it up.

CHAIRPERSON: Ja.

MR MKWANAZI: And receive it.

CHAIRPERSON: Okay.

MR MKWANAZI: So hence I was saying that that will be the amount that will be [00:14:40].

CHAIRPERSON: About R1.5 billion.

MR MKWANAZI: Ja R1.5 billion and then part of that ...

CHAIRPERSON: That would be at risk.

MR MKWANAZI: Ja.

CHAIRPERSON: Ja. Okay. And of course the – a question that would be bound to arise would be whether this situation
10 could have been avoided or may well have been avoided if there had been a competitive process because maybe Denel would not have been given the tender. Because from what you have said it looks like it is Denel's financial situation that is largely responsible for these delays.

MR MKWANAZI: Yes Chair the current situation. Although it – Denel had a problem – technical problem delays which is normal in a project of this nature which is very complex. So even if you look at international standards in terms the delays one would find that they do have delays of about
20 three to four years in terms of the complexity of the project. But what has worsened the situation now is that having all those technical problems that Denel experienced now it was exacerbated by the problem of the cash flow.

CHAIRPERSON: The financial situation.

MR MKWANAZI: The financial situation.

CHAIRPERSON: Yes.

MR MKWANAZI: Which is even getting worse in the sense that because of the financial situation not being able to pay salaries they are even losing now their resources which will make it even more difficult to achieve.

CHAIRPERSON: Which could bring back the technical problems.

MR MKWANAZI: Yes, yes.

CHAIRPERSON: Ja okay alright. Thank you Mr Kennedy.

10 **ADV KENNEDY SC:** Thank you Chair. On page 24 in your concluding paragraph you say just above 981.

“The following are significant issues for consideration.

981 Financial liquidity challenges are not allowing it to acquire critical components and pay suppliers and sub-contractors.”

You referring there to Denel, is that right?

MR MKWANAZI: Correct Chair.

ADV KENNEDY SC: And then you say:

20 “The risk of not completing Project Hoefyster is very high and cannot be mitigated without external financial assistance.”

So are you telling the Chair that unless there is financial assistance by that you mean – do you mean a so called bailout from government?

MR MKWANAZI: For Denel correct Chair.

ADV KENNEDY SC: Yes for Denel. Without that there is a very high risk that Project Hoefyster may completely collapse?

MR MKWANAZI: Correct Chair.

CHAIRPERSON: You may not have an answer for this but if you do that would be helpful. Do you have an idea about how big a bailout Denel needs in order to be able to continue with this project?

10 **MR MKWANAZI:** I would not be able to give the exact figure.

CHAIRPERSON: Yes

MR MKWANAZI: Except what I have heard from the employees in Denel.

CHAIRPERSON: Ys.

MR MKWANAZI: Where they are indicating that they owe about R700 million to R600 million to the suppliers in terms of the suppliers being able to supply them.

CHAIRPERSON: Ja.

20 **MR MKWANAZI:** Otherwise right now they are not prepared to supply them.

CHAIRPERSON: Yes.

MR MKWANAZI: While they are owed by Denel.

CHAIRPERSON: Yes.

MR MKWANAZI: Now if you look at that and also if you look

at the situation in terms of where they are in terms of the normal cash flow to be able to pay salaries talking about – about R130 or so million per month in terms of the salaries. So I would say what I heard from the media and everywhere else it was R1.8 billion that they were looking at. To get a bailout to be in a position to be you know out of the situation so that it unlocks all those problems.

CHAIRPERSON: Yes.

MR MKWANAZI: That they are having and then they will be
10 in a position to start over.

CHAIRPERSON: Yes. Thank you.

ADV KENNEDY SC: Mr Mkwanzazi are you aware that Denel entered into contracts with VR Laser to procure various items – 217 platform hulls and then subsequently two lots of sole supplier contracts the one for DLS and the other for DVS. Are you aware of that?

MR MKWANAZI: No Chair we do not manage the sub-contractors of Denel.

ADV KENNEDY SC: Right.

20 **MR MKWANAZI:** The only information I have is based on the list of sub-contractors that was given to us by Denel and also in terms of the latest list that we have. Yes we saw a shift in terms of the amount of – of sub-contracting work in terms of the value. When we contracted Denel the value was less and then as soon as they start manufacturing we saw

the value increasing of VR Laser. But as to how they were contracted and things like that we do not get involved at the lower level of sub-contracting and suppliers.

CHAIRPERSON: I guess the delays that have happened would be pushing the prices up as well of whatever was supposed to have done in 2010/2011/2012 has not been done over the past eight years prices must be going up?

MR MKWANAZI: Correct Chair there is a cost of escalation.

CHAIRPERSON: Ja.

10 **MR MKWANAZI:** As well as the rate of exchange.

CHAIRPERSON: Yes. But of course as the customer Armscor would be seriously prejudiced by those escalations, is it not? Or is the fact that the delays are caused on the – by Denel, Denel would have to bear the escalation costs, is that right?

MR MKWANAZI: Correct Chair.

CHAIRPERSON: Of course that just serves to make their financial situation worse.

MR MKWANAZI: Correct Chair.

20 **CHAIRPERSON:** So on top of the R700 and whatever million that they may be owing suppliers they may be owing a lot of money that they need in order to take care of the escalation costs in regard to this project?

MR MKWANAZI: Correct Chair.

CHAIRPERSON: Yes.

MR MKWANAZI: Plus penalties.

CHAIRPERSON: Plus penalties.

MR MKWANAZI: Yes.

CHAIRPERSON: At this stage do you have an idea about what the penalties – what...?

MR MKWANAZI: Chair I will off the...

CHAIRPERSON: What amounts we may be talking about?

MR MKWANAZI: I will give an off the cuff figure of about R200 million but it might not be correct.

10 **CHAIRPERSON:** Yes. Okay alright. Thank you. Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. If I may just conclude with taking the witness back to page 9. Mr Mkwanazi I drew your attention previously on page 9 to paragraph 4.8 of your affidavit and you will recall confirming in your evidence a little earlier this afternoon that the Defence Force's AAC as far back as October 2006 authorised funding within a ceiling amount of R1.2 billion and then funding for the industrialisation and – sorry that is for the development and
20 then the funding for industrialisation would involve R7.2 odd billion. Now clearly that is not being kept to.

Can you tell the Chair please what measures may have been put in place at Armscor not Denel – at Armscor what measures were put in place to ensure that these limits were not exceeded?

MR MKWANAZI: Chair as I indicated earlier on that these figures are excluding VAT, excluding escalation, excluding rate of exchange so the measures we have as Armscor when we contract we have got a formula that we use for – to cater for escalation. And then we also contracted that we will be paying the rate of exchange because it fluctuates and is not as a result of the fault of the supplier. And then VAT obviously we paid in accordance to what is – what will be the VAT at that point in time. If it is 14% - 14 or 15%.

10 So if you look at in terms of that you would realise that because of the escalation cost, rate of exchange it is higher than it is stated there which is understood by the client as well and this is how they plan. And then also on phase 2 it is the same.

 But like I was indicating that when it comes to – meaning that the formula will apply up to that completion of the project. Beyond that then the supplier then will have to pay the escalation because they are delayed as a result of their [00:24:26]. So in terms of during the project this is how
20 we controlling Chair.

ADV KENNEDY SC: Chair we have no further questions for this witness.

CHAIRPERSON: Okay alright. Thank you very much Mr Mkwanzazi for making yourself available to testify. If we need you again we will ask you to come back but we appreciate

the fact that you – you made yourself available. Thank you very much. You are now excused. We are at one minute past four.

ADV KENNEDY SC: Yes.

CHAIRPERSON: We can still continue.

ADV KENNEDY SC: Yes happy to continue thank you.

CHAIRPERSON: With the next witness.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: What is your contemplation of how long
10 would be – you will be with him?

ADV KENNEDY SC: I would think probably two hours.

CHAIRPERSON: About two hours.

ADV KENNEDY SC: Something in that order yes Chair.

CHAIRPERSON: So we might go up to six o'clock or so.

ADV KENNEDY SC: Yes. I am not sure that we will necessarily finish in two hours but that is my rough estimate.

CHAIRPERSON: Okay alright. Well we – and tomorrow how many witnesses have you got?

ADV KENNEDY SC: We have only one currently and the
20 reason for that is not necessarily that the witness will take all day. But in fact the next witness will be Mr Ntshepe who will take some time. You will recall he was – he replaced Mr Saloojee as Group CEO. So he will take some time. We had originally scheduled Mr Mantsha the Chairperson but he was not available or his legal team were not available tomorrow

so they have had to be accommodated later in the week. And because other people have been – have been arranged for other dates it has not been possible at short notice to shift somebody in. So I have explained to Mr Mhlontlo who is present.

CHAIRPERSON: Yes.

ADV KENNEDY SC: That we may – might not get to his evidence at all today or he might only be called at a fairly late stage as is now happening and that he must be –
10 although he is obviously inconvenienced if he has to spill over to until tomorrow. We have indicated that that will be required if we cannot finish today if we start.

CHAIRPERSON: Okay well I just want to make an assessment about tomorrow. With Mr Ntshepe you say you contemplate he might not take the whole day.

ADV KENNEDY SC: Yes.

CHAIRPERSON: On his own.

ADV KENNEDY SC: Yes.

CHAIRPERSON: What is your assessment of – if we start at
20 ten tomorrow as we plan to what is your estimate of by when he might be done or you might be done?

ADV KENNEDY SC: I would think probably three hours Chair. Yes probably three hours we think,

CHAIRPERSON: Oh because if that is so there might not be a need for us to sit too late today.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Because Mr Mhlontlo I guess can come back in the morning and we finish with him.

ADV KENNEDY SC: Yes.

CHAIRPERSON: So maybe what we should do is take a break now and then – fifteen minutes break, come back and then we – I hear his evidence and then maybe – maybe up to five or quarter past five for – oh ja quarter past five or latest half past five.

10 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: That will give us about what one and a half hours or so and then we continue with him tomorrow before Mr Ntshepe.

ADV KENNEDY SC: Certainly.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Certainly Chair.

CHAIRPERSON: Okay alright.

20 **ADV KENNEDY SC:** Thank you. So you proposing to adjourn until – and resume what at twenty past – twenty past...

CHAIRPERSON: It is five past now I think let us adjourn until twenty past.

ADV KENNEDY SC: Twenty past thank you Chair.

CHAIRPERSON: Four. Ja We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay are we ready Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair, with your leave, may we now call our next witness, Mr Fikile Mhlontlo?

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

REGISTRAR: Please state your full names for the record?

WITNESS: Fikile Mhlontlo or known, for short, as Fikile
10 Mhlontlo.

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

WITNESS: No.

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

WITNESS: Yes, I do.

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

WITNESS: So help me God.

FIKILE MHLONTLO: (d.s.s.)

CHAIRPERSON: Thank you. Yes, you may proceed Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. Mr Mhlontlo, Has

provided the Commission's teams two statements/affidavits Chair. They are both to be found in the same Denel bundle, Bundle 07 which we were using earlier with the last witness and they form part of Exhibit W20. If I may take the witness to the 1st affidavit to identify it and then likewise the second, and then we will ask for them to be formally admitted.

CHAIRPERSON: Yes.

EXAMINATION BY ADVOCATE KENNEDY SC: Good afternoon, Mr Mhlontlo.

10 **MR MHLONTLO:** Good afternoon Chair.

ADV KENNEDY SC: Mr Mhlontlo, If I could ask you in the bundle in front of you, when I give page numbers I'm going to give you page numbers according to the top left, not the top right and it is black print and not the one in red, and I will miss out the first letters, the Denel 07 and just give you the last three digits, okay?

MR MHLONTLO: [No audible reply]

ADV KENNEDY SC: So the first affidavit, the statement I would like to take you to is at page 6. Sorry, 568.

20 **MR MHLONTLO:** Ja.

ADV KENNEDY SC: Is that your first statement?

MR MHLONTLO: Yes, it.

ADV KENNEDY SC: And if I can ask you please to go to page 575?

MR MHLONTLO: 575.

ADV KENNEDY SC: Is that your signature Above the date of 19 July 2019?

MR MHLONTLO: Indeed it is.

ADV KENNEDY SC: Yes. This was not signed before a commissioner of oaths. Is that right?

MR MHLONTLO: That one was ...[indistinct] [speaker not clear]

ADV KENNEDY SC: So this is not an affidavit. We will call it by its correct name which is statement. The next...

10 **CHAIRPERSON:** At least be closer to the microphone Mr Mhlontlo.

MR MHLONTLO: Ja. Thank you, Chair.

ADV KENNEDY SC: The next document is from page 576.

MR MHLONTLO: 576... Yes, Chair.

ADV KENNEDY SC: Is this your second statement?

MR MHLONTLO: Yes, it is.

ADV KENNEDY SC: And it runs to page 596 and 7, excluding the annexures. At 596, is that your signature above the date 7 October 2020?

20 **MR MHLONTLO:** Yes it is my signature.

ADV KENNEDY SC: Just pick up please.

CHAIRPERSON: Raise your voice Mr Mhlontlo

MR MHLONTLO: Yes it is my signature.

ADV KENNEDY SC: I am sorry?

MR MHLONTLO: It is my signature.

ADV KENNEDY SC: It is your signature. And this time you did in fact signed it before commissioner of oaths Where you took the oath.

MR MHLONTLO: Yes I did.

ADV KENNEDY SC: As we see at page 597. Now Mr Mhlontlo, you told me a moment earlier during the tea adjournment that you have picked up a couple of errors relating to date that has been mistyped whatever subject to those corrections that we are going to ask you to take us
10 through in a moment.

The first statement which you didn't swear under oath to in front of a commissioner of oath before. you have obviously just taken an oath now to tell the truth and nothing but the truth, et cetera. Have you been through the first statement from page 569? 568, I am sorry, to 575. Have you been through them?

MR MHLONTLO: Yes.

ADV KENNEDY SC: Those pages?

MR MHLONTLO: Yes I have been.

20 **ADV KENNEDY SC:** and subject to the errors that you are going to draw to our attention, do you in terms of the oath that you have now taken before the Chairperson, Do you confirm that the contents of the statement in fact reflect the truth and the whole truth and nothing but the truth?

MR MHLONTLO: Yes I do.

ADV KENNEDY SC: Right. Thank you. And then you confirmed again under oath the correctness of the contents off your affidavit from page 576 to 596.

MR MHLONTLO: Yes, I do.

ADV KENNEDY SC: Right. Chairperson, may we then before we proceed to deal with the typing errors. Maybe ask your leave to formally admit the statement from page 568 and the affidavit from page 576 and the annexures that follow and that they should be admitted as in Denel Bundle
10 07 as Exhibit W20?

CHAIRPERSON: Well, the first one must have its own exhibit number and then the second one, its own exhibit number as well.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Shall we do it that way?

ADV KENNEDY SC: I have happy to do that.

CHAIRPERSON: Ja, so the first one will be Exhibit W20. Is that right?

ADV KENNEDY SC: Yes. Thank you, Chair.

20 **CHAIRPERSON:** The statement of Mr Fikile Mhlontlo starting at page 568 is admitted as Exhibit W20.

STATEMENT OF MR FIKILE MHLONTLO STARTING AT PAGE 568 IS SUBMITTED AND MARKED AS EXHIBIT W20

CHAIRPERSON: And then of course the next one, can I – would probably need to be made W20.1. Have not had 20.1

in another bundle?

ADV KENNEDY SC: No, Chair.

CHAIRPERSON: Oh, okay.

ADV KENNEDY SC: I do not believe so.

CHAIRPERSON: Oh, okay. So you ask that this one to be admitted as Exhibit W20.1?

ADV KENNEDY SC: That is correct.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Thank you, Chair.

10 **CHAIRPERSON:** The statement of Fikile Mhlontlo starting at page 576 is admitted as Exhibit W20.1. Thank you.

STATEMENT OF MR FIKILE MHLONTLO STARTING AT PAGE 576 IS ADMITTED AND MARKED AS EXHIBIT W20.1

ADV KENNEDY SC: As you please Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Mr Mhlontlo, The typing or other errors. are there any errors in the first statement that starts at page 568, that is Exhibit W20?

MR MHLONTLO: There is one on page 571, paragraph 3.4.

20 **ADV KENNEDY SC:** So it is page 571, paragraph 3.4. what does the correction?

MR MHLONTLO: Where it refers to a meeting in April 2009. It should be April 2010.

ADV KENNEDY SC: That is April 2010?

MR MHLONTLO: Yes.

ADV KENNEDY SC: Right. And nothing else in this statement?

MR MHLONTLO: And nothing else on this statement.

ADV KENNEDY SC: Right.

MR MHLONTLO: And then the ...[intervenes]

ADV KENNEDY SC: So then the affidavit from page 576. Anything in that?

MR MHLONTLO: And then if you go to page 576... I am going to get to page... Page 587, paragraph 5.3.

10 **ADV KENNEDY SC:** That is page 573?

MR MHLONTLO: No ...[intervenes]

ADV KENNEDY SC: I am sorry. At 587 you said.

CHAIRPERSON: 587, Paragraph 5.3.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Is that so Mr Mhlontlo?

MR MHLONTLO: Yes. Yes, Chair.

CHAIRPERSON: Ja, okay.

20 **MR MHLONTLO:** The paragraph that says during the orientation and he refers to 24 July 2020. It should be 24 July 2015.

ADV KENNEDY SC: Right. Any other changes in the affidavit?

MR MHLONTLO: Then at page 18...

ADV KENNEDY SC: I am sorry what page?

MR MHLONTLO: No, no, no. I am just ...[indistinct]

[Speaker not clear] page 588

ADV KENNEDY SC: 588. Yes?

MR MHLONTLO: Paragraph 5.6

ADV KENNEDY SC: Yes?

MR MHLONTLO: the line just before the last line within that paragraph, it talks of 14 September 015. It should be 14 September 2015.

ADV KENNEDY SC: Right. Anything else?

MR MHLONTLO: And then the two last ones. It is 5.7 and
10 5.8. there's a line that refers to the 10th of September. It says 2020. It should be saying 2015. And within the same paragraph, there it is also referring to September 2020. it should be 2015. Those are the typos that I wanted to point you to.

ADV KENNEDY SC: Thank you. Now Chair, did you get both of those last two paragraphs?

CHAIRPERSON: Yes. No, that is fine.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: They can just do a short supplementary
20 affidavit later on and send it to...

ADV KENNEDY SC: Thank you, Chair. That will be done. Right. What I propose to do is. Is to deal with your first statement as it comes first in the file. That is a fairly short statement and it just deals with a few issues. Before we get to the meat of that, may you just confirm. You used to be

employed by the Denel. Is that correct?

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: And you were the financial director. if I may take the witness through the, what I believe is uncontroversial evidence?

CHAIRPERSON: Ja.

ADV KENNEDY SC: In leading him Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Thank you, Chair. You ready financial
10 director at the time that you - from 2008, October until you left in September 2015. Is that correct?

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: And then you were placed
...[intervenes]

CHAIRPERSON: Well, I see from paragraph one Mr Kennedy. I see an answer to a question I raised earlier on about Africa, that it is a lady.

ADV KENNEDY SC: Yes, it is Ms Africa.

CHAIRPERSON: Ja. Okay alright.

20 **ADV KENNEDY SC**: It was the company secretary, is that right Mr Mhlontlo?

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: and you say that you within placed on paid special leave together with Mr Salugi, the then Group CEO. Is that right?

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: And Ms Africa who was then the company secretary. There were allegations, you say, who were unsubstantiated levelled by a new board. It was never put, ultimately, to a disciplinary process. Is that correct?

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: And you then received a financial settlement 11 months later and you then - that allowed you 2 then resign with effect from August 2016. Is that correct?

10 **MR MHLONTLO**: That is correct Chair.

ADV KENNEDY SC: So from September 2015 when you were placed on special leave, that is similar to a suspension. Is that right?

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: You were not working during the next year. Is that right? Until you actually resigned.

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: but you were being paid a full salary during that period.

20 **MR MHLONTLO**: It is indeed so.

ADV KENNEDY SC: You agree. Now Chair, If you would like, perhaps what is not being dealt with in the affidavit is the issue off the settlement that was reached with the witness.

CHAIRPERSON: Yes. Ja.

ADV KENNEDY SC: May I just traverse that?

CHAIRPERSON: Yes, please. Ja.

ADV KENNEDY SC: Mr Mhlontlo, You have reached a financial settlement which then resulted in a disciplinary process not being pursued but you then you resigned. is that correct?

MR MHLONTLO: A financial settlement was always offered in the process that eventually culminated in after 11 months into a settlement that was, on my side felt it was reasonable.

10 **ADV KENNEDY SC:** Sorry, it was what?

MR MHLONTLO: And I felt on my side it was worth exploring which eventually I accepted.

ADV KENNEDY SC: You accepted it?

MR MHLONTLO: Yes.

ADV KENNEDY SC: Was there a written settlement agreement?

MR MHLONTLO: Indeed, yes.

ADV KENNEDY SC: Are you able to provide a copy? Otherwise, we will get a copy from Denel.

20 **MR MHLONTLO:** I will provide.

ADV KENNEDY SC: I am sorry?

MR MHLONTLO: I will provide one.

ADV KENNEDY SC: You will provide one. Thank you very much. Chair, if we may file that in due course?

CHAIRPERSON: Yes.

ADV KENNEDY SC: Chair, would you like me to traverse the bottom line of that settlement?

CHAIRPERSON: I would like to. I... There is a thought whether I should say do not mention the amount but it is taxpayers money and I am thinking why should it not be mentioned. Do you have any discomfort?

MR MHLONTLO: [No audible reply]

CHAIRPERSON: I will tell you why. I do not know if you were here when I spoke about it earlier today. You see, I
10 have heard evidence relating to Eskom to the suspension of executives at Eskom.

And millions of rands were offered to each member, each of the executives who were ultimately – who ultimately resigned. They believe that they were pushed out of Eskom because otherwise they still wanted to continue at Eskom.

So they believed that they were being pushed out. Now they were given large amounts of money as settlements. And one of the questions that I asked those members of the Eskom Board, who were board members of it at the time is,
20 why they offered money or those large amounts of money to those executives.

Because they said to me here giving evidence that they were not the ones who wanted these executives to leave Eskom. They said it is these executives who wanted to leave.

But those executives have come here and said: Either, we did not want to leave. We said we wanted to go back to our work after – during suspensions. Or, one of them said: I have been writing letters to the board and the CEO in regard to my suspensions and wanting to be allowed to play a role in terms of the inquiry that was happening but I was being ignored and I felt unwanted.

Therefore, I said let us talk about my exit but I still wanted to work. The other two said they wanted to go back
10 and – but that was not being entertained by the board.

And after they had left or even before they left, there was a secondment of Mr Brian Molefe from Transnet to Eskom to take the position of CEO which had been occupied by a CEO who had been suspended and later on he became – he was appointed permanently.

And one of the executives who had been suspended was the financial director, just like you were the financial director at Denel. She had been suspended and she wanted to come back, according to her evidence.

20 But according to her, the board or those members of the board who were given the task of talking to her, did not want her to come back. They encouraged her to look at a financial settlement.

Ultimately, she was offered quite a large amount to leave. And then Mr Anoj Singh who was seconded from

Transnet to Eskom. This was in March/April 2015. That is the same year when your own suspensions at Denel happened. Your suspension. The suspension of Mr Salugi and the suspension of Ms Africa.

And when one listens to how you – all of you got suspended, it is quite – it raises a number of questions. One would still hear more evidence from people who made those decisions.

But you were suspended for quite a long time. From
10 what I have heard from Mr Salugi and I see from your own affidavit. You were keen if the company thought there were grounds to discipline you. You were keen to take part in a disciplinary hearing and be charged and answer for yourself.

But ultimately, it looks like you were either given – you were either offered and offer that you felt that you could not refuse [laughing] in terms of the financial settlement.

Or the three of you, maybe because of how long the suspension had taken and the fact that nothing seemed to be happening in terms of the disciplinary process. You might
20 have – some of you might have reached the point of: Look, let me just take the money and leave.

Now that may or may not have been a way of getting rid of certain executives in order to bring other people as executives. As I say, I will hear evidence from other people and see whether that is actually what happened, whether

that was the reason.

But when one looks at the Eskom suspension of the executives, one remains with certain questions along those lines. And it may well be that in regard to your own suspensions, it may well be that there are similar elements.

I do know, based on Mr Salugi's evidence that Mr Salim Essa seems to have been quite involved as the new board. Well, the board or starting, actually even before the new board was starting was quite – had some interest in Denel.

10 And in regard to the suspensions at Eskom, he has been mentioned by certain witnesses as somebody who seems to have known the names of executives who were going to be suspended even before some of the board members knew. You see?

So it then becomes necessary to say: Is the Denel situation with regard to suspensions and ultimately the departure of yourself and Mr Salugi and Ms Africa, does it fall into a category of removals of executives who might not have been prepared to get involved in wrongdoings so that
20 others who may have been taught, would not mind getting involved in wrongdoings or might not – who have been taught to be prepared to assist certain people outside of Denel to achieve certain objectives.

So it makes it necessary to look at these suspensions and the ultimate departure of these executives to say: Well,

was this legitimate? Was the paying of this money justified the taxpayers money to achieve their removal justified?

Because one would get fact of that may be the board would take the view that: Look, if there is proper evidence of wrongdoing or misconduct on the part of the executives, let them be subjected to a disciplinary hearing. If they are found not guilty, let them continue. If they are found guilty, then they can be dismissed if the wrongdoing justifies dismissal.

10 Rather than say: Well, maybe even if there is no sufficient evidence to find them guilty, let us offer them money.

So I do not know what the situation is and I am keen to establish what the facts are so that these questions that I may have on my mind arising out of Mr Salugi's evidence and your own affidavit maybe will be answered.

So I wanted you to get that background. Have you – do you feel comfortable to share the information or not comfortable?

20 **MR MHLONTLO**: Chair.

CHAIRPERSON: If you do not feel comfortable – if it – obviously – well, I assume it is in the settlement agreement. We would have it in the settlement agreement. But I cannot promise you that when we get it, we will not talk about it publicly.

ADV KENNEDY SC: Chair, before the witness answers, may I just assist?

CHAIRPERSON: Yes.

ADV KENNEDY SC: Sorry, I was not able to assist earlier. My attention has been drawn ...[intervenes]

CHAIRPERSON: Yes.

ADV KENNEDY SC: ...to one of the annexures right at the end of the affidavit where, in fact, the settlement agreement is attached and it provides the figure. And perhaps I can just
10 take the witness to it?

CHAIRPERSON: Yes. What page is it?

ADV KENNEDY SC: The settlement agreement. Mr Mhlontlo, it starts at page 724. It is ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry. Did you say I must go to the second affidavit?

ADV KENNEDY SC: Yes, that is attached to the second affidavit, not the first. Right at the end of the file Chair. I think it is the very last annexure and it is at page 724. It was not attached to the first affidavit.

20 **CHAIRPERSON:** [No audible reply]

ADV KENNEDY SC: May I proceed.

CHAIRPERSON: Yes, I see it. Yes. Ja, you may take the witness there. Well, if it is here, it is already a public document.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: H'm.

ADV KENNEDY SC: May I proceed Chair?

CHAIRPERSON: Yes, you may proceed.

ADV KENNEDY SC: Thank you. Is this the settlement agreement that we have been discussing Mr Mhlontlo?

MR MHLONTLO: I confirm, yes.

ADV KENNEDY SC: It is called Determination of Employment Agreement. It provides on page 727 for a determination date being the 31st of August 2016. Is that
10 correct?

MR MHLONTLO: That is correct Chair.

ADV KENNEDY SC: If I can take you to right to the end, page 741?

MR MHLONTLO: I am on 741.

ADV KENNEDY SC: It appears from that, that the agreement was signed on the 25th of July 2016. Is that your signature at the foot of the page?

MR MHLONTLO: It is indeed my signature.

ADV KENNEDY SC: And above that, on behalf of Denel
20 Stock Limited it is signed by Mr Zulake(?) and Tshepe.

MR MHLONTLO: Yes, it is.

ADV KENNEDY SC: Who happens to be the next witness that we intend to call. Now if I can take you back to page 720. Sorry, 731.

MR MHLONTLO: [No audible reply]

ADV KENNEDY SC: At Clause 7 reads:

“The employer shall continue to pay the employee his normal remuneration until termination date.”

So at the time that you were signing this agreement at the end of July 2015, you were still in employment... Sorry, 2016.

You were still in employment and you were still receiving salary and you would continue to do so until the termination date which was one month later. Is that right?

10 **MR MHLONTLO:** Correct Chair.

ADV KENNEDY SC: And then in addition to that, you will received a settlement payment in Clause 6. Oh, sorry Clause 8, of R6 625 844, sorry, 644 rand. So it is R 6 625 644,00.

CHAIRPERSON: What clause is that?

ADV KENNEDY SC: Eight point one.

CHAIRPERSON: Eight point one. Okay alright. Yes. Do you confirm that Mr Mhlontlo?

MR MHLONTLO: I confirm Chair.

20 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: And you confirm what is set out in the rest of that clause that that amount of R 6 625 644 was an amount equivalent to your remuneration for 24-months?

MR MHLONTLO: Correct Chair.

ADV KENNEDY SC: Right.

CHAIRPERSON: Shu! Well, it is much more in terms of months than what the Eskom executives got in terms of months. But the amount and round figure is more or less the same as some – as one or more of those executives.

But they were – I think theirs were about 12-months except for one of them whose amount was equivalent to 18-months. I think. Is that so?

Oh, you would not know that Mr Kennedy. That is another evidence leader who would know that.

10 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: The Eskom ones.

ADV KENNEDY SC: Fortunately, I do not have to deal with everything.

CHAIRPERSON: [laughing] Unfortunately, I have to. Well, it is quite interesting. It is quite interesting that the company thought you had misconducted yourself. And I think based on your affidavit, they thought that you had been dishonest. Is it not?

20 That was one of the allegations that subjecting you to a disciplinary hearing. They give you an amount equal to 24-months salary. That is very strange. Ja. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. And that would be 24-months in addition to the more than the 12-months that you were paid during the period of – or special leave with your suspension?

MR MHLONTLO: Correct Chair. And I would like also to draw you to Clause 11.

ADV KENNEDY SC: Yes.

MR MHLONTLO: [No audible reply]

ADV KENNEDY SC: Yes? Is that incentive bonus?

MR MHLONTLO: Part of the settlement were clause 8.1 and 11.

ADV KENNEDY SC: It is the amount – and incentive bonus for the year ending 2015/2016 amounting to
10 R1 656 411. Did you receive that bonus?

MR MHLONTLO: I confirm, Chair, yes I did.

CHAIRPERSON: So all in all you – if you take that amount into account, short term incentive bonus and the *ex gratia* payment you are looking at about 8 million, 9 million?

MR MHLONTLO: About 8.2.

CHAIRPERSON: About 8.2 million. Yes.

ADV KENNEDY SC: May I ask, Mr Mhlontlo, was that an additional settlement amount or was that something you
20 would have been entitled to as an incentive bonus if you had been normally employed?

MR MHLONTLO: This is a – clause 11, Chair, is an amount I would have been entitled to for the end of the 2015/2016 year. Now 2015/2016 year closed while I was on suspension and as the employees were paid incentives,

I also qualified for that, as an employee.

CHAIRPERSON: Now the incentive bonus, in order to qualify to be paid an incentive bonus in the company, were you not required to have done your job quite well?

MR MHLONTLO: I confirm, Chair, indeed.

CHAIRPERSON: That is a requirement. So they had no complaints about your performance, they cannot say they had any complaint if they gave you this bonus. It is contradictory – it would be contradictory?

10 **MR MHLONTLO:** Chair, the standard way of interpreting anyone qualifying for a bonus is the recognition that you have done your job.

CHAIRPERSON: Yes, you have done your job well, to say the least.

MR MHLONTLO: Done your job well.

CHAIRPERSON: Maybe you have done it excellently or at least the employer cannot give you this kind of bonus and complaint now that you are guilty of poor performance in terms of your job.

20 **MR MHLONTLO:** Correct.

CHAIRPERSON: It would not – ja. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. In the second affidavit ...[intervenes]

CHAIRPERSON: Or maybe, Mr Kennedy, before we proceed.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Are you able, Mr Mhlontlo, to tell me what the previous offers had been? You said that this one was substantially better than a previous one or previous ones. Are you able to tell me what kind of range the previous ones had been?

MR MHLONTLO: Chair, when we were suspended, on the night we were suspended, we were offered three months ...[intervenenes]

10 **CHAIRPERSON:** Three months pay?

MR MHLONTLO: Three months pay.

CHAIRPERSON: Ja, if you agreed to resign?

MR MHLONTLO: If we agreed to resign on the spot.

CHAIRPERSON: Yes.

MR MHLONTLO: Then we went into mediation in 2016, I think it is about 8 February. In that process the settlement was on the table, it was not specific in terms of what months we were to be offered other than to say there is a settlement available and which we insisted at that point
20 that we would want to have our jobs, we would want to engage with the board and clarify and explain any questions that they may be sitting with. Then the process then went on to correspondence that came to our attorneys, separately this time. With regards to Mr Saloojee, obviously was dealing with his contract of

employment. With regards to myself, it was also dealing with my contract of employment and wanting to engage on it and to question and test the validity because the board holds a view that my contract might have expired in 2013. Then when my attorney then pointed out to the board to say the mandate or the expertise of valid contract does not sit with the Chair of a disciplinary hearing, rather it sits with courts of the country and then the board seemed to have changed its approach because then it called us onto
10 a – called me, individually, into a disciplinary hearing on the 22 April of 2016.

If you count from September to that time, number of months, and then even that disciplinary, it was never a disciplinary, it was more procedural, it was more looking at the policy, looking at who should gather evidence in order to seek to get – to hold me to account to certain allegations that were levelled against me, but there was nothing on the table.

And then in that bundle that they provided, there
20 was a correspondence that suggested that there had been some investigation on us and that investigation did not really find anything of substance and that correspondence got to our file I think by mistake and that got tabled, not necessarily on the 22 April, but in the follow-up supposedly disciplinary hearing which was the 18 July.

In the 18 July then we produced this letter and said but in the bundle you handed to us there is this letter that suggests that the whole investigation could – it could appear it was being steered in a certain direction and what does this correspondence really mean? And the Chair of the disciplinary hearing ruled that look, even if there is this correspondence, the charges do not seem to be drawn from whatever is behind the correspondence because the correspondence was between the Chair of the board and
10 the internal legal adviser.

Shortly thereafter, after that, again was not a proper hearing, was more another preparatory because there was no bundle, there was no evidence that they are point to wrongdoing which is now ten months down the line.

And then shortly after that, then an offer for – I was called in and I was – an offer was made to say look, in terms of your contract, you got about 30 months left, look, if we cut it at 24 are you comfortable?

20 **CHAIRPERSON:** So but during the entire 11 month period, if it was 11 months of suspension, were there ever any documents that reflected facts that were placed before you by the board which supported the allegations they were making against you?

MR MHLONTLO: Chair, I would like to place on record, I

was never subjected to a disciplinary hearing at all.

CHAIRPERSON: And nothing substantiating the allegations was ever given to you?

MR MHLONTLO: Correct, Chair.

CHAIRPERSON: Yes. Okay, alright. Of course, Mr Kennedy, I did say that even with regard to Mr Saloojee and Ms Afrika, we should try and get the settlement agreements and if Ms Afrika has not given us an affidavit we should try and get her affidavit as well.

10 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: We will certainly attend to that, to the extent it is not already dealt with.

CHAIRPERSON: Yes. Mr Mhlontlo, you seem like you want to say something? Yes?

MR MHLONTLO: Chair, is unfortunate because a lot of information ended up in public that make damaging remarks about us. Unfortunately, at our fairly youngish age it curtails our opportunities to practice our skills and
20 profession on matters that were never subjected to processes even though we availed ourselves so much to say whatever level, we are happy to stand before the board or before whatever disciplinary committee they could put into place and it is a pity.

CHAIRPERSON: Well, I guess that part of the importance

of you appearing before the Commission, as well as Mr Saloojee and Ms Afrika in due course, in terms of Ms Afrika and telling your story how you were suspended and how you ended up leaving Denel and stating that you were never found guilty of anything and actually you wanted to go through a disciplinary hearing but it was the employer who was delaying with the disciplinary hearing and ultimately it was the employer who offered you money that you felt was reasonable for you to leave. That is important
10 so that the public and potential employers that you might approach might get to know that the circumstances of your departure do not seem to reflect anything negative that you might have been accused of.

But, of course, the Chairperson of the board, Mr Mantsha, will come here and will give evidence. We will hear their side of the story, it is just that on the face of it, if they were prepared to pay you 24 months' salary for you to go, it is difficult to reconcile that with any view on their part that they had a strong case against you in terms of a
20 disciplinary process because then they should have subjected you to a disciplinary hearing and they should have abided by the outcome but he will come and he will put his side of the story. Yes, Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. Your second affidavit refers to the process of negotiation which

ultimately led to the settlement agreement that was being concluded. If I can take you to page 593, you have made reference a number of times in your affidavit to your desire to clear your name in a disciplinary hearing and your desire that it should continue or proceed to actually be heard but at one stage you refer to management saying that they insisted that if the matter is to be resolved it would have to be on the basis that you should leave the company and agree on a financial settlement. In fact, may I take you
10 back to page 591? You refer to the mediation process and your attorney Ms Hlohlela sending correspondence and there were mediation proceedings held on the 8 February 2016 and then you say:

“Our stance was that there was no basis for our suspension and that we should return to work in circumstances where Denel could not illustrate any impropriety. Denel still insisted as a nonnegotiable that we depart from the company and agree on a financial settlement.”

20 Was that their attitude right till you finally agreed to sign the settlement agreement?

MR MHLONTLO: It is correct, in fact it was the centre of what was their submission or their side of the – or submissions in the mediation process that they believe what had happened up until that time had leads trust

issues and they would then put forward that we should explore a financial settlement.

ADV KENNEDY SC: If I can take you to the following page, 593, you refer to a disciplinary hearing session held on the 18 July 2016 at CDH offices. That is the firm of attorneys were representing the employer, is that right?

MR MHLONTLO: That is correct, Chair.

ADV KENNEDY SC: And then you referred to that:

10 “Only discussing preliminary issues, the failure by Denel to produce documents and there were a few documents that had been received not being satisfactory. My legal representative also tabled the letter at page 74 and 75 of the Denel, requested the Chair of the hearing to read the letter and employer to explain what the letter in reality means further, challenging the position of the employer that the Dentons’ report is not a document they are relying on for this case. The Chair ruled that he continued to consider the Dentons’ report as not
20 key to the case, as argued by the employer. Denel was still not ready to prosecute me on the charges tabled and no file listing charges and placing documents providing guilt even ten months after we were suspended. Disciplinary hearing was then postponed to the 3 August.”

So you had been suspended, ten months later when there were various meetings in relation to a disciplinary process you still had not received even a charge sheet?

MR MHLONTLO: Chair, I had received a charge sheet but what I had not received is a bundle proving each point.

ADV KENNEDY SC: Yes.

MR MHLONTLO: As to why the board holds a view that I am guilty of anything.

ADV KENNEDY SC: So there was no bundle of documents
10 that the employer had produced to you for purposes of the
disciplinary enquiry that would substantiate if there was
substantiation the charges that you had already been
notified of, right? And then you say in 7tion the charges
that you had already been notified of, right? And then you
say in paragraph 533:

“After ten months on paid leave only three formal
meetings were held, March 16, failed mediation,
April 26, preliminary administrative discussing that
the employer present a file with appropriate
20 evidence and July 2016, another preliminary
administrative with similar emphasis.”

If I might just stop there, in April 2016 there had been a discussion that the employer would produce a bundle of documents to pursue the charges at the next occasion.

And then in July, some many months later, you were

still discussing the need for them to provide you with such documents.

MR MHLONTLO: Chair, from April which was really a preliminary meeting drawing reference to policy, emphasising the party responsible to produce the evidence necessary to prove our guilt, it led to – from that time led to the meeting of the 18 July. My expectation, because that session was against me myself only, was the bundle which charges with evidence that we would scrutinise with
10 my attorney to plan our defence. When it got to the 18 July there had been a ream and ream of documents that had been photocopied but they were not at all in a format that would be usable and prove guilt. In fact, the discussion on the 18th was still emphasising that the employer needed to produce a proper file substantiating their issue.

ADV KENNEDY SC: And then you continue in 5.34:

“A few days later, whilst awaiting documents from Denel, I was surprised to receive a phone call from
20 the Acting GCFO, Mr Odwa Mhlwana...”

That is the person who was acting in your stead, is that right?

MR MHLONTLO: That is correct.

ADV KENNEDY SC: While you were on suspension.

“He stated that he has a mandate...”

Did he say who that was from?

MR MHLONTLO: If my recollection is correct it would be from the Chair of the board at the time.

“...and that we should meet without the attorneys to consider a way forward. My wife and I met Mr Mhlwana at the Baron Woodmead for lunch. He tabled an amicable settlement with a financial package in exchange for my resignation whereas I continued to be keen through the process.”

10 What do you mean by that?

CHAIRPERSON: To go through the process.

MR MHLONTLO: To go through the process, whereas I continued to be keen to go through the process, I considered that financial settlement was substantially better than the previous one.

ADV KENNEDY SC: Yes.

MR MHLONTLO: And therefore it was clearing the way for me to accept.

ADV KENNEDY SC: I was asking you to explain through
20 the process, meaning what? The disciplinary process.

MR MHLONTLO: The disciplinary process.

ADV KENNEDY SC: And so you were still keen to go through that process at that stage. Why was that?

MR MHLONTLO: Very much so.

ADV KENNEDY SC: Why was that?

MR MHLONTLO: I am saying the offer came ...[intervenes]

ADV KENNEDY SC: No, why were you still – I am sorry to interrupt, why were you still keen to go through the process if there was no settlement? Were you still keen to clear your name?

MR MHLONTLO: Precisely.

ADV KENNEDY SC: Was that ...[intervenes]

MR MHLONTLO: And one of the requests that I put
10 forward to Mr Mhlwana was that there has got to be way in which my name would be cleared. If Denel is withdrawing the charges and giving me a financial settlement I would want my name cleared because my name was in the public domain, a CA who is purported to have done certain things and I was concerned about that.

ADV KENNEDY SC: If I might have a moment, Chair?

CHAIRPERSON: I am sorry, Mr Mhlontlo, your statements do not seem to say anything, as far as I could recall, about your qualifications. Did you say CA just now?

20 **MR MHLONTLO:** Yes.

CHAIRPERSON: You are a CA?

MR MHLONTLO: I am a CA.

CHAIRPERSON: Yes, okay, so you were concerned about the fact that you are a CA and your name in the public domain had been tainted because of what Denel had said.

Okay, alright, thank you.

ADV KENNEDY SC: And so was the offer that was presented to you accompanied by your wife by Mr Odwa Mhlwana, was that the offer that was then agreed to as captured in the settlement agreement we have looked at?

MR MHLONTLO: On that date he gave a broad indication of, you know, in terms of my contract you are left with x number of months, if you are in agreement, I will speak to my principal of where we can potentially settle, but we
10 acknowledge the overall number of months left in your contract. It was clear the direction in which it was going. We were then to meet a couple of days later, which we then met in Midrand where we then concluded the deal but the initial part of it was at the Baron in Woodmead.

CHAIRPERSON: Well, how much time was left? Were you on a fixed term contract appointment?

MR MHLONTLO: I was initially appointed in October 2008 as a permanent employee. When Mr Saloojee joined the company in 2012, he said look, in an executive position as
20 yours, it is not ideal to be on a permanent appointment or permanent employment. His mandate is that he must explore placing all of us on a temp contract, which was a five years from that time. So when this unfolded, it was within the context that my original employment contract had an addendum already that specified as to when I would

exit.

CHAIRPERSON: And was it 24 months that was left?

MR MHLONTLO: It was about 30 months that was left.

CHAIRPERSON: About?

MR MHLONTLO: About 30 months that were left.

CHAIRPERSON: Ja.

MR MHLONTLO: And the settlement was over 24 months.

CHAIRPERSON: Okay, alright.

ADV KENNEDY SC: Chair, may I now refer the witness,
10 please, Mr Mhlontlo, to your paragraph 535 on page 593
where you refer to the fact that even after the settlement
there were damaging media statements. What are you
referring to here?

MR MHLONTLO: There is a specific statement which was
made that we, without following appropriate governance
processes, we have changed the borrowing arrangements
with a financial institution and whereas that - in fact, how
that happened, unfolded differently the way as put out
there, as casting aspersion on us, saying we are bad, we
20 are this and that and I was concerned about it, but we will
deal – I suppose we will cover it at some point.

ADV KENNEDY SC: And then you make reference at the
foot of the page to your removal being seen largely in the
same way as that of exited senior executives at Eskom in
2014. Seen by whom and in what way?

MR MHLONTLO: There was a lot of media coverage that was attributing our exit to the same circumstances that were prevailing elsewhere. I take a view that I am not necessarily going to join the speculation, but I am just pointing out factually what I was seeing covered in the press.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Yes, I think the suspensions of executives at Eskom was 2015 rather than 2014, if I am not
10 mistaken. But it is okay, it is not necessarily material. Yes, okay, let us continue.

ADV KENNEDY SC: Thank you, Chair. We have dealt with the issue now of the package.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Which came in the very introductory sections that I was just taking him through his employment history and so forth.

CHAIRPERSON: Yes.

ADV KENNEDY SC: We will need to proceed to deal with
20 the meat of his first affidavit and in the second and the second will include consideration in some detail of the circumstances of his and his colleagues' suspension. May I suggest, unless you would like me to continue, that we can deal with that tomorrow?

CHAIRPERSON: Yes. No, we can do that tomorrow.

Okay, let us adjourn and then we will resume tomorrow. So, Mr Mhlontlo, we will continue with your evidence tomorrow morning at ten. Okay, we adjourn.

INQUIRY ADJOURNS TO 10 NOVEMBER 2020