

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

11 NOVEMBER 2020

DAY 304



Gauteng Transcribers
Recording & Transcriptions

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

CERTIFICATE OF VERACITY

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

11 NOVEMBER 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH, D MILLS



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 11 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.

CHAIRPERSON: Okay let us continue. Mr Ntshepe good morning.

MR NTSHEPE: Good morning Chair.

10 **CHAIRPERSON:** The oath you took yesterday will continue to apply today you understand?

MR NTSHEPE: Yes.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Morning Mr Ntshepe.

MR NTSHEPE: Morning, morning SC.

ADV KENNEDY SC: May I ask you to return to a document we were looking at yesterday. It is in Bundle 1 – Denel Bundle 1.

MR NTSHEPE: Yes.

20 **ADV KENNEDY SC:** And if I may ask you please to turn to page 824. You recall this; this is the motivation that was sent to Mr Mlambo for his approval as Group Supply Chain Executive of the single supplier contract between DLS and VR Laser. We looked at this yesterday; remember?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And Ms – Ms Malahlela indicated at page 824 that the reason for the request was that there was a Denel Supply Chain Policy which required that approval be obtained from the head of Supply Chain for a deviation of the normal rule which was that such contracts should be kept in-house for and inside supplier – inside Denel unless there were good business reasons to go outside and she indicated that she was instructed to request this and Mr Mlambo refused to give that approval
10 at least at that stage he said what would be needed was that there would have to be proof that the internal entities DVS and LMT could not meet the requirements. Now you remember you gave evidence yesterday that you overruled Mr Mlambo's decision.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Despite the – were you aware that DVS and LMT did not submit proof to Mr Mlambo that they could not satisfy the requirements?

MR NTSHEPE: I was not aware of that.

20 **ADV KENNEDY SC:** Yes. In fact the evidence is that no such proof was submitted and yet your approved the transaction.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now I said to you last night when we adjourned that yesterday evening that we would now give

you an opportunity this morning to explain why you overruled Ms Mlambo.

MR NTSHEPE: Thank you SC. Thank you Chair. I think the facts are there for themselves to prove that Denel has always been late and sometimes being very bad penalties in terms of deliveries because their programs were late or their programs did not meet the specifications of the client.

When Mr Mlambo – when this motivation came to me it came to me after they had taken to Ms Mlambo and
10 Mr Mlambo did not approve. And to me what was urgent was for the work to be done not for people to – if Mr Mlambo really wanted to find out to exactly why is DVS and LMT not submit any proof that he cannot do this work. I think it was upon him to go and find that information out.

In other words I am saying that it could be – could have been a mutual responsibility between DVS and LMT. Now for me what was – as the memorandum is explaining that this was an urgent request which this vehicle was prepared for a demonstration and the parts that were going
20 to be used were specialised fabrication parts which VR Laser at that point in time was the company that we knew that were able to do that.

So when this request came to me it came to me on an urgent basis to say that we really need this thing otherwise we will not be able to have this vehicle for a

demonstration.

So I approved it based on that and further to note that Mr Mlambo claims that I scratched his name out in this document which is false. I did not scratch his name out.

So I – I believe that I took the right decision to approve it and also to further explain that you know Denel though is a state owned entity it is an enterprise which competes with private enterprises.

If you are not able to deliver a product at a certain
10 point in time you will pay the penalty either financially or by losing the sale or by losing the opportunity to demonstrate your capabilities.

So where those were the things that were motivating – motivated me to – to overrule – to overrule not to say that I undermined him, I did not undermine him. But for me it was for the best interest of the company to make sure we are able to do this on time and we do not have much time to be dilly dallying and being given the label that Denel cannot deliver on – because in the market
20 place as you have indicated also SC that Denel was late eleven years on some products or on a project which should have been delivered eleven years ago.

ADV KENNEDY SC: May I just unpack a few of the points that you raised Mr Ntshepe. You are aware are you not that the agreements the MOA had already been signed

before Mr Mlambo was asked for this approval.

MR NTSHEPE: Yes I was aware.

ADV KENNEDY SC: And you had been involved in that signature?

MR NTSHEPE: Yes I was as a witness.

ADV KENNEDY SC: Now as I understand it one of your reasons was in fact – well the memorandum of agreement has already been signed and so we cannot cancel it now even if Mr Mlambo is advising us to based on procurement
10 requirements because the – because the horse is already out of the stable.

MR NTSHEPE: Correct.

ADV KENNEDY SC: The agreement has already been signed. You already committed to VR Laser.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. But how did it come about that an agreement was signed before the person most senior in the organisation responsible directly for Supply Chain Management Mr Mlambo had never been asked for his
20 approval which was required under the procurement policy?

MR NTSHEPE: The agreement was signed as per the instruction for – of the – the then CEO the SY CEO Mr Saloojee and the people who were involved in it were the executives. As I have indicated before SC Mr Mlambo although he called himself an executive he was not an

executive he was a senior manager – Group Senior Manager Supply Chain. The executive was the CFO he was reporting to the CFO.

In terms of the titles in Denel I think there is a blur because if you are invited as permanent invitee as EXCO it does not necessarily mean that you are an executive.

ADV KENNEDY SC: Well let us – let us leave aside for a moment the question of whether his title was truly executive or truly Manager. What I am particularly
10 interested in is that we had – you had a situation where you signed an MOA where the procurement policy required approval from the Supply Chain Manager in your language Mr Mlambo because VR Laser was not a Denel subsidiary, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Were you aware of that requirement at the time that you signed it – the MOA?

MR NTSHEPE: That VR Laser is not a Denel subsidiary?

ADV KENNEDY SC: Were you aware that there was a
20 requirement in the procurement policy that where goods were being bought from an entity outside Denel that the – there had to be a good business reason for going outside the divisions of Denel or its subsidiaries and that good business reason had to be approved by the Supply Chain Manager. Were you aware that the procurement policy

required that?

MR NTSHEPE: As a Group Business Development at that point in time I would not have been very [00:10:17] with all policies of the organisation. I was familiar in particular with policies that are pertaining to business development.

However the signature – why Mr Mlambo's signature was not in the MOA it was the prerogative of the [00:10:38] Group CEO.

ADV KENNEDY SC: Sorry the prerogative of?

10 **MR NTSHEPE:** Mr Saloojee.

ADV KENNEDY SC: Mr Saloojee?

MR NTSHEPE: Yes.

ADV KENNEDY SC: But will you not answer my question please? I appreciate that as the executive dealing with the business development you may not have known everything in the organisation. My question was not whether you knew everything in the organisation.

My question was specific and may I ask you please to give a specific direct answer. Specifically in relation to
20 the requirement of the procurement policy of the Denel that if you were going to buy goods from outside company divisions or entities you would need to have a good business case and that had to be approved by Mr Mlambo. Were you aware of that rule?

MR NTSHEPE: I was aware of the rule that if you were

procuring services from outside you will have to have the processes in order for their approval. The final approval whether it was Mr Mlambo of the – or the division head I was not aware – was not totally aware of that.

ADV KENNEDY SC: Well – well it is true that the Chief Executive had authority to sign such a contract that is true. It is also true that the Chief Executive was the Chief of the Administration so that Mr Mlambo was subordinate to Mr Saloojee in terms of power and authority.

10 All of that is true but you will see on this page 824 that Ms Malahlela has taken the trouble to quote from the Supply Chain Policy the provision in question and it says and here the Supply Chair Policy itself uses the term Supply Chain Executive but leave that aside that it has to be approved by the Group Supply Chain Executive based on sound business reasons.

 So apart from the fact that the Group CEO would at the end of the process of recommendations and evaluation and all of that sign the actual MOA before it could get to
20 the CEO there had to be approval by the Supply Chain Executive or Manager.

 And you were aware of that rule not so?

MR NTSHEPE: Yes I was.

ADV KENNEDY SC: Yes. So are you saying that this fell away simply because Mr Saloojee was prepared to sign the

MOA?

MR NTSHEPE: I think in my affidavit I have explained the relationship that had now evolved between VR Laser and Denel in terms of the relationships – in terms of the MOA.

ADV KENNEDY SC: Yes but I am not talking about relationships with VR Laser.

MR NTSHEPE: Yes.

ADV KENNEDY SC: I am talking about compliance with the Denel policy within Denel.

10 **MR NTSHEPE:** Yes.

CHAIRPERSON: Maybe before you answer Mr Kennedy's question and do not forget it Mr Kennedy.

ADV KENNEDY SC: No.

CHAIRPERSON: Do you agree that this rule or policy as quoted in Ms Malahlela's memorandum actually prohibits the procuring of products or services from outside of Denel when there is a group entity or division within from which such product or services can be obtained unless there are sound business reasons. Do you accept that this – you

20 accept that?

MR NTSHEPE: Yes – unless – yes I accept that.

CHAIRPERSON: Okay alright. Mr Kennedy's question then is, are you saying that this policy or this rule fell away in these – in this case?

MR NTSHEPE: I believe it did because she – the

motivation was to say that after an EXCO meeting they had agreed on an exception that they – they should procure the services.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you. In this case of course there was no open procurement process, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: As there had been at least in the sense of three quotations were sought for the platform
10 hulls contract that went before, correct?

MR NTSHEPE: Correct as per the memorandum.

ADV KENNEDY SC: So – so there was no competitive process for the single supply contract and there was not good business reason that was approved by Mr Mlambo, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. There is nothing that I have seen in the Group Procurement Policy that says that if the Supply Chain Executive or Manager refuses approval
20 based on good business reasons if he or she is not satisfied that the CEO then has the power to override him or her. Are you aware of any such provision?

MR NTSHEPE: There is no policy like that but at the same time I am totally responsible for the board not Mr Mlambo.

CHAIRPERSON: One second Mr Kennedy I may have

caused some slight confusion on the meaning of the rule. This rule here as I read it I think I may have put it slightly differently. Seems to prohibit the procuring of products or services from outside of Denel when there is a division or group entity within that can provide such a product or services unless there is approval by the Group Supply Chain Executive.

So it seems that it is a condition that the approval of this particular specific person or incumbent is obtained.

10 And the sound business reasons it seems are sound business reasons for him approving that you go outside. I may – I may be wrong but you are free to indicate your own understanding.

It seems to me that what the rule says is he is the one who will approve or not approve the procuring of products or services from outside if there is a division or group entity which can provide the same product or services.

But when he approves in those circumstances

20 where he approves that services or such a product or services be obtained from outside he must have sound business reasons.

So he is the one who must have sound business reasons if he is going to approve that such product or services be obtained from outside. Not somebody else.

Do you share the same understanding?

MR NTSHEPE: Chair I share the same understanding with limitations in the sense that the ultimate responsibility of the organisation lies with the CEO. If there are things that are not done in the company I cannot go to the board and say so and so refused to do that. Or then they would – the question would be why did you not put him through a disciplinary which I – I am not sure if Mr Mlambo works for Denel now or not but I – I believed that I needed to
10 expedite the work of Denel and be able to have this demo ready on time because this is a demo vehicle.

I think it was going to be shipped and they are limited – and there are limitations in terms of time where the ship and where it was going to be shipped to it is a long way. If I still believe this was probably Pakistan because it is the [00:19:28]

If you delay the process then it is either the vehicle will not go and we will therefore not be able to demonstrate or the – and then we will lose the opportunity for other
20 clients in the world to see what type of capability we have.

CHAIRPERSON: Mr Kennedy I know I interrupted you but I thought I may have given a different understanding of this rule. But maybe even the one with the meaning that I have given might not be hundred percent. I do not know what – but you can go according to how you understand it.

ADV KENNEDY SC: Chair with respect we are comfortable with the proposition that you have put to the witness Chair so – but if I may just develop the questions that arise from that?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Are you saying Mr Ntshepe that because it was urgent that gave you the right to deviate from procurement policy?

MR NTSHEPE: I am saying that there was a motivation.
10 To me the motivation made sense and we had also the urgency of doing the – making sure that the vehicle is ready therefore with the responsibility that I bear on my shoulders that gave me the right to be able to do that.

ADV KENNEDY SC: That ...

MR NTSHEPE: And the authority to do that.

ADV KENNEDY SC: So where did you get that right from – from the fact that it was urgent and you needed to report to the board on the progress, is that what you are saying?

MR NTSHEPE: It was urgent and secondly that I cannot
20 have an excuse that we could not demonstrate because Mr Mlambo delayed the process.

ADV KENNEDY SC: Yes but what I am suggesting to you is this that even if it was urgent you still have to comply with the law not so?

MR NTSHEPE: Yes I – in my view I complied with the law.

I might not have complied with Mr Mlambo.

ADV KENNEDY SC: With the?

MR NTSHEPE: With Mr Mlambo.

ADV KENNEDY SC: With Mr Mlambo?

MR NTSHEPE: Ja.

ADV KENNEDY SC: And we have just seen the procurement policy provision that says that Mr Mlambo's approval had to be obtained for this going outside Denel's operations. He had to do that only if he was satisfied that
10 there was a good business reason.

Now you saying that where Mr Mlambo decides that there is – that there is not evidence before him to show a good business reason so he does not approve it but therefore you could override his decision because it was urgent?

MR NTSHEPE: To me Chair that was not reasonable for him to do that.

CHAIRPERSON: Just repeat that?

MR NTSHEPE: To me Chair that was not reasonable for
20 him to do that because he knew exactly what the consequences thereof will be in the event that we do not complete this.

ADV KENNEDY SC: But Mr Mlambo has given evidence and I would like you to comment on it. He was saying that his job included the responsibility of enforcing this as well

as other provisions of the Supply Chain Management Policy. He took it seriously. He was not even asked for his approval before the MOA was signed. Are you aware of that and do you dispute that?

MR NTSHEPE: I will not comment because I was not the one who put the MOA together and the person who signed the final signature is the one who decided who should be in – consulted or not.

ADV KENNEDY SC: Yes I understand that you may not
10 have had active involvement in the MOA at that stage but you are aware of it now, not so? Were you not aware of it at the time that you saw this memorandum and actually signed to have it approved? You see page 824 actually makes it clear that the MOA has already been signed. If you look at the second last paragraph on page 824 it says in the second line

“In May 2015 DLS signed a MOA with VR
Laser for this scope of work.”

MR NTSHEPE: Correct.

20 **ADV KENNEDY SC:** And then Ms Malahlela says the last paragraph.

“Due to the these contradicting positions
Supply Chain approached DLS EXCO to
make a decision as to whether to honour
the MOA and place the order on VR Laser

or to follow the Supply Chain Policy and procure from inter group namely DVS or LMT for this project. Given the time frame urgency and history EXCO has recommended that the work be done by VR Laser.”

So Ms Malahlela makes it clear in this memorandum that you signed to give approval She makes it clear that what is now being sought – what is now being requested
10 from Mr Mlambo is approval retrospectively after the fact because the MOA has already been signed. Not so?

MR NTSHEPE: Correct.

ADV KENNEDY SC: So I get back to my question. What do you say about the fact that the MOA was signed at a time in May 2015 when Mr Mlambo had not even been asked whether or not he wants to give his approval?

MR NTSHEPE: I repeat again SC that the MOA – the individual or the erstwhile GCEO is the one who decided who should be involved in signing the MOA. I cannot
20 create something that I have no idea of why he did not do that. I can speculate but and saying yes now I understand but he did not do it. The fact is he did not do it.

ADV KENNEDY SC: So you were not aware at the time the MOA was signed that this had not been done?

MR NTSHEPE: No I was not – I was...

ADV KENNEDY SC: Is that correct?

MR NTSHEPE: What is this? Sorry SC?

CHAIRPERSON: And at the time when he read this memorandum?

ADV KENNEDY SC: No I asked Chair the witness was he aware at the time that the MOA was signed that Mr Mlambo had not given his approval – at that time?

MR NTSHEPE: I was not aware of that.

ADV KENNEDY SC: You were not aware – I understand
10 that. But now you – you then become aware because you are asked to override Mr Mlambo's refusal.

You are aware by way of this memorandum of 29th October 2015 so that is more than five months since the MOA had already been signed. You are aware now as Group CEO that people in the organisation had signed a MOA without following the procurement policy provisions specifically requiring Mr Mlambo to give his approval. And now what she is trying to do Mr Malahlela instructed by her DLS board is to get Mr Mlambo retrospectively to authorise
20 the deviation. Is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes.

MR NTSHEPE: With due respect can I continue SC?

ADV KENNEDY SC: Sorry.

MR NTSHEPE: With due respect Chair five months after

the MOA has been signed the Group Chief – the Group Chief Procurement is not aware there is tardiness somewhere there.

ADV KENNEDY SC: The is what – tardiness somewhere did you say? What did you say I did not hear you.

MR NTSHEPE: Tardiness. In other words there is neglect of responsibility.

ADV KENNEDY SC: Yes.

10 **MR NTSHEPE:** After five months that has – it has been signed.

ADV KENNEDY SC: And you ...

MR NTSHEPE: And Ms Malahlela was responsible for the Supply Chain in the division. Whereas his boss is not aware of that. Five months to me that is tardiness, there is neglect of responsibilities.

ADV KENNEDY SC: Yes. There is a neglect of responsibility.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Do you – are you ..

20 **CHAIRPERSON:** On whose part..

ADV KENNEDY SC: Sorry Chair.

CHAIRPERSON: On whose part?

MR NTSHEPE: Both Mr – especially Ms Malahlela because if she knew that the – because she is the one who is writing that the MOA has been signed. She should have

informed the head - there was group meetings of the Supply Chain at Denel like there were group meetings of the business development. Ms Malahlela should have made sure five months that his boss is not aware. I do not know what they were discussing then in the group Supply Chain meetings.

CHAIRPERSON: Ms Kennedy – Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Is it not a bit unfair of you to be pointing the finger of blame at Ms Malahlela.
10 She has already given evidence to this commission in public on TV that she in fact specifically recommended to her board at DLS and her EXCO that there were breaches of the procurement policy and it should not go ahead. And in fact as I pointed out to you her evidence has been that she specifically used the words for example

“I hereby request permission to implement
the EXCO decision”

Because she disagreed with that decision. Is it not a bit unfair to blame the person who was in fact strongly
20 recommending to management that they should not sign the MOA; that it was signed without the necessary approval being obtained.; that it was signed without the necessary approval being obtained.

MR NTSHEPE: Chair honourable SC asked me if Mr Mlambo was – was he aware of that the MOA was signed

five months thereafter in October meaning that it was signed five months before October; the MOA. And he was not aware of that.

ADV KENNEDY SC: So are you blaming not Ms Malahlela and you now blaming Mr Mlambo

MR NTSHEPE: No I am not blaming Mr Mlambo.

ADV KENNEDY SC: Or are you blaming both?

MR NTSHEPE: Sorry SC.

CHAIRPERSON: Yes. Ja let us give Mr Ntshepe a chance
10 to answer.

MR NTSHEPE: I am not blaming Mr Mlambo I am saying there is a relegation of responsibility here whereas there were individuals who holding meetings almost every two weeks I remember in the Group Supply Chain in the – at head office and this matter should have been discussed there. And I am acting only and only on the document that is laid before me.

ADV KENNEDY SC: .Yes. Yes.

CHAIRPERSON: No, do you remember Mr Kennedy
20 whether Ms Malahlela indicated whether how she became aware that the MOU or MOA had been signed. I know that with regard to Mr Mlambo, one got the impression that there was an attempt to ensure that this did not get to his attention or something. One got that impression. I do not know whether you got the same impression.

MR NTSHEPE: Yes.

CHAIRPERSON: Now I do not know, I cannot remember Ms Malahlela's evidence as to when she would have become aware of the fact that the MOA or the MOU in May had been signed.

ADV KENNEDY SC: Yes, as I recall the evidence, she was resisting the signature from the outset of the process and was then aware that she was being overridden. So it was not as if she find out only after the event.

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: Whereas Mr Mlambo did in fact only ...[intervenes]

CHAIRPERSON: Yes.

ADV KENNEDY SC: He was only asked for this approval five months after the MOA had been signed already.

CHAIRPERSON: Ja. Ja-no, that is fine. Well, one of the questions which I think Mr Kennedy had asked at some stage Mr Ntshepe which I would like you to deal with because I am not sure that you have dealt with it properly is.

20 I understood Mr Kennedy to want to find out what your attitude was when you became aware that Mr Mlambo's approval had not been obtained before the MOA was signed.

When you discovered this, that which at the latest, I guess, would have been when you signed the approval when he had refused.

In other words, when you realised that there had been no compliance with policy, what was your attitude to that?

MR NTSHEPE: My attitude Chair was that, because of the nature of the request, there was an urgency to go ahead and that is why I wrote approved. So my attitude was that I supported the memo.

CHAIRPERSON: Well, I want you to distinguish between two things because I want to make sure I understand your attitude in regard to each one of them correctly.

10 That is the request which was then before you in October 2015 after Mr Mlambo said that he needed certain requirements to be – he needed to be satisfied about certain requirements before he could approve and you approved. Now, that is one thing. That is your attitude to that request.

MR NTSHEPE: Yes.

CHAIRPERSON: And one of the things you have said is, because of urgency, you thought approval should be given. Okay, that is one thing.

MR NTSHEPE: Correct.

20 **CHAIRPERSON**: But the other one is, you become aware that there has been a breach of policy sometime back when the MOA was signed without his approval. His approval has been sought after but it should have been sought before.

So what was your attitude to the fact that there had been a breach of policy by those who signed that MOA without

first obtaining the approval?

MR NTSHEPE: In my understanding Chair. The Group CEO applied his mind when he signed the MOA. In his mind, I trust and believe that he would not have breached any policy at that point in time. I trusted him. Otherwise, why would he want to breach a policy purposely?

CHAIRPERSON: So is your answer that when you heard – when this came to your attention, your view was that either Mr Mlambo... Well, I guess you could not say Mr Mlambo's
10 approval had been obtained. So I guess you would have said there must have been good reasons for the MOA to be signed without his approval. Is that what you thought?

MR NTSHEPE: [No audible reply]

CHAIRPERSON: Is that what you thought?

MR NTSHEPE: Correct.

CHAIRPERSON: But you did not check whether there were actually good reasons? You took the view that the person who was Group CEO at the time, approved and you left it at that?

20 **MR NTSHEPE**: The representative for Group Supply Chain as it reported to the former or the erstwhile Chief Financial Officer, in my mind, that represented the whole function of that organisation and he signed it. So I had no doubt – I had no reason to believe that there was a breach of policy.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. Mr Ntshepe, but you did have good reason. You may not have had reason at the time that Mr Saloojee signed it originally to believe that there was a breach of the policy but here there was an attempt being made by DLS to cure what had already been identified as having been a breach in the policy.

So the mere fact that you thought Mr Saloojee would not have signed unless – at least where he knowingly was aware that the policy had breached. That must have fallen away.

10 You had been alerted now as his successor to the fact that something had been signed by your predecessor in circumstances where the necessarily approval had not been obtained.

So I am suggesting to you. It may not be appropriate for you to say: Well, because Mr Saloojee signed, therefore, I assumed everything was in order.

You now knew, surely, that everything was not in order specifically this provisions of the process had not been complied with. Was it not your duty as Group Chief
20 Executive to take corrective action?

MR NTSHEPE: Honourable SC, I am – cannot be hundred percent certain that mister – erstwhile Mr CEO, Mr Saloojee, would not have signed this motivation, number one. So I cannot attest to it ...[intervenes]

ADV KENNEDY SC: No, but sorry Mr Ntshepe, I think we

are at cross purposes. I am not talking about Mr Saloojee singing this motivation because this motivation was submitted when you were Group CEO, not when Mr Saloojee was.

I am simply saying this. You are now faced when you signed to approve this motivation. You were aware that the MOA had previously been signed ...[intervenes]

MR NTSHEPE: Correct.

ADV KENNEDY SC: ...in circumstances where the
10 necessary approval under the procurement policy had not been obtained. You were aware of that. Mr Saloojee may or may not have been aware of that but you were aware of that.

There is a problem that the memorandum is asking: Can we fix it by way of approval where there has been a breach of the procurement policy?

Mr Mlambo said: Well, maybe but I need to be satisfied there is a good business reason before I give my approval. And you overruled him. Not so?

CHAIRPERSON: Maybe... Can I put it this way? I think
20 what Mr Kennedy is saying to you is. You have said to me in answer to a question I had put to you that you would have thought that there would have been no breach of policy ...[intervenes]

MR NTSHEPE: Correct.

CHAIRPERSON: ...because ...[intervenes]

MR NTSHEPE: Correct, Chair.

CHAIRPERSON: ... Mr Saloojee, as far as you are concerned, you did not think he would approve if there had been a breach of policy.

MR NTSHEPE: Correct, Chair.

CHAIRPERSON: Which might mean, as far as you are concerned, either there was no breach of policy or if there was a breach, it was a breach – there were good reasons for him to approve.

10 So what Mr Kennedy is putting to you now, effectively, is to say. But Mr Ntshepe, you could not have thought along those lines when you had to make a decision on this memo.

Because the facts which emerged from the memo, were that no approval – Mr Mlambo's approval had not been obtained. That is number one.

Number two. Those concerned were now bringing to you the fact that there had been no approval. And they are not saying Mr Saloojee signed because here were the grounds that justified him to approve.

20 They were simply saying, in effect, no approval was obtained from Mr Mlambo but we think it should be obtained now. That is what I think Mr Kennedy is saying to you. So you could not have thought along the lines that you say you thought.

MR NTSHEPE: Correct. Correct, Chair.

CHAIRPERSON: You accept that?

MR NTSHEPE: Yes, I accept.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

CHAIRPERSON: Okay. So Mr Kennedy, you want to take it from there?

ADV KENNEDY SC: Yes, thank you Chair. I would like to explore the issue of urgency a bit more. The memorandum just refers to urgency but it does not say what the reasons
10 for urgency were, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: H'm. I see. Do you know how long it might have taken for an answer to be provided to Mr Mlambo?

MR NTSHEPE: [No audible reply]

ADV KENNEDY SC: Because if you look at page 852. He is not saying: I will never approve this. He is saying that DVS and LMT must submit proof that they cannot meet the requirements. He also says: Prior to the contract being
20 awarded. Of course, it had already been awarded. But do you know how long it would have taken?

MR NTSHEPE: In my view SC, it could not have taken a day or two.

ADV KENNEDY SC: Even more than a day or two?

MR NTSHEPE: [No audible reply]

ADV KENNEDY SC: And yet that was not done. Nobody came back to Mr Mlambo to say: Well, actually Mr Mlambo, DVS was saying X, Y, Z. They are not able to do it. And LMT are saying X, Y, Z. They are also are not able to do it. That was not done even that could have taken no more than a day or two. You are aware of that?

MR NTSHEPE: I am not aware of that but you are informing me right now, SC. I am aware of it now.

ADV KENNEDY SC: You cannot dispute it, correct?

10 **MR NTSHEPE:** Sorry, I missed that?

ADV KENNEDY SC: Can you dispute it or not?

MR NTSHEPE: I am not disputing it.

ADV KENNEDY SC: You are not disputing it?

MR NTSHEPE: [No audible reply]

ADV KENNEDY SC: Thank you. And is it correct that nobody came to you to say: Well, actually Mr Mlambo – the answer to Mr Mlambo's questions are the following: Nobody came back to you. Is that right?

20 **MR NTSHEPE:** I think the individual – I do not remember – the individual who brought this to me, because it was not directed to me, would have pointed out that Mr Mlambo did not sign this thing.

ADV KENNEDY SC: Yes.

MR NTSHEPE: And when I read it, this is what I read and I asked him why did he sign this thing. The answer I got was

that he is delaying the process. And ...[intervenes]

CHAIRPERSON: Well... Ja, probably, that is what you were told and maybe you also bought into that. But you have said that checking these requirements that Mr Mlambo wanted to be checked could not have taken more than a day or two.

MR NTSHEPE: Correct, Chair.

CHAIRPERSON: So the challenge, therefore, is, why could you not say: Look at whether the requirements that Mr Mlambo is asking to be checked and go back to him.
10 Because as Mr Kennedy says, he had not said he will never grant the approval.

He just wants to be satisfied that the requirements of the policy are met before he can approve. So if it was somebody that could not take a day or two, what is it that was so urgent that you had to approve it yourself.

Rather than say: But Mr Mlambo is following policy. You people must respond. Check these requirements and respond to him. Let him make a decision after that because it is not something that is going to take a month. It is just a
20 day or two and then he can make up his mind. Maybe he will approve, maybe he will not but he has raised certain issues. Attend to them. Why did you not say that?

MR NTSHEPE: Chair, the individual who brought this memorandum to me, I believed he brought it in good faith.

CHAIRPERSON: I am sorry. You say you believe...?

MR NTSHEPE: He brought the memorandum to me in good faith because he wanted the expedition of the work. And I believed what he told me.

CHAIRPERSON: Yes.

MR NTSHEPE: I did not doubt because I believed what he said and I trusted his views. And I then acted appropriately as I deemed fit.

CHAIRPERSON: But he – is what he has told you that Mr Mlambo was delaying the process.

10 **MR NTSHEPE**: Correct.

CHAIRPERSON: Yes, but then your answer – why was your answer not this? Mr Mlambo, seeks to ensure that the policy of the company is complied with. It is not going to take long to check whether this requirements are met. It is a day or two. You go and attend to that. Go back to him on those requirements. Come back to me only after he has looked at your response and if he still says no... Why did you not do that?

MR NTSHEPE: I did not do that as I – I will repeat again
20 Chair. That I believed that DVS and LMT, the individual who brought this to me is aware that DVS and LMT might not necessarily or does not have a capability and capacity to this specialised requirement for the T-file(?).

And therefore, he brought it straight to me because he realised if we do not do it now, we might never do it or it

might take a long time ...[indistinct] ...[intervenes]

CHAIRPERSON: But Mr Ntshepe, the heavens were not going to fall if in two days' time they went back to Mr Mlambo.

MR NTSHEPE: Correct, Chair.

CHAIRPERSON: Yes.

MR NTSHEPE: Correct.

CHAIRPERSON: So you are the acting Group CEO. You are supposed to, among other things, make sure that the
10 policies of the company are followed.

MR NTSHEPE: Correct, Chair.

CHAIRPERSON: Here is a functionary or somebody who holds a particular position in the company and his duty includes enforcing this policy and he is not saying: I am refusing. He says: I want to make sure that the policy is complied with before I make up my mind.

And in your own version, it is not going to take long to satisfy him one way or another. Do you not agree that your approach – your response should have been: No, no, no,
20 no. Mr Mlambo is raising legitimate issues here. This thing of saying he is delaying, I am not buying it. He is raising legitimate issues here.

The policy of the company requires that he must satisfy himself about this. Deal with this. Go back to him. Only after he has made a decision, after he have gone back with

this, can you come back to me. Do you not accept that that is how you should have handled it?

MR NTSHEPE: On hindsight, Chair. As you are pointing it out to me now. Yes, I should have done that.

CHAIRPERSON: Yes, okay alright. Mr Kennedy.

ADV KENNEDY SC: Sorry, Chair. May I just check something with my colleague?

CHAIRPERSON: Ja, okay. Okay.

ADV KENNEDY SC: You see, the memo starts on page 6...

10 Oh, sorry 824, the first paragraph or first two. Previous situation, as which as you pointed out, relates to the TS Demo Model which was prior to this particular single source contract, correct?

MR NTSHEPE: Yes. T5.

ADV KENNEDY SC: I am sorry?

MR NTSHEPE: T5.

ADV KENNEDY SC: T5. I beg your pardon.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes. But that is correct, is it not?

20 **MR NTSHEPE**: Correct.

ADV KENNEDY SC: That was a previous contract. And Ms Mahlalela is pointing out to the Group Supply Chain Executive to whom it is addressed, that he had previously in relation to that contract had given instruction that DLS must first explore whether and to what extent DVS and LMT could

be used to do that.

And it was precisely because of the same provision. So she effectively was saying in this memo: We are aware - (at her level). We are aware that you, Group Supply Chain Executive, previously required the DLS to make sure whether we could do it in-house.

That has not been done for the contract for the single source supplier. She has taken it to her executive to DLS to say: We have got on the one hand a violation of this policy.
10 On the other hand, we have the fact that the MOA has been signed in violation of the policy. We have this problem.

And she was recommending to DLS Management: You are going to have to scrap this contract and start the process to do it, to do it in compliance with the policy. But her DLS Management overruled her.

And so, she was now saying to Mr Mlambo: My board, my executive at DLS are now asking you if you will retrospectively approve it.

So did this not ring alarm bells in your mind to know that
20 there was in fact a violation of the policy that you were now being asked to approve? Sorry, not you Mr Mlambo was being asked to approve.

MR NTSHEPE: In terms of what is written here, there is a violation of the policy.

ADV KENNEDY SC: Sorry? The what?

MR NTSHEPE: There is a violation.

ADV KENNEDY SC: There is a violation.

MR NTSHEPE: Yes.

ADV KENNEDY SC: So ...[intervenes]

MR NTSHEPE: However ...[intervenes]

ADV KENNEDY SC: Yes?

MR NTSHEPE: Can I...?

ADV KENNEDY SC: Sorry, yes.

MR NTSHEPE: Ms Mahlalela was part of Exco. She was
10 not outside of Exco. She was part of Exco herself.

ADV KENNEDY SC: But she has given her evidence that
she was overruled by the rest of Exco. Are you saying that
she should be blamed?

MR NTSHEPE: No, I am saying she was part of Exco. She
was part of the decision. I cannot say if we make South
Africa a decision. Then I am saying, I, individually refused
...[intervenes]

ADV KENNEDY SC: Sorry. When she answered my
question. We know that she was part of Exco. We know that
20 Exco decided by a majority view ...[intervenes]

MR NTSHEPE: Yes.

ADV KENNEDY SC: ...that Mr Mlambo should be asked to
give approval. Not... It is addressed to Mr Mlambo, not to
you.

MR NTSHEPE: Correct.

ADV KENNEDY SC: We will get in a moment to how it came to you. But Exco at DLS accepted as the evidence go and the minutes reflected, accepted that there was a violation of the policy but said: Well, if there is a violation of the policy, it can be ignored effectively because the MOA has already been signed.

So if it was done unlawfully, we are now stuck with it and we may face litigation from VR Laser if we cancel it. So it is then sent to Mr Mlambo against Ms Mahlalela's views.

10 Is it fair to suggest that she should be blamed because she sat in the same Exco meeting that took that decision when she was a minority view that strenuously resisted it?

MR NTSHEPE: Honourable SC, I am not saying she should be blamed. I am stating the facts that according to me as I see them in front of me. She says: I hereby requests permission to implement. I am not blaming her but she is the one who is saying: I hereby request. She does not say: I hereby... To implement the Exco decision.

ADV KENNEDY SC: Yes.

20 **MR NTSHEPE:** Being part of Exco, I would believe that she was implementing the Exco decision.

ADV KENNEDY SC: Yes, because ...[intervenes]

CHAIRPERSON: Well, maybe ...[intervenes]

ADV KENNEDY SC: Sorry, Chair.

CHAIRPERSON: Maybe let us put it this way Mr Ntshepe.

Ms Mahlalela made it clear in her evidence that in the particular Exco meeting where this issue was discussed, she was the minority. She had a different view from the majority.

But she was instructed to write a letter to Mr Mlambo and request permission. So when she wrote this letter, she says: I was complying with an instruction from Exco.

And as Mr Kennedy said, I think she particularly said that last sentence of the memo, where it says: I hereby request permission to implement.

10 She deliberately put it like that because she was really against it but she had been instructed.

MR NTSHEPE: Yes, I understand now.

CHAIRPERSON: You now understand her position?

MR NTSHEPE: Correct. Correct, Chair.

CHAIRPERSON: Ja.

MR NTSHEPE: Ja.

CHAIRPERSON: So that was her position. That is the context in which she said she wrote the letter. Ja. You accept that she should not take any blame for that if she was
20 carrying out the instruction of the majority in the Executive Committee?

MR NTSHEPE: Chair, my honest opinion.

CHAIRPERSON: H'm?

MR NTSHEPE: I have to be honest here.

CHAIRPERSON: Yes, yes, yes.

MR NTSHEPE: It might not be a popular opinion.

CHAIRPERSON: Ja.

MR NTSHEPE: My honest opinion. She is part of Exco.

CHAIRPERSON: Yes.

MR NTSHEPE: And whether she was instructed by Exco or not, I am outside Exco of the division and I am seeing a letter and she is part of Exco and she is asking for permission to ask as an Exco decision. She does not say there was a minority view to say that she is not agreeing
10 with it.

CHAIRPERSON: No, she might not be saying this here.

MR NTSHEPE: Yes.

CHAIRPERSON: But one, she said it in her evidence here. Two, there is documentation to which Mr Kennedy might refer you if necessary, which shows her different view in regard to this issue.

So I am not sure what the point is that you are making because she is saying: I was against this in the Exco meeting and I expressed my views. The matter was
20 discussed. I believe that what was being done was wrong. I believe that even the route to ask Mr Mlambo to approve was wrong. But I was the minority.

So I am not sure what you expected her to do if she felt what was being sought to be done by the majority was wrong?

MR NTSHEPE: Chair, I would have expected her to write something here to say that there is also a manual to use that this should not be done. Then – because this is what I only had in front of me.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

CHAIRPERSON: But ...[intervenes]

MR NTSHEPE: And my understanding is that, Exco including her ...[intervenes]

10 **CHAIRPERSON:** Yes.

MR NTSHEPE: ...had agreed.

CHAIRPERSON: Yes, but now I guess you can take it from us who have listened to her evidence.

MR NTSHEPE: Yes.

CHAIRPERSON: And we have looked at some documents that she had the minority view. If you accept that, then ...[intervenes]

MR NTSHEPE: I accept it.

CHAIRPERSON: ...Mr Kennedy can take it from there.

20 **ADV KENNEDY SC:** Thank you, Chair. Now you dealt previously in your evidence with your view that you never undermined Mr Mlambo. But now that you know the facts, at least in relation to Ms Mahlalela, it seems that she was undermined. She, in fact, gave evidence.

And if you watched it online, you may have seen how

moving it was, how she was – in fact, how she came to the point of tears before the Chairperson in these proceedings when she was concluding her evidence and talked about how demoralising and undermined she felt, where she was giving advice and just being overruled.

Now, it just seems to me – I would just want to suggest to you that perhaps it is unfortunate that your finger of blame has been repeatedly pointed at Ms Mahlalela, despite the points that the Chairperson has raised with you.

10 And we have not heard any criticism from you, I believe, as to the colleagues who were in the majority who, in fact, undermined Ms Mahlalela.

Does that disturb you now as the former Group Chief Executive that this went on? Whether you knew about it at the time, you know it now. Do you have any comment on that?

MR NTSHEPE: In my ten year Chair at Denel, I had – it was my priority to make sure that everybody at work has the freedom and the ability to do their work without fear or
20 favour. Now I was not aware that Ms Mahlalela was being undermined. Not that she ever came to me to say that she was being undermined.

ADV KENNEDY SC: Yes.

MR NTSHEPE: She might have said it here but she never told me.

ADV KENNEDY SC: Ms Mahlalela gave evidence, not only that she was against going out... Sorry. Giving the contract directly to VR Laser without at least exploring whether LMT and DVS could do it. But from the beginning, she had in fact strongly advised her colleagues within DLS that it should be put out to tender. She gave that advise as well and she was ignored.

In fact, she gave evidence that she put in the recommendation in the motivation that that is what should be
10 done. And Mr Teubes then changed it and he has given evidence to similar effect. He changed it. Again, she was undermined, according to her evidence. Does it not disturb you that this took place?

MR NTSHEPE: I... Honourable SC, I cannot dispute that because I was not in those meetings.

ADV KENNEDY SC: I see. Now I want to go back to the point. Who, in fact, brought this memorandum to you? Because it was addressed not to you. It was addressed to Mr Mlambo. Mr Mlambo said: Well, DVS and LMT will have
20 to provide proof. Which he did not receive. Nobody gave that to him. You did not give that to him.

How did this memo come to you and how did you come to approve it? Who as this individual that you have referred to earlier without naming him or her?

MR NTSHEPE: If I remember Honourable SC, it was

Mr Stephan Burger.

ADV KENNEDY SC: Mr Stephan Burger?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes. And did you have a discussion about ...[intervenes]

MR NTSHEPE: Yes.

ADV KENNEDY SC: Sorry, just let me put the question please.

MR NTSHEPE: Sorry.

10 **ADV KENNEDY SC:** Did you have a discussion with him about Mr Mlambo's concerns?

MR NTSHEPE: Yes.

ADV KENNEDY SC: And what was his answer?

MR NTSHEPE: His answer was that Mr Mlambo is delaying this process.

ADV KENNEDY SC: So he criticised Mr Mlambo?

MR NTSHEPE: Yes.

ADV KENNEDY SC: But was it not Mr Mlambo's rights and perhaps his duty to ensure that there was compliance with
20 the procurement policy?

MR NTSHEPE: I do not dispute that, correct.

CHAIRPERSON: Does your – does it mean that he did not – that is Mr Stephan Burger, he did not address Mr Mlambo's concerns on their merits, he just said Mr Mlambo is delaying the process or something like that?

MR NTSHEPE: Well, he did address the fact that DDS and LMT in his understanding will not be able to do this work.

CHAIRPERSON: Yes.

MR NTSHEPE: Which is required here.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes because we had a discussion, it was not just – ja.

CHAIRPERSON: Yes. Now it seems that the problem
10 then arose with you because once he had said that, should you not have said to him then you must address those requirements that Mr – those concerns of Mr Mlambo on the merits and send him a response so that he can make a decision, do not come to me at this stage until you have responded to his concerns.

MR NTSHEPE: Chair, as I said, there was urgency to do this work, number one.

CHAIRPERSON: Sorry?

MR NTSHEPE: There was urgency.

20 **CHAIRPERSON:** Yes.

MR NTSHEPE: To do and complete this work on time.

CHAIRPERSON: Yes.

MR NTSHEPE: And, number two, there were numerous incidents, it is whereby Mr Burger and Mr Mlambo were not agreeing on issues and especially in terms of who is

responsible for what. Ja, because we had a federal type organisation whereby the CEOs will be totally responsible because they will be evaluated at the end of the year in terms of their performance, one.

And number two, however the supervisory part will come at group. So there was a group responsibility whereas largely it was a divisional responsibility.

CHAIRPERSON: But is the position not that everyone has got their own role?

10 **MR NTSHEPE:** Correct.

CHAIRPERSON: Okay, everyone has got their own functions and everyone must be given space to do that which they are employed to do.

MR NTSHEPE: Correct.

CHAIRPERSON: Okay and sometimes somebody will look at an issue and think he would have liked that issue to be handled differently but is the responsibility of the one who is given the function...

MR NTSHEPE: Correct.

20 **CHAIRPERSON:** ...to do it in the way that he or she is expected to do it?

MR NTSHEPE: Correct, Chair.

CHAIRPERSON: Now the policy which was quoted in the memo that Mr Stephan Burger came to you with makes it clear that Mr Mlambo was the one who should approve. So

it seems to me that your approach ought really to have been it is Mr Mlambo's function to ensure that we follow policy in this regard, supply chain management policy. He has asked for certain requirements, go back to him and deal with what he is raising because they are legitimate issues he is raising. It is his function to give approval, do not come to me, go back to him, he has raised legitimate questions, go back to him, you know? And then once he has made a decision and you are aggrieved maybe you can
 10 come to me but at this stage he has not made a decision to refuse or – he simply says I want to be satisfied about this, go back to him. You appreciate when you look at it now?

MR NTSHEPE: I hear what you are saying, yes Chair.

CHAIRPERSON: Yes. And you have said that there was urgency but I thought you and I agreed that there was no urgency that justified that approval be given within two days, all that was required for Mr Mlambo's concerns to be addressed was a day or two. There is nothing that was going to happen that was going to harm Denel if there was
 20 a delay of a day or two while Mr Mlambo's concerns were being addressed. You accept that?

MR NTSHEPE: A reasonable man will accept that, so I accept it.

CHAIRPERSON: Yes, yes. Because it would have been different if you said in a day or two we had to comply with

x and if we did not comply this is what Denel was going to suffer. That would be different but once you accept, as I think you do, that addressing Mr Mlambo's concerns for him to make a decision one way or another did not require more than a day or two, then it seems to me there was no – there were no grounds to rush to approve in circumstances where, as I see it, this whole process was still within Mr Mlambo, it had not been completed, he was still seized with the matter, he just wanted to apply his mind and that
10 you should have said go back to him, let him apply his mind, make a decision. If you are aggrieved after that then you can come to me and then we can take it from there.

MR NTSHEPE: Correct, Chair.

CHAIRPERSON: You accept that?

MR NTSHEPE: Yes, I do.

CHAIRPERSON: Okay, Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. May I just pick up on something you said earlier, that Mr Burger was expressing frustration that this would take – this would
20 delay things and that there was also a frequent – pattern of frequent problems between Mr Burger and Mr Mlambo, is that right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. And that it was desirable to let these things be dealt with at the divisional level, is that

correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: But the trouble is, even if there was a good business reason for it to be dealt with at divisional level rather than head office, your own policy required – and we have seen the provision – that it be dealt with, this issue be decided by the group head of supply chain not the divisional supply chain, not the divisional CEO and effectively where Mr Mlambo was saying I cannot approve
10 this yet, I need certain things, that would have only taken a day or two, instead you have Mr Burger coming along and saying Mr Mlambo is obstructing me, it is delaying us, even though the delay does not seem to have been really significant, as the Chairperson has pointed out and he is saying he always frustrating me, should you not, as a responsible GCOE have said look, if somebody has to approve this, it is not you, Mr Burger. If you think there is a good business case, even if you persuade me, that is not good enough, it should not be left to you, Mr Burger, it
20 should be left to Mr Mlambo because surely, Mr Ntshepe, do you agree that you were bound, as the Group Chief Executive of Denel by its own procurement policy, legally?

MR NTSHEPE: I was bound by all policies of Denel.

ADV KENNEDY SC: Including this, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: But effectively you seem to be saying well, because Mr Burger was complaining that Mr Mlambo was taking too long and the project was urgent and so forth that you should just approve it but that would breach the policy, not so?

MR NTSHEPE: Not as you put it.

ADV KENNEDY SC: I see, so how do you put it then?

MR NTSHEPE: There is a motivation of why this should be done by VR Laser and I believed in this motivation that
10 this motivation represented the true facts of what was decided by Exco of the division and that Mr Burger said Mr Mlambo is always delaying him or whatever, of course, as I say, there were issues now and again between the two but I was looking at this as an individual memorandum to be settled so that we can be able to move the products and be able to deliver this product.

ADV KENNEDY SC: But can I take you back to the heart of my question and that is that however you felt that there was a good business reason to get things moving and not
20 to get into a dispute with VR Laser, you have been alerted to the fact that there is a violation of a procurement policy which is legally binding on Denel and legally binding on you as Group Chief Executive Officer. Now you seem to have been persuaded by the urgency and the Chair has already debated that with you, you seem to have been

persuaded by Mr Burger's complaint that Mr Mlambo was taking too long or obstructing, you seem to have been persuaded by Mr Burger that LMT and DVS could not do this even though Mr Mlambo asked for a proof which was never provided and you also seem to have been persuaded by a concern that if you cancel the agreement or you do not place an order under the agreement already signed with VR Laser they could raised claims and bring litigation. Have I summed up your attitude correctly?

10 **MR NTSHEPE:** Correct, sir.

ADV KENNEDY SC: Yes. But against all of that, even if one assumes in your favour, that all of those were good reasons, surely there was a very bad reason for approving this and that was a simple point of the law. The law says in order to award a contract you have to get the approval, not of the CEO but the head of group supply chain to find a business reason and you were aware here that that was not complied with. You seem to have gone in with your eyes open into approving something that could not be approved
20 under the policy.

MR NTSHEPE: I was aware of the policy, I was aware that there is deviation from the policy. I was aware that there is a motivation to deviate from the policy.

ADV KENNEDY SC: Yes.

MR NTSHEPE: I was not aware there is a minority view to

say that Ms Malahlela is not agreeing with this and
...[intervenes]

ADV KENNEDY SC: Mr Ntshepe, I am sorry to interrupt you. You are referring to various issues that you have already dealt with. I understand your evidence, you were not aware of Ms Malahlela. I understand that you believed there was a good motivation. I understand all of that but my point is, let us accept all of those as being sensible reasons that were concern that gave you concern. Let us
10 assume in your favour all of that. Did you not have one serious problem? However strong the other reasons might be, there was a legal obstacle, you could not approve this because the procurement policy, it is a legal – legally binding measure, bound you. That is the simple question.

MR NTSHEPE: With due respect, Chair, I would like to differ. I believe that I had the authority to approve this.

ADV KENNEDY SC: Where did you get that authority from?

MR NTSHEPE: As being the Group CEO, Acting Group
20 CEO.

ADV KENNEDY SC: Group CEO?

MR NTSHEPE: Acting Group CEO.

ADV KENNEDY SC: Acting Group CEO?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes but as Acting ...[intervenes]

CHAIRPERSON: Maybe let us put it this way because I was about to ask you this question. Do you know whether the policy - that the policy had a provision as to what should happen if somebody is aggrieved by Mr Mlambo's decision not to approve?

MR NTSHEPE: I would not know all the policies, it has been a long time now.

CHAIRPERSON: Ja, no, no, no, ja, ja.

MR NTSHEPE: Yes. And you could talk to HR, I believe,
10 you could also talk to Mr Mlambo to say I am not happy with the way you have handled this matter. I mean, for me that would be the logical things to do.

CHAIRPERSON: You see, it is very important or it would have been very important for you as Group CEO generally or at least before you approved this, it would have been important for you to establish whether there is a provision in the policy which says what should happen if somebody is aggrieved by a decision taken by Mr Mlambo. Does it say they may appeal to the Group CEO or does it not say
20 because when policies or rules in any organisation are prepared, those who prepared them make decisions for reasons that they regard as good as to why certain decisions must be – or the responsibility for certain decisions must be given to certain specific people and not to so and so and why there should be an appeal or should

not be an appeal and, if there is an appeal, to whom that appeal should lie. They exercise their judgment, you see? They might say, you know, in regard to this matters, these types of matters, the decision of the person occupying Mr Mlambo's position is the decision ...[intervenes]

MR NTSHEPE: Correct, correct.

CHAIRPERSON: Because he will be having certain expertise that even the Group CEO might not have. So he is the one who must make this decision and somebody else
10 might like it or not like it but that is how the framers of the policy have decided and in that case, nobody can pick and choose when they do not like decisions, just like the Group CEO. As the Group CEO, you had power to make certain decisions. There would have been many people under you who might not have liked some of your decisions but the fact that they do not like them did not mean that they could disregard them or that they could do as they pleased. Everybody is bound by the rules and policies of the organisation, that includes the Group CEO.

20 **MR NTSHEPE:** Correct.

CHAIRPERSON: If the policy says the responsibility for this decision lies with so and so, the Group CEO must respect that, that those who drafted the policy wanted it that way and if they wanted it differently they would have put it different. You understand that? And if the Group

CEO and other functionaries might start to say well, I am going to disregard policy when I feel like, that is a recipe for ...[intervenes]

MR NTSHEPE: Disaster.

CHAIRPERSON: Disaster. You see?

MR NTSHEPE: Correct.

CHAIRPERSON: It instils a wrong culture, people start not respecting policies of the organisation, they start not respecting the rules and so on and the Group CEO must be
10 exemplary in this regard. You understand that?

MR NTSHEPE: Correct.

CHAIRPERSON: Yes but you say that you are not aware that there was any provision which dealt with – in the policy which dealt with what should happen if you are not happy with – if somebody was not happy with Mr Mlambo's decision on these matters.

MR NTSHEPE: No, I was not aware.

CHAIRPERSON: You were not aware.

MR NTSHEPE: Correct.

20 **CHAIRPERSON:** Okay. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. In fact we have had regard to the supply chain management policy of Denel as well as – at both group and divisional level as well as the National Treasury regulations and the PFMA. We are not aware of any provision that actually says that if

somebody like Mr Burger is unhappy with a decision of somebody like Mr Mlambo they can go to the Group CEO or Acting Group CEO and ask him to overrule the supply chain executive in relation to this. You are not aware of such a provision either?

MR NTSHEPE: No, I am not aware.

ADV KENNEDY SC: What we are also aware of, Mr Ntshepe, I know you may have had a fair bit to do with legal issues but you are not a trained lawyer, correct?

10 **MR NTSHEPE:** No, I am not.

ADV KENNEDY SC: So it may be unfair for you to have this put to you but I just want to put it on the record that in fact there is provision in the PFMA that allows a deviation from a supply chain management policy to be authorised. It does not say it can be authorised by the Chairperson or the Group CEO of the entity, it can be – a deviation can be authorised in appropriate circumstances by National Treasury. Now were you saw of that ...[intervenes]

MR NTSHEPE: No, I am not aware of it.

20 **ADV KENNEDY SC:** And are you aware with any attempt made by Denel, by you or anybody else to approach National Treasury to approve this deviation from your procurement policy?

MR NTSHEPE: In particular this deviation, I am not aware of it.

ADV KENNEDY SC: Right, thank you.

CHAIRPERSON: I am sorry, Mr Kennedy. With this discussion that has taken place, do you accept now that your decision to approve this in circumstances where the policy said it was Mr Mlambo who had the power to approve, number one. Number two, in circumstances where he was still seized with the matter, he had not made a decision yet. You accept that your decision then to go ahead and approve was in breach of the company policy
10 because the company policy gave that responsibility to him and he was still applying his mind.

MR NTSHEPE: Chair, I cannot totally agree with what you are saying. I am saying that with the facts before me, the decision for me to approve was based on what I saw and what the discussion I had with Mr Burger.

CHAIRPERSON: Yes but remember that what I am putting to you is not whether your decision was justified or not or was correct or not, but it is whether it was in breach of the policy and I am suggesting to you that this discussion that
20 we have had reveals that there is nothing in the policy and you were not aware of anything in the policy that allowed you to override – actually I do not even know if it is correct to say it override Mr Mlambo because he had not made a decision yet but there seems to have been nothing in the policy to allow you not to wait for Mr Mlambo to make a

decision whether he was approving or not.

MR NTSHEPE: Correct, Chair, I hear what you say.

CHAIRPERSON: You accept that ...[intervenes]

MR NTSHEPE: Yes, I do.

CHAIRPERSON: ...that was in breach of the policy?

Approving it where the policy says Mr Mlambo is the one who has the responsibility to approve and in circumstances where he was still seized with that matter.

MR NTSHEPE: It is a bit confusing for me, Chair, I have
10 to be honest to say whether ...[intervenes]

CHAIRPERSON: Yes, yes, but it is important that you should understand.

MR NTSHEPE: Yes, yes, yes.

CHAIRPERSON: I do not want you to say you agree when you do not agree.

MR NTSHEPE: Yes.

CHAIRPERSON: I want you to only say you agree if honestly that is what you...

MR NTSHEPE: Yes.

20 **CHAIRPERSON:** But because, you see, if the law says this decision must be taken by Mr Mpshe and while Mr Mpshe is busy with matter, applying his mind, where do I get the licence to usurp this responsibility for him and exercise this responsibly myself unless the policy does say under the following circumstances I can intervene while he

has not finished, you see?

MR NTSHEPE: I hear what you are saying, Chair.

CHAIRPERSON: Yes, in this case it seems to me that Mr Mlambo was still seized with this request for him to approve. He had raised certain issues because he wanted to satisfy himself that everything should go according to the policy. Mr Stephan Burger comes to you and effectively asks you to carry out a responsibility that is Mr Mlambo's responsibilities in circumstances where Mr
10 Mlambo has not said I am not approving, he said I just want to be satisfied about one and two. So I am seeking to get your concession that you accept that in that situation your decision to approve in those circumstances cannot be said to be in compliance with the policy and was in breach of the policy.

MR NTSHEPE: If you put it that way, Chair.

CHAIRPERSON: Yes. On reflection after this discussion.

MR NTSHEPE: I will concede.

CHAIRPERSON: Yes, yes, okay, alright. Mr Kennedy?

20 **ADV KENNEDY SC:** Thank you, Chair. May I just ask one question that relates to the operational issues you referred to of the difficulty between Mr Burger and Mr Mlambo and Mr Burger's frustration and the feeling that maybe this should be dealt with at divisional level. You agree that if there was a good reason to take the group

head of supply chain out of the requirements for approval, that could have been done by way of approaching the board to change the delegations of authority and the procurement policy, not so?

MR NTSHEPE: Correct. In fact I think this new policy, this was a new policy because the structure of the organisation changed from a totally federal to a semi-federal organisation and this was a fairly new policy.

ADV KENNEDY SC: So ...[intervenes]

10 **MR NTSHEPE:** Was a fairly new policy.

ADV KENNEDY SC: So this was a fairly new policy which had given the right and the power to Mr Mlambo to decide this issue, correct?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes.

MR NTSHEPE: Correct.

ADV KENNEDY SC: If you felt that that policy was not a good one, the newish policy was not a good one because it should rather be left to the division, surely the way to do it
20 would not be to violate the policy but to go back to whoever prepared it and approved it. We know that the board approved these policies to go and persuade the board, not so?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Okay.

CHAIRPERSON: And you could even actually say the policy should be amended to give you the power to override Mr Mlambo's decision or to intervene if he is delaying in making a decision but that would have to be within – that would have to be part of the policy because then if it is part of the policy and you do that, you would be acting in accordance with the policy. But when you do that when the policy does not say that, you act in breach of the policy. You understand that?

10 **MR NTSHEPE:** Correct.

CHAIRPERSON: Yes, okay. I think we must take the tea break, Mr Kennedy.

ADV KENNEDY SC: As you please, Chair.

CHAIRPERSON: We have gone past – why past quarter past. We will take the tea break now - or were you keen to ask one or two questions before we take the break?

ADV KENNEDY SC: I am happy to take it now, Chair.

CHAIRPERSON: Ja. Okay, let us take a tea break now and we will resume at quarter to eleven.

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

CHAIRPERSON: Or no, I am sorry. No, I am getting confused because we started early. I thought it was quarter past eleven.

ADV KENNEDY SC: No, no.

CHAIRPERSON: But because we started at nine...

ADV KENNEDY SC: Yes, it is almost half past ten.

CHAIRPERSON: It is only half past ten. No, we can continue, I am sorry.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Ja, maybe we should decide when we will take the tea break, whether we will take it normal time or...

ADV KENNEDY SC: I expected – but it depends on how many question I will put to the witness and how long he
10 takes.

CHAIRPERSON: Ja.

ADV KENNEDY SC: But I would expect that we will probably finish his evidence in the next half an hour.

CHAIRPERSON: Oh, okay, then – which will be eleven o'clock, then maybe we can take it then.

ADV KENNEDY SC: Yes but perhaps we can review it at that stage.

CHAIRPERSON: Ja, okay, alright. Let us continue.

ADV KENNEDY SC: Thank you, Chair. I would like to
20 deal with one final aspect, I believe, in relation to this issue of the single source – single supplier contract that was awarded to VR Laser. You have confirmed that one of the reasons that persuaded you to give this approval despite the requirements of the procurement policy was that the agreement with the MOA had already been signed

with VR Laser and there was concern that if you then said well, we are not going to place an order with you now because there has not been compliance that they could – that could result in VR Laser bringing claims against you and possible legal cases, is that right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now there are two points I want to explore with you on that. That could have been avoided if within the next day or two a proper business case had
10 been put to Mr Mlambo to get his approval, not so?

MR NTSHEPE: Correct, it is not a long time.

ADV KENNEDY SC: If he had given that approval. If he had not then you would have still faced a problem, not so?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. The other point is this, that I can understand you would be concerned that VR Laser might take you to court if you did not honour the MOA but were you not aware of the possibility, the danger that if you did approve this and you implemented the MOA where
20 officials such as Mr Mlambo had said this provision of the procurement policy had been violated, were you not aware that the Auditor-General, for example, might query how this contract had been signed in breach of the procurement policy? Or some other entity, maybe a competitor, might have taken you to court and were you not aware that there

was a risk that because there was this violation of the procurement policy and Ms Malahlela has identified a whole lot of others, as did Mr Mlambo, that you would then vulnerable to having the contract set aside?

MR NTSHEPE: Chair, I trust, my belied was that every year we have internal auditors who go through all these matters, this matter was never, ever brought to me in that year of – end of the financial year as a matter that need to be investigated. So I believed that there was no need for
10 condonation or the Auditor General would have questioned our financials, and I trusted the judgment of the Auditor General.

ADV KENNEDY SC: Do you know whether the Auditor General was aware of this conflict, this violation of the Procurement Policy?

MR NTSHEPE: I am not aware of it.

ADV KENNEDY SC: Yes. You seem to be suggesting Mr Ntshepe, but correct me if I am wrong, but you seem to be suggesting well we got away with it, they had not picked it
20 so let us carry on with the problem.

MR NTSHEPE: No, I – it is not correct SC what I am saying is there is a fair assessment of our performance every year by external auditors. I am not – if there was any problems, there were problems that were picked up especially in like irregular expenditure that we picked up

and this matter was never brought up to say that it is a problem so I am not suggesting anything that we got away with it.

CHAIRPERSON: But you see that is what concerns Mr Kennedy. He is saying he is not talking about what happened months later he is saying at the time of giving approval bearing in mind that Mr Mlambo was saying certain requirements should be dealt with first. Were you not concerned that if you approved that this is something
10 that could be picked up later by the Auditor General to say that there was a violation of policy because then it would come back to you to say you approved how did you approve something that was in violation of policy that is what he is asking. Were you not concerned about that?

MR NTSHEPE: In my honest opinion Chair I was not concerned because I believed it was correct.

CHAIRPERSON: But now when you look back do you accept that you should have been concerned?

MR NTSHEPE: Yes.

20 **CHAIRPERSON:** Yes, okay alright Mr Kennedy.

ADV KENNEDY SC: Alright thank you Chair. Does this not illustrate the importance for a GCEO like yourself to actually be taking seriously the concerns of your colleagues such as Mr Mlambo when they are raising issues like this to investigate them properly and not simply

go along with what Mr Burger told you?

MR NTSHEPE: Chair I have always taken the concerns of the people I worked with at Denel very seriously and this matter in my judgment at that point in time was an urgent matter I am as you said I cannot be able to expatiate more than that and start speculating that I was not taking them seriously I took him very, very seriously that is why he worked there.

ADV KENNEDY SC: Chair with your leave may we then
10 move on from this topic to the next issue that is dealt with in Mr Ntshepe's affidavit and that is the single source agreement between DVS as opposed to DLS and VR Laser. You deal with that Mr Ntshepe at page 517 of your affidavit. Sorry you can put away File 1.

MR NTSHEPE: Okay.

ADV KENNEDY SC: I should have told you put away File 1 if you would and then Chair we are going back to File 8.

MR NTSHEPE: 517?

ADV KENNEDY SC: 517 yes.

20 **MR NTSHEPE:** Yes.

ADV KENNEDY SC: Now you were asked questions by the investigators that gave rise to these answers, correct?

MR NTSHEPE: I missed that pardon me SC.

ADV KENNEDY SC: The investigators asked you certain questions about how it came about that you approved the

section for single supplier contract from DVS we have moved away from DLS.

MR NTSHEPE: Correct.

ADV KENNEDY SC: And there has been evidence from other witnesses to the effect that you gave an instruction particularly to Mr Steyn and Mr Wessels that they negotiate with Mr Van der Merwe to secure this contract, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes, in fact at page 517, 4.1 you say:

10 “There is nothing unlawful about my instruction that
 Mr Johan Steyn and Mr Jan Wessels negotiate with
 Mr Peter Van der Merwe because we had already
 signed a single source agreement with VR Laser.”

Now that single source agreement had already been signed was the one that you had approved for VR Laser to be a single supply at DLS, correct?

MR NTSHEPE: I was a witness, correct.

ADV KENNEDY SC: Yes, were a witness to that and you then approved the overriding of Mr Mlambo’s concern about
20 the policy that we have just dealt with, correct?

MR NTSHEPE: Correct there were other contracts which were signed also.

ADV KENNEDY SC: Yes, so as I understand it you do not dispute that you gave an instruction to Mr Steyn and to Mr Jan Wessels that they should negotiate this contract with

VR Laser for DVS's single supplier.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes, and why did it come from you though why did this instruction come from you? This does not appear to have been something that came from divisional level.

MR NTSHEPE: There was a resolution from the Board whereby the three divisions that were land based divisions should merge as one division because basically they are
10 just apposed and they complement each other. One was DLS, the other one was DDS and the other one was LMT and the Board was expecting that in the end they should have been cost savings and I should be able to show those cost savings.

So when I gave the instructions to the two gentleman was because of the resolution from the Board saying they should come together and secondly that the matter of service should bear fruit. There will be no point in having three divisions come together and then you find
20 the costs increase. So the issue of saying that I instructed them yes I concede and I agree that I did instruct them and the motivation was that the Board had taken a resolution that they should come together which I believe Chair when I hear is that currently they have done that now.

ADV KENNEDY SC: Sorry there is currently?

MR NTSHEPE: They have done that now at Denel.

ADV KENNEDY SC: Yes but let us turn specifically to the instruction to appoint VR Laser as single supplier for DVS. I understand that there was an intention to rationalise your divisions the three divisions that you have identified including DVS but we know that the single supplier contract awarded to VR Laser by DLS was done without following a tender process or a procurement process, correct?

10 **MR NTSHEPE:** Correct.

ADV KENNEDY SC: Yes, so the fact that you had already awarded that Denel had awarded that contract without following a procurement process in favour of VR Laser that surely did not entitle you to do the same thing for the DVS single supplier without complying with procurement processes.

MR NTSHEPE: As I have explained in my affidavit I think it, is it 2.5.5 if I am not mistaken.

ADV KENNEDY SC: Yes or perhaps just tell the Chair
20 what you want to say about that.

MR NTSHEPE: 2.5.

ADV KENNEDY SC: You want to refer us to page 215, two one five did you say?

MR NTSHEPE: No page 514 and page 515.

ADV KENNEDY SC: Yes.

MR NTSHEPE: 2.5.

ADV KENNEDY SC: Yes.

MR NTSHEPE: As I have explained that the MOA had already been signed with DLS it is one organisation and for me it did not make any business sense to go out and find other suppliers whom the products still have to be qualified because every product that the suppliers that supplied to Denel must be qualified to meet the Denel standards and Armscor standard and if you go out again and do a
10 qualification and the cost of qualification is very high. In other cases, it surpasses more than R10million.

So now that we have an agreement with an organisation which had already qualified its products with Denel and also with Armscor many years ago not even before the acquisition by Essa and we had signed a single source agreement it made sense to me and it was logical for me to rationalise the organisation and show cost savings and in my understanding the cost savings came to about R80million.

20 **ADV KENNEDY SC:** How would those cost savings be achieved by appointing VR Laser without a competitive process?

MR NTSHEPE: Well cost savings in the sense that there will be one organisation in the end there was going to be one organisation.

ADV KENNEDY SC: One Denel organisation?

MR NTSHEPE: One land systems organisation in Denel.

ADV KENNEDY SC: Your divisions, you three divisions would be incorporated into one, yes.

MR NTSHEPE: Yes, therefore there is a duplication of staff one will be a reduction in staff and number two we will have more power to negotiate prices and be able to squeeze prices to our suppliers to say that we are now a bigger organisation we might, we have therefore a bigger
10 need and you will be getting more revenue as a supplier in any organisation whereby you get a bigger order the price goes down.

ADV KENNEDY SC: Yes, I understand that but surely those two reasons that you have just given are reasons why it may have made sense from a business and a financial point of view to merge the three entities of Denel. It does not seem to me unless I have missed something that that is a good reason why you should not allow a competitive process assume for a moment that we accept
20 that if you merged your three divisions you would have greater purchasing power.

MR NTSHEPE: Yes.

ADV KENNEDY SC: You would have more bargaining power suppliers would give you better prices, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: But that would happen also if you went out to on a tender or a competitive procurement process perhaps even more so. So I am not – I am struggling to understand unless I am missing something. I am struggling to understand why merging the three divisions is being raised as a reason why you were deviating from procurement processes which would have allowed a competitive process, if you would please focus on that.

10 **MR NTSHEPE:** It is not the only chief focus as I have indicated.

ADV KENNEDY SC: Okay what else?

MR NTSHEPE: The other focus was that we already had an agreement...[intervene]

ADV KENNEDY SC: Yes.

MR NTSHEPE: ...a single source agreement at this point in time within the organisation with its production and as I have said yesterday that those products it is not just a product it is something that protects our soldiers and if
20 anything happens there will be bigger problems that Denel is experiencing therefore the goods must be of high quality of high value quality and it takes time and what you call evaluation to make sure that those products meets the standard of Armscor and also of Denel.

So I would therefore believe then that with the VR

Laser being a qualified supplier and we have a single source there should be one agreement and we will be able to – in fact I think they also consulted Mr Stephan Burger on how he did his agreement, I think it is in one of the reports I do not remember or in one of the emails it does say that to see how they did it.

ADV KENNEDY SC: Well let us leave out of account what Mr Burger says his still going to give evidence this week he can speak to that himself from his own perspective, I am
10 asking you for your perspective. Now I have no difficulty with your points that VR Laser was already accredited with Armscor.

MR NTSHEPE: Yes.

ADV KENNEDY SC: But they were not the only party that was accredited with this Armscor or was capable of being credited by Armscor. This was not a situation for example that there was only one single supplier of this type of component or equipment in the world namely VR Laser, not so?

20 **MR NTSHEPE:** No we are talking about it because we have to grow the economy of South Africa we are a South African company.

ADV KENNEDY SC: Okay so if you confine it to the South African market this was not the only potential supplier, not so?

MR NTSHEPE: The other suppliers as far as I know I am not an engineer they did not meet the requirements and the standards of in particular of Denel and Denel has to meet the standards of Armscor.

ADV KENNEDY SC: DVS itself was manufacturing this type of component and equipment.

MR NTSHEPE: DVS had closed its fabrication division and I see that they are claiming that they did not they did after the Iraq contract which was done for the Americans.

10 They went from a R3billion company to less than R800million company within a year and one of the reasons they had was today of – but up to today after I had made this decision they had not made any retrenchments.

ADV KENNEDY SC: Yes, are you aware that Ms Geldenhuys has testified in these proceedings.

MR NTSHEPE: Yes, Sir.

ADV KENNEDY SC: And are you aware that she gave a very, very different picture to you. She was part of the EXCO senior management team at DVS.

20 **MR NTSHEPE:** Ms Geldenhuys I rarely interacted with her.

ADV KENNEDY SC: Yes, I am asking you are you aware that she gave evidence?

MR NTSHEPE: Yes, I am aware.

ADV KENNEDY SC: And are you aware that she gave

evidence that it made absolutely no sense from a business point of view for this contract to be given to VR Laser where DVS could make the items themselves.

MR NTSHEPE: I do not agree with her.

ADV KENNEDY SC: And she gave evidence that Mr Steyn her boss who was the divisional CEO of DVS, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And he also was unhappy about exactly this and in fact recommended against giving the
10 single source, single supplier contract to VR Laser for the same reason.

MR NTSHEPE: I am aware but I do not agree with what Ms Geldenhuys is saying.

ADV KENNEDY SC: Do you disagree with Mr Steyn as well.

MR NTSHEPE: Yes, I do not agree because he is saying that I forced him, his far experienced in the business than me. His a mechanic, his far, far experienced and he is senior than me in the business, he actually grew up in the
20 business who am I to force him to do something that he does not – he knows the process.

If he had be grudgingly or a grievance he knew what
he had to do. Why did he then agree to exercise this process there is no way – I have never ever in Denel

forced anybody to do anything but I would put my authority and say that this is what is required because my operating style was that this is a business, this is not a department of government.

ADV KENNEDY SC: But is that not exactly what you did you told Mr, you gave Mr Steyn the instruction that he must contract with VR Laser an outside company as a single supplier and he was against that. Aare you saying that he actually was in favour of it?

10 **MR NTSHEPE:** He had reservations but I said this needs it be done I did not force him I mean if he had reservations to such an extent that he felt very strongly against this instruction from me he knew exactly where to take it.

ADV KENNEDY SC: When you say he had reservations were they not very serious reservations? Were they not serious reservations?

MR NTSHEPE: To me it was not serious reservations.

ADV KENNEDY SC: In fact he – the emails that Ms Geldenhuys took us to previously in fact showed that he
20 was very unhappy about it, were you aware of that?

MR NTSHEPE: I have never had a discussion with Ms Geldenhuys on this issue so it was for me even a shock to see that she is saying all the things and being very dramatic about it all the things that she said about this contract.

ADV KENNEDY SC: You see Ms Geldenhuys has given evidence that she felt that she and her colleagues were being undermined at DVS. Ms Malahlela has given evidence that she was being overridden at DLS by her EXCO and ultimately you overrode Mr Mlambo, Ms Malahlela and Mr Mlambo has given evidence that they felt that they were being seriously undermined by what was being done and Ms Geldenhuys has given similar evidence.

There just seems to be a pattern Mr Ntshepe of
10 senior people responsible for procurement issues and also in Ms Geldenhuys's case for legal issues, legal compliance issues and a member of senior management where they felt undermined. Are you saying that they did not feel undermined or are you saying that if they did feel undermined they had no reason to?

MR NTSHEPE: I am saying that if they did feel undermined then they knew the due process on how to voice their grievances they can even have gone to the department if need be.

20 **ADV KENNEDY SC:** Gone to the?

MR NTSHEPE: Department of Public Enterprise.

ADV KENNEDY SC: Gone to the Department of Public Enterprise.

MR NTSHEPE: Yes, if you are saying that the CEO is undermining to do our job.

ADV KENNEDY SC: Does that not put somebody in for example Ms Geldenhuys or Ms Malahlela positions both holding senior positions within their divisions that way below you within the organisation. Is it seriously suggested that they could and should have escalated to the Department of Public Enterprises to go right over your head would that not have been extremely difficult for them to do?

MR NTSHEPE: In my understanding our government has
10 got an open policy whereby individuals if he have a problem he can find a way to express your grievance. If they are professionals, they are lawyers both of them Ms Geldenhuys and Ms Malahlela I would actually expect them to do exactly what to do but whether they go to the department or not go to the department or go to HR they should know exactly what to do.

ADV KENNEDY SC: Instead all three of them ultimately resigned.

MR NTSHEPE: I was not there when they resigned. One
20 went overseas because he was recruited by another country for his own benefit and the other two I left Denel they were still there.

ADV KENNEDY SC: We have already heard your evidence that there was good business reason to leave many decisions in the hands of the divisions and that is

was one of the reasons that informed you to support Mr Burger at DLS in implementing the contract already awarded to VR Laser.

MR NTSHEPE: Correct.

ADV KENNEDY SC: But the contrary seems to have happened in the case of DVS where Mr Steyn and Ms Geldenhuys objected or at least raised serious objections or as you put it reservations and you then said well I am group chief executive officer you are going to do what I am
10 telling you effectively.

MR NTSHEPE: It is not correct SC this is not what I said, what I said was to say that there was a Board resolution to rationalise the companies and we have to take action and that. So it was not just an arbitrary decision for me to say that you also go and contract I was moving towards and actioning towards achieving that Board resolution.

ADV KENNEDY SC: The Board resolution may have said we approve the rationalisation so that the three divisions will be merged into one operation the land based entity
20 that you were referring to. It did not say however that in that process VR Laser should be given a single supply contract, not so?

MR NTSHEPE: It also says and show savings in the process because it will not help to rationalise the organisation and have a balloon structure.

ADV KENNEDY SC: Yes, but it did not say that VR Laser should as a result of that be given a single supply contract, correct?

MR NTSHEPE: These are one of – yes it did not say it.

ADV KENNEDY SC: Right and it did not say that it should be given a contract in violation of the Boards own procurement policy and delegation of authorities, not so?

MR NTSHEPE: I think SC I have explained the role of VR Laser Chair and Denel their differences and I have
10 conceded in areas whereby I needed to concede or where you made me understand and I have also explained the reasons why I took those decisions and this is one of those decisions whereby I took in order to rationalise the organisation other people could have done it differently.

ADV KENNEDY SC: Now if I can take you back to 518. Can I just confirm you gave the instruction to enter into the contract with VR Laser for DVS, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And did you actually sign that
20 agreement?

MR NTSHEPE: No I did not.

ADV KENNEDY SC: Why not?

MR NTSHEPE: Because Mr Steyn asked me if he could sign it or should I sign it and I said no you can sign it.

ADV KENNEDY SC: Mr Steyn signed it?

MR NTSHEPE: Yes.

ADV KENNEDY SC: But that was after you had given him an instruction to give the contract to VR Laser and to sign the agreement.

MR NTSHEPE: He could have refused to say I am not signing it.

ADV KENNEDY SC: He could have refused.

MR NTSHEPE: Yes.

ADV KENNEDY SC: But he would have been refusing an
10 instruction from you as his ultimate boss, not so?

MR NTSHEPE: What would be the consequences of that I do not think – he would know exactly what he would be doing and I do not think that I was forcing him to sign it I mean it was free will it was not forced on him to say you sign it or there will be consequences thereafter if you do not sign it.

ADV KENNEDY SC: Now Mr Ntshepe at page 518 your affidavit at paragraph 4.2 at the top, you there, are you with me?

20 **MR NTSHEPE:** Yes, yes.

ADV KENNEDY SC: Right this is what you say:

“With regards to evidence suggesting that the DVS concluded the MOA with VR Laser services without following Denel procurement policies I do not know to what extent such policies were not followed and

you – presumably the investigators, have not stated the extent of that non-compliance. I would therefore not know whether or not procurement policies were followed as this was the division of Denel handling its own procurement processes in this regard.”

And then you say”

“I must however point out that DVS was a newly acquired private company that was still governed by their policies. It was agreed that DVS will migrate to government SEM policies over a period of time in my understanding the Ministry of Public Enterprises was aware of this.”

Now let us unpack this if we may Mr Ntshepe you referred at the top of your paragraph to the fact that you were aware that there was evidence suggesting that this particular contract between DVS and VR Laser did not follow Denel procurement policy and you say well you do not know to what extent that was not followed so you do not whether in fact they were followed. But you aware that there is evidence before the Commission that is why you were responding to this that is why you were saying this and the evidence is clear that procurement policies were not followed for example in that there was no competitive procurement process followed and secondly that the

correct level of authority did not sign or approve the transaction. Now may I suggest that you seem to be saying well you do not know about that and you do not perhaps care about that.

MR NTSHEPE: It is not correct SC.

ADV KENNEDY SC: Okay just explain do you care about; did you care then?

MR NTSHEPE: I cared very much I spent 21 years in Denel.

10 **ADV KENNEDY SC:** Yes.

MR NTSHEPE: So I cared very much about the success of the organisation.

ADV KENNEDY SC: Yes.

MR NTSHEPE: And I contributed very significantly I believe.

ADV KENNEDY SC: But you have already conceded some of the concerns that the Chair has raised with you as you sit now of the benefit of the discussion.

20 **MR NTSHEPE:** Yes, but it does not mean that I do not care about the organisation, Chair. I conceded it could have been mistakes but it does not mean that I do not care about the organisation.

ADV KENNEDY SC: Okay well so you did care alright that is good but if you did care was it not important that you ensured that before you gave an instruction to Mr Steyn

that you were satisfied that there were proper compliance with procurement processes.

MR NTSHEPE: Mr Steyn and Mr Johan Wessels were both involved and I think to a certain extent Mr Burger was also involved and I think they were asking for advice of how he concluded his VR Laser single source. If there was a problem and they might not have signed it willingly or but they had recourse they could have even put me in a disciplinary process through channels which I would
10 believe they would know.

So what I am saying is that I cared and the policies of this organisation as I further go down is that they were in transition they were not totally a State owned policies and the Treasury was aware of that because the letter was written to Treasury on that matter.

ADV KENNEDY SC: Mr Ntshepe what I am asking is really about your own state of mind and your own conduct. Now I understand your evidence that if Mr Steyn or Ms Geldenhuys or anybody else that felt that the instructions
20 that you gave to award a single source, a single supplier contract from DVS to VR Laser was wrong from a legal or a business point of view understand your point that they could have laid a complaint against you within the organisation or with the Minister of Public Enterprises or whatever. Before you even get to that point before you

decide to give that instruction to them to carry out which may result in them being unhappy and potentially raising a complaint against you.

Before you decide to give that instruction was that if

you cared about compliance with procurement policies was there not a little question that went off in your mind can we actually give VR Laser this contract without following procurement policies and can I give an instruction to my
10 juniors in the group to give that contract to VR Laser and if there may not be compliance that is what I am asking you.

So do not trouble us at the moment please with whether or not Mr Steyn or Ms Geldenhuys should have reported you for taking a decision just focus please if you would on whether you could and should have taken a decision.

MR NTSHEPE: I believe I should have taken that decision Chair.

ADV KENNEDY SC: You entitled to take it.

20 **MR NTSHEPE:** Yes.

ADV KENNEDY SC: And there was good reason to good business reason to.

MR NTSHEPE: Yes, to me it was a good business reasons.

ADV KENNEDY SC: Now did you ask yourself the

question is this permissible to give it to one entity and not allow a competitive process to allow others to tender or to quote?

MR NTSHEPE: Chair I have already indicated the reasons why we chose VR Laser and to me it made business sense not to piggy bank on the existing agreement that we have with VR Laser and I have been instructed by the Board to rationalise the organisations the three divisions and it make business sense for me to say okay we already have
10 this agreement and for the supply of steel in any event DDS was buying steel from VR Laser in any event it would not have done any harm actually for me it would have made savings in terms of the operations of the organisation. Therefore, in my mind I think I believe I was correct.

ADV KENNEDY SC: How do you know there would have been savings if there was no tender or quotation process that was competitive you could not know what prices might be offered by other potential bidders?

MR NTSHEPE: Well there were projections made when
20 they were doing this exercise the figure of R80million is not an arbitrary figure it was a projected figure.

ADV KENNEDY SC: Projected on the basis that the three divisions would be merged or projected on the basis that VR Laser would supply it at a certain price?

MR NTSHEPE: The three divisions will merge and the

operations of the three divisions were when they merged will be enough to cover the three divisions without getting extra or cost any other what I would say cost in terms of getting new suppliers, re-qualifying those new suppliers etcetera. But the three divisions will merge and there will be cost savings and the cost savings will be internal and also external.

ADV KENNEDY SC: I understand that cost savings may have been achieved if the three divisions were merged but
10 I am interested in a different point and that is how could there be projections that you would save if you went to VR Laser if you as an organisation did not go out to the market place and find out how much each person would be prepared to offer.

MR NTSHEPE: Chair I have already expressed the issue of volumes to say that if you have larger volumes you would have been able to get a lesser price and that would have been a cost saving in my mind and secondly the employees of Denel especially the engineers in particular
20 that were involved in this types of activities know the workings of VR Laser than finding a new company whereby it will take a bit of time to understand their systems of working and also the matter of Armscor now re-qualifying that new supplier.

ADV KENNEDY SC: But Mr Ntshepe the procurement

policy does not say well when we think as an entity that we might get better prices through bigger volumes so let us give it to the same party that is already with us in another contract so let us give them another contract, it does not allow that.

MR NTSHEPE: It has happened before.

ADV KENNEDY SC: I am sorry it has happened before.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Are you saying two wrongs make a
10 right?

MR NTSHEPE: No, no I am not saying it you are now telling me it is wrong.

ADV KENNEDY SC: I am asking you.

CHAIRPERSON: Well he was saying the policy does not allow that and your answer was it does happen but your answer should address the question whether what the policy allows and what it does not allow irrespective of whether people comply with the policy or not.

MR NTSHEPE: Okay maybe...[intervene]

20 **CHAIRPERSON:** Do you want to repeat your question Mr Kennedy.

ADV KENNEDY SC: Yes, if I may that the mere fact that a party such as VR Laser already has a contract with one Denel company namely DLS the procurement policy does not say well if you have already given a contract to VR

Laser from DLS that entitles you to avoid compliance with the requirements of a competitive process you give another contract for a different division DVS. Do you disagree does it allow that or does it not allow that?

MR NTSHEPE: As the policy stands it does not allow that.

ADV KENNEDY SC: It does not allow that.

MR NTSHEPE: Yes.

ADV KENNEDY SC: And yet you were instructing people to do exactly that.

10 **MR NTSHEPE:** I have indicated to you that after the discussions that we have been having and after the Chair has expressed what should have happened I conceded to say that is - I concede to the fact that that is correct. This is history the issues that we are talking about here are things that have happened in the past it is not something that is going to happen in the future. If I was, it is like asking me if now you know would you do it the same thing again of course I would not do the same thing again.

CHAIRPERSON: Okay I guess your answer is now you
20 see that it was not right or it was against public policy but you are saying that at that stage you did not see it that way.

MR NTSHEPE: Yes, correct.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you may I just suggest to you

is it not a great pity that you only came to realise now and concede that there were these irregularities under procurement policies when the matter gets to a Judicial Commission of enquiry and when counsel such as myself puts these points to you. Were you as the group chief executive officer not require to know this sort of thing yourself and if you did not know to go to the experts such as Mr Mlambo or get outside legal advice to say can you do this or can you not do this instead years later you now
 10 conceding well now in fact I accept that I could not do this under the procurement policy.

It does seem to me that as group chief executive officer you should have known this before and if you did not know about it you should have at least gone for example Mr Mlambo and said Mlambo you are the expert in procurement policies can I do this or not and yet he seems to have been side lined or overruled. Any comment on that?

MR NTSHEPE: With respect SC you have made points as
 20 if I was deliberately taking decisions to break the policy of the company and in my view I was not and as I say that is hindsight that is history and that I have to come to the Commission and say that yes it is fine where would I have said it. I do not think it is a sin for me to say okay Chair what you saying makes sense I think I am not embarrassed

to say it I am saying it with good faith.

CHAIRPERSON: I think the proposition that Mr Kennedy is putting to you for your comments is that as Group CEO you ought to have been familiar with what the policy allows and what the policy did not allow but that where you were not sure you ought to have approached people such as Mr Mlambo or even outside experts or advisors to advise. He is suggesting to you that you did not act in the manner in which a Group CEO would have been expected to act.

10 What do you say to that that is what he is putting to you?

ADV KENNEDY SC: Chair I do not agree I acted in the best manner for the company I believe that. I do not agree to the fact that I was basically being negligent and I ought to have known that if I did not know I ought to have known that is not correct to do. We already had an existing contract of a similar nature and it was accepted and it was operating and as now it has been pointed to me that if it has happened before does it mean it must continue like that. I am being told that the contract was wrong. So I

20 say I hear what you're saying and I am in a position to hear what you're saying basically Chair but in my belief that we were doing or I was doing things for the interest of the company and nothing more.

CHAIRPERSON: Of course when you look at whether what you, whether your decisions were or were not in the

best interest of the company one has got to make a distinction between two things there may be a decision that on its merits might seem to be in the best interest of the company but the process that is supposed to be followed before a decision made might be something else and following legal processes and following the processes of the policy and complying with the policy is also in the best interest of the company.

MR NTSHEPE: Correct.

10 **CHAIRPERSON:** You accept that?

MR NTSHEPE: Yes I accept that.

CHAIRPERSON: Ja okay, Mr Kennedy we at quarter past.

ADV KENNEDY SC: Yes, Chair this would be a convenient time I want to try and...[intervene]

CHAIRPERSON: I think let us take the tea adjournment.

MR NTSHEPE: Yes, thank you Chair I just want to just wrap up with his evidence as briefly as I can.

CHAIRPERSON: Yes, no that is fine.

ADV KENNEDY SC: Perhaps we can take the tea
20 adjournment now it will enable my learned friend in the team to give the input that she wants me to do.

CHAIRPERSON: No that is fine we will take the 20 minutes instead of the normal 15 minutes for me to attend to something.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: So we will resume at twenty-five to twelve.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: Please rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV KENNEDY SC: Thank you Chair. May I just deal finally
10 with a few, a few further issues? In relation to the Denel
Asia, during your time as GCEO of Denel, is it correct that
Denel then brought legal action against the treasury,
National Treasury? Just switch on your mic please. Thank
you

CHAIRPERSON: Switch on your mic. Ja. And face this side
when you give answers.

MR NTSHEPE: Apologies. Apologies.

CHAIRPERSON: Alright.

ADV KENNEDY SC: Was that decision taken by yourself?

20 **MR NTSHEPE:** The decision was taken by the Board.

ADV KENNEDY SC: By the Board, on your
recommendation?

MR NTSHEPE: It was a decision taken by the Board, there
was no recommendation from me. It was taken by the Board.

ADV KENNEDY SC: So who came up with the idea?

MR NTSHEPE: I would not remember because this, we had so many board meetings.

ADV KENNEDY SC: Does it not make sense though that it must have been initiated by you as the Group Chief Executive Officer?

MR NTSHEPE: No. To me because I did not initiate it, it does not make sense because I did not initiate it. It is the Board.

ADV KENNEDY SC: But you cannot remember who it was?

10 **MR NTSHEPE:** Yes. Yes.

ADV KENNEDY SC: And are you aware that there was non-compliance with Section 54 of the PFMA?

MR NTSHEPE: In terms of our understanding when we put in the application we complied with Section 54 of PFMA.

ADV KENNEDY SC: Ultimately the Court's application was withdrawn by Denel, is that right?

MR NTSHEPE: I do not remember.

ADV KENNEDY SC: You do not recall?

MR NTSHEPE: Ja it has been such a long time.

20 **ADV KENNEDY SC:** Now were you part-heard to the discussion at the board meeting where it was decided to bring a court case against National Treasury?

MR NTSHEPE: Yes, I was. I was in the board meeting.

ADV KENNEDY SC: And did you agree with it, the decision?

MR NTSHEPE: I did not oppose the decision.

ADV KENNEDY SC: You did not oppose it.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. Did you or your board colleagues consider the implications for Denel for bringing a legal action against National Treasury?

MR NTSHEPE: I would believe yes they did.

CHAIRPERSON: Well if you were at the meeting, you would know who came with the idea at the meeting that this is the decision that the Board should take. You would have been
10 aware who raised the issue or who moved for this decision to be taken.

MR NTSHEPE: Chair if I may address you, I am being honest when I say that I do not remember exactly because I do not want to label people and find out that type of evidence to support that.

CHAIRPERSON: No, no, it is fine if you do not remember.

MR NTSHEPE: Yes.

CHAIRPERSON: I am just saying.

MR NTSHEPE: Yes.

20 **CHAIRPERSON:** If you were at the meeting.

MR NTSHEPE: Yes.

CHAIRPERSON: You would have known at least at that time who came with the idea at the meeting, who was, who raised it. But I accept that a number of years after you might not remember. Could it have been a matter that the Chairperson

of the Board raised? Because I think if I am not mistaken.

MR NTSHEPE: What I am – I think because it was discussed at the Board and he was the Chairperson of the Board, in the end I also believe that he did not oppose it, because the resolution was taken that we should put a court case against the treasury.

CHAIRPERSON: I cannot remember now, but you may remember who deposed to the bounding affidavits.

MR NTSHEPE: I did.

10 **CHAIRPERSON:** You did.

MR NTSHEPE: Yes.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Thank you Chair, may I proceed? Thank you. I would like now to deal with evidence that the Commission has already heard a week and a half ago from Mister – sorry this week from Mr Mhlontlo(?) about the circumstances of his being suspended and commissioned a long time ago, at the evidence of Mr Saloojee(?). You were at that stage the Head of Business Development in the
20 group, is that correct?

MR NTSHEPE: When you are suspended I was asked to act.

ADV KENNEDY SC: Yes. Yes.

MR NTSHEPE: Yes.

ADV KENNEDY SC: I mean immediately before they were suspended and you then came into act.

MR NTSHEPE: No, it was after they were suspended. I was called into a meeting and asked to act, it was recorded.

ADV KENNEDY SC: And the evidence that Mr Mhlontlo has given is that he was called in. Each of the three were called in one by one. So he was called in and that you happened to be at the office at the time the Board was having its meeting when the suspension was decided upon.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Is that correct. The meeting started
10 round about 6 o'clock in the evening, he gave evidence as did others particularly Ms Mandin, Mandindi(?). It was supposed to have started at 17:00 but the Audit and Risk Committee had a meeting first and about an hour later the board meeting took place. And that then lasted well into the evening. I think round about 10 o'clock is roughly when the decision was taken.

MR NTSHEPE: Correct.

ADV KENNEDY SC: And were you at the office throughout this period that the board was meeting?

20 **MR NTSHEPE:** Yes. Not throughout the period because I did not know about the Audit and Risk, the first time I hear it. I was in the office when the, I think the main board said I was in my office. Yes.

ADV KENNEDY SC: And were you then called in that evening to see the board?

MR NTSHEPE: That was the first time I was called, not again. First time I was called after the suspension.

ADV KENNEDY SC: After the suspension.

MR NTSHEPE: Yes.

ADV KENNEDY SC: But that same evening.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes. You see the perception of some the witnesses such as Mr Mhlontlo is that even before they were heard, now I appreciate you were not yourself part of
10 the board meeting that decided on their suspensions, correct?

MR NTSHEPE: Correct I was not.

ADV KENNEDY SC: Yes. But the perception that has been created is that this, this was all just engineered that the so-called hearing before suspension was a, was a farce and that you had already been picked to take over in an acting capacity once Mr Saloojee was, was suspended. Do you have any comment, any knowledge to that you can add on this to the Chairperson?

20 **MR NTSHEPE:** Chair in my understanding this was not a farce because this meant a serious matter of people's careers, so it was not a farce. And secondly, I was very, I worked with this team that was very, very closely, very close. Especially the CEO, was very closely work with him. I was asked by the Chair not to leave the day and then he would

let me know. That is why I was staying the evening.

ADV KENNEDY SC: So he ...

MR NTSHEPE: I was not ...

ADV KENNEDY SC: I am sorry, sorry. Carry on.

MR NTSHEPE: I was asked by the Chair.

CHAIRPERSON: You were asked not to leave?

MR NTSHEPE: Ja.

CHAIRPERSON: For home that day?

MR NTSHEPE: Yes. Yes, because it was serious.

10 **CHAIRPERSON:** Until, until they had spoken to you.

MR NTSHEPE: Until, yes.

CHAIRPERSON: Ja.

MR NTSHEPE: I would assume until ...

CHAIRPERSON: Yes.

MR NTSHEPE: They have spoke to me.

CHAIRPERSON: Ja. Okay. So in other words they asked you not to go home until they have come back to you.

MR NTSHEPE: Yes.

CHAIRPERSON: One way or another.

20 **MR NTSHEPE:** Correct, correct.

CHAIRPERSON: But were you told why were you not at that stage?

MR NTSHEPE: No Chair, because I was asked by the Chair not to leave. I believed that there must have been a good reason for him to say that, but I was not told.

CHAIRPERSON: Okay.

ADV KENNEDY SC: When did he make that request? That is Mr Mantsha you are talking about, is that right?

MR NTSHEPE: Yes.

ADV KENNEDY SC: When did he tell you not to go home? Before the board meeting?

MR NTSHEPE: Huh?

ADV KENNEDY SC: Did he raise that before the board meeting started?

10 **MR NTSHEPE:** Yes, before the board meeting.

ADV KENNEDY SC: Otherwise you would have gone home that, that evening.

MR NTSHEPE: It was – yes, it was around 18:00, 17:00, 18:00.

ADV KENNEDY SC: Around 17:00 or 18:00.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Alright and he did not tell you what, what they were going to tell you.

MR NTSHEPE: What they were going to tell me.

20 **ADV KENNEDY SC:** What they were going to talk to you about.

MR NTSHEPE: No, he did not at all talk to me.

ADV KENNEDY SC: Yes.

MR NTSHEPE: I saw him for a very short time.

ADV KENNEDY SC: And yes, after that, many hours later do

you agree it was round about 10 o'clock that you were called in?

MR NTSHEPE: Yes it could have been around 10 o'clock.

ADV KENNEDY SC: Did Mr Mantsha have a discussion with you privately before you were called in or did you just go in?

MR NTSHEPE: No, he did not have a private discussion.

ADV KENNEDY SC: So you had no idea while you were waiting all these hours that it might relate to ...

MR NTSHEPE: No, I was not ...

10 **ADV KENNEDY SC**: Your acting.

MR NTSHEPE: I did not.

ADV KENNEDY SC: And when you went into the board meeting as requested, did they indicate the purpose of calling you in was to, was to arrange for you to become Acting Group CEO in light of Mr Saloojee's suspension?

MR NTSHEPE: Yes they did.

ADV KENNEDY SC: Yes.

MR NTSHEPE: In fact it is on record.

20 **ADV KENNEDY SC**: Yes, was that all that they raised with you? That was the reason why you had to wait.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Those hours.

MR NTSHEPE: Yes, if I still remember that evening, that was the main thing the ...

ADV KENNEDY SC: Right. Thank you.

CHAIRPERSON: Must have been frustrating to be told not to go home around 17:00 or 18:00 and then 20:00, 21:00 you have not been called and you are only called around 22:00 here.

MR NTSHEPE: I ...

CHAIRPERSON: You just waited, when you do not know exactly what the issue is.

MR NTSHEPE: It could have been me that I was going to be fired, I do not know.

10 **CHAIRPERSON:** Ja.

MR NTSHEPE: Ja.

CHAIRPERSON: By this time, that is September 2015.

ADV KENNEDY SC: I am sorry Chair.

CHAIRPERSON: Yes, no, I am sorry. By this time namely September 2015, I take it that you and Mr Salem Essa had come to know each other quite well, because I think it was in 2012 or 2013 when Mr Saloojee introduced him to you and said you are the, you would be the contact person for him or you would work, he would deal with you.

20 **MR NTSHEPE:** Correct.

CHAIRPERSON: So you had come to know each other quite well by September 2015?

MR NTSHEPE: In short correct Chair, but as I have explained before, relationships to me are very important especially for the job that I was doing.

CHAIRPERSON: Yes.

MR NTSHEPE: I was doing Business Development and New Business Development.

CHAIRPERSON: Yes, yes. Okay. No that is fine.

ADV KENNEDY SC: Thank you Chair. You then took over as Acting Group CEO for some time and later became the fully fledged Groups Chief Executive Officer, is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now the Commission has heard
10 evidence about the departure of Mr Saloojee and the
departure of Mr Mhlontlo as well as the company secretary,
Ms Africa. And is it correct that all three of them were
initially charged in a disciplinary process?

MR NTSHEPE: I would believe, I think correct, because why
would they depart.

ADV KENNEDY SC: Yes.

MR NTSHEPE: And ... (indistinct) in charge.

ADV KENNEDY SC: And there must ...

MR NTSHEPE: I think they were suspended, and I assume
20 they were charged. You must be told a reason why are
suspended.

ADV KENNEDY SC: Well when you say you think they were
suspended, they were suspended at the very board meeting
before you were brought in to be made Acting Group CEO.
Not so?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. And the dis – I do not know if you have heard the evidence of Mr Mhlontlo the other day, but she gave evidence that despite the three executives concerned being on suspension, they, they were keen to have the disciplinary process run its course so that they could clear their names, but in fact the disciplinary process over about a year did not actually eventually ever take place.

MR NTSHEPE: Correct, I heard him saying that.

10 **ADV KENNEDY SC:** Yes. Now the suggestion has been made to this Commission that Denel had no basis to charge them. It was actually just to get them out of the way because they were, they were being difficult as it were in relation to particular transactions.

MR NTSHEPE: I cannot attest to that. If that is their view, I accept it. I cannot change their view.

ADV KENNEDY SC: Do you – what is your own perspective? Can you deny that? Effectively what they have seemed to be saying to the Chairperson is that the disciplinary process
20 was in bad faith. There is a way simply of getting them, getting rid of them where you did not have any real substance to the charges. And that explains why it took so long. It took about a year before they resigned.

CHAIRPERSON: But you said Mr Kennedy, you I think – he did not make the decision to suspend nor the decision to

charge.

ADV KENNEDY SC: No. No, with respect that is what you say.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So let me correct it, apologise if I put things wrongly. I accept that you did not suspend, but what I am interested in is while you were Acting Group Chief Executive Officer, in Mr Saloojee's place, your organisation took a very long time to actually get to the point where it
10 would start with disciplining. And that was despite the fact that these employees kept on asking, we want documents to be able to prepare, so that our senior counsel can prepare and we also want this thing to move quickly. And yet Denel seems to have taken a long time. And the allegations has been made that that was in bad faith, that in fact you knew as management at Denel that there was not any serious basis for the charges and this was all just a strategy to try and get rid of them by basically aiming over their heads the threat of disciplinary action which never took place. How do
20 you react to that allegation?

MR NTSHEPE: Chair the firstly, they were not charged by management. They were charged by the Board.

ADV KENNEDY SC: I am sorry, there were no charges?

MR NTSHEPE: They were not charged by management, Denel Management, they were charged by the Board of

Denel.

ADV KENNEDY SC: By the board.

MR NTSHEPE: Secondly, how long it took. It was out of my control. The Board was driving the process.

CHAIRPERSON: You had no role to play in ... (indistinct).

MR NTSHEPE: The only role I played was to take the documents. I still have the, I still, I even left it there.

CHAIRPERSON: Yes.

MR NTSHEPE: The files.

10 **CHAIRPERSON:** Ja.

MR NTSHEPE: That is the only role I played if I remember.

CHAIRPERSON: Okay. So the whole process was handled by the board itself?

MR NTSHEPE: Yes, correct.

CHAIRPERSON: Yes. Okay. In particular the Chairperson?

MR NTSHEPE: Well I think the Chairperson has, had the large input to it.

CHAIRPERSON: Yes.

20 **MR NTSHEPE:** Yes. But I think the other board members also were involved.

CHAIRPERSON: Okay.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Did you sit at the board meetings where this was discussed as Acting Group CEO?

MR NTSHEPE: I think whenever they came to an issue

regarding the, the suspended employees, we were asked to go outside. I do not remember sitting in any meeting that dealt with the charges.

ADV KENNEDY SC: Are you saying then that you cannot help the Commission with your own personal knowledge of facts as to why the disciplinary process took so long?

MR NTSHEPE: Yes, correct I am saying that I, I cannot because I, I was mainly involved in keeping the documentation. I was not involved in conducting the
10 disciplinary process.

ADV KENNEDY SC: Now were you involved in the settlement negotiations?

MR NTSHEPE: Sorry. I did not hear you. I see ...

ADV KENNEDY SC: Were you involved in the settlement negotiations? That the negotiations to ... (indistinct).

MR NTSHEPE: No I was not involved ... (indistinct).

ADV KENNEDY SC: Not at all?

MR NTSHEPE: Not at all.

CHAIRPERSON: Including on, including on what amounts of
20 money should be offered to them, were you not – did the board not involve you on that?

MR NTSHEPE: I was not involved.

CHAIRPERSON: Okay.

MR NTSHEPE: Chair.

ADV KENNEDY SC: Now Mr Mhlontlo was one of those

suspended as Group CFO, he was – he was replaced in an acting capacity by Mr Odwa.

MR NTSHEPE: Odwa Mhlwana.

ADV KENNEDY SC: Mhlwana.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes. And are you aware that Mhlwana contacted Mr Mhlontlo and arranged a meeting where a mandate was conveyed to him as, as the mandate to settle and in fact a settlement was ultimately reached with Mr
10 Mhlontlo.

MR NTSHEPE: I am not aware of the particular meeting whereby he, where they discussed the settlement. But I was aware that because it involved finance or something, if there was going to be a settlement that Mr Odwa Mhlwana would be involved.

ADV KENNEDY SC: And do you know where he got this mandate from?

MR NTSHEPE: I would have believed from the board.

ADV KENNEDY SC: Did he not discuss it with you?

20 **MR NTSHEPE:** Not, not in particular.

ADV KENNEDY SC: Not?

MR NTSHEPE: Not in particular. Not in particular.

ADV KENNEDY SC: Not in particular?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Does that mean a yes or a no?

MR NTSHEPE: No.

ADV KENNEDY SC: Did he discuss it with you or not?

MR NTSHEPE: No.

ADV KENNEDY SC: Does it not seem strange that he would not have discussed that with you? A settlement that would secure the resignation or termination of employment on agreed terms with three senior executives?

MR NTSHEPE: I am not sure if it is strange Chair. But this is what happened and I cannot blame him for not discussing
10 with me. But the point is he did not discuss it with me. I did not even know how much the settlement was, in fact it was the first time I heard it.

CHAIRPERSON: Well I certainly would have expected that the board or its Chairperson would talk to you about what was being done to expedite the disciplinary process against the three executives. Because as Group CEO you would be concerned about a situation where three senior executives are on suspension for a long time, you have got to have acting people. That is not an ideal situation where ...

20 **MR NTSHEPE:** Totally not.

CHAIRPERSON: That is going to take too long. One would have expected the board to talk to you about that, but I would also expect, have expected the board to talk to you about their idea that the three executives should be given settlement offers so that they go because you were the

Group CEO albeit acting. You had to have the interest of the whole organisation at heart. If senior executives are sought to be allowed to go, one would have thought that the board would talk to you about that and, and hear what you may have to say.

MR NTSHEPE: As I have said Chair, I kept the documentation.

CHAIRPERSON: Yes, but they never spoke to you about it.

MR NTSHEPE: But in terms of having a meeting and
10 discussing all these matters in relation to the suspension.

CHAIRPERSON: Yes.

MR NTSHEPE: I did not have any particular meeting.

CHAIRPERSON: Were you only informed by the board after the settlement agreements had been reached with the three, or with each one as they got to reach settlement agreement.

MR NTSHEPE: I think it was mentioned in one of the board meetings that we ...

CHAIRPERSON: After it had happened?

MR NTSHEPE: Yes.

20 **CHAIRPERSON:** Yes. Okay Mr Kennedy. Is that – thank you Chair. Is that after the settlement agreements had been reached with the three individuals?

MR NTSHEPE: For me, the first time ...

ADV KENNEDY SC: The first time you were aware?

MR NTSHEPE: Ja, that, ja. That it was in one of the board

meetings that they, there has been a settlement.

ADV KENNEDY SC: And so the agreements were already finalised were they?

MR NTSHEPE: I would, I would believe that they were finalised and I – that is why there was a second.

ADV KENNEDY SC: And were the agreements to your knowledge signed by Mr Mantsha?

MR NTSHEPE: I would not know, I am not ...

ADV KENNEDY SC: You would not know.

10 **MR NTSHEPE:** Because I did not see them.

ADV KENNEDY SC: Okay. Can I take you please to another bundle. It is Bundle 7 and perhaps your Registrar could assist us again. Bundle 7. You can just find it, it should be – yes you are going to be helped there Mr Ntshepe. So Chair it will be Bundle 7, page 741. In fact perhaps you can start at the beginning. It is page 724. Do you have 724 Mr Ntshepe?

CHAIRPERSON: I can look at the black number on the left-hand corner. Of left-hand corner, black ...

20 **MR NTSHEPE:** Yes.

ADV KENNEDY SC: Page 724 appears to be the first page of a Termination of Employment Agreement between Denel and Mr Mhlontlo. Is that correct?

MR NTSHEPE: Yes I see my signature here.

ADV KENNEDY SC: Yes, can you just answer one question

at a time. That is going to be my next question. Page 741, you find where I was going with this line of questioning? Yes indeed, there is your signature. You just told the Chair a moment ago that you only found out after the agreements had been finalised and signed, we believed by Mr Mhlontlo, that it had all been finalised and yet we see at page 741 your signature and your name.

MR NTSHEPE: Yes.

ADV KENNEDY SC: As Acting General, Group CEO. So it
10 was your evidence a moment ago incorrect?

MR NTSHEPE: I will not say it is incorrect, I mean if I would not remember in details this document, but I am sure I was required to as an Acting CEO.

ADV KENNEDY SC: Yes.

MR NTSHEPE: To sign this document.

ADV KENNEDY SC: Yes but I understand. We can see for ourselves you are not suggesting that this is a fabrication is it?

MR NTSHEPE: No I am not suggesting it.

20 **ADV KENNEDY SC:** Yes, okay.

MR NTSHEPE: It was not even created by ...

ADV KENNEDY SC: If we accept that it is not a, that it is a genuine document that was signed by you, your evidence earlier that you, that you were only involved, you were only informed after the agreements had been finalised and

signed, you believe by Mr Mantsha that cannot be correct. In fact you can see that it was signed by yourself, is that correct?

MR NTSHEPE: Yes, except I do not remember. I am not sure who signed them.

ADV KENNEDY SC: Yes.

MR NTSHEPE: Yes.

ADV KENNEDY SC: But it turns out ...

MR NTSHEPE: Now it turns out that it is me.

10 **ADV KENNEDY SC:** Yes.

MR NTSHEPE: Yes. So I am not now – it is my signature, so ...

ADV KENNEDY SC: Yes.

MR NTSHEPE: I am not saying that it is not my signature.

ADV KENNEDY SC: Right and – sorry Mr Ntshepe what?

MR NTSHEPE: This is 2016, so I would not remember this thing, totally declare it.

ADV KENNEDY SC: I understand that.

20 **MR NTSHEPE:** Documents and whatever, whatever, which documents I have signed.

ADV KENNEDY SC: Yes I understand that Mr Ntshepe. So I am just simply asking you if it is appropriate to correct your earlier evidence that you only heard after the event that the agreements had been signed by somebody.

MR NTSHEPE: By somebody else?

ADV KENNEDY SC: Yes.

MR NTSHEPE: Oh no.

ADV KENNEDY SC: Somebody else signed it.

MR NTSHEPE: I correct it.

ADV KENNEDY SC: You correct it?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Okay. Thank you.

CHAIRPERSON: And do you remember whether you have signed only this settlement agreement relating to Mr
10 Mhlontlo or whether you signed each one of the settlement agreements involving the other two executives?

MR NTSHEPE: Chair I have to check. I recall ...

CHAIRPERSON: Yes.

MR NTSHEPE: Because it is such a long time.

CHAIRPERSON: Yes.

MR NTSHEPE: That is why I gave you the answer I gave you because I honestly I did not ... (indistinct).

CHAIRPERSON: Well I am a little surprised by you saying you do not remember. I would have thought that the
20 suspension and the departure of these three senior executives from Denel was something quite important and I think it made ...

MR NTSHEPE: News.

CHAIRPERSON: It made news, it was on the public domain.

MR NTSHEPE: Yes.

CHAIRPERSON: And so on. I would have thought that if you were the one who signed the settlement agreements, you would not remember that.

MR NTSHEPE: Remember the ... (indistinct).

CHAIRPERSON: You would not, you would not forget that you are the one who signed the settlement agreements relating to these ...

MR NTSHEPE: (Indistinct).

10 **CHAIRPERSON:** Because it would have been something quite momentous at the time.

MR NTSHEPE: I am not lying sir. I did not remember until I saw this.

CHAIRPERSON: Yes.

MR NTSHEPE: I signed, I used to sign a lot of documents.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes. So it is my signature, I do not deny.

20 **CHAIRPERSON:** Is it possible that when you say, when you said earlier on you were not involved at all in the processes relating to the disciplinary process, relating to these executives, the disciplinary process relating to these executives when you say you were not involved and when you said the board never spoke to you. And when you said the Acting Financial Director did not speak to you about the settlement negotiations or the settlement offers, is it

possible that you might be mistaken about that? And that you might have ... (indistinct).

MR NTSHEPE: With this now ...

CHAIRPERSON: Yes.

MR NTSHEPE: It could.

CHAIRPERSON: It could be.

MR NTSHEPE: Yes.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

10 **CHAIRPERSON**: Yes. Ja, because it just sounds strange to me that the board, you were the person that the board identified as the right ...

MR NTSHEPE: Yes.

CHAIRPERSON: As the right person to act in a Senior Executive position.

MR NTSHEPE: Yes.

CHAIRPERSON: That must mean they had confidence in you.

MR NTSHEPE: Yes.

20 **CHAIRPERSON**: You know. So it just would seem strange if they would not keep you informed as to what was happening ..

ADV KENNEDY SC: Can I...

CHAIRPERSON: With the disciplinary process that was taking so long and even when they were thinking of

effectively getting rid of these executives that they would not have a discussion with you to say look this is what we are thinking and maybe get your views because you might say well – well with regard to the CEO you can make your own decision but I think these other two are good members of the management team I would like them to remain you know. They whatever. Or you could have whatever views including about the CEO.

MR NTSHEPE: Maybe I just answered that question very
10 quickly.

CHAIRPERSON: Ja.

MR NTSHEPE: Let me just come back to it.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

CHAIRPERSON: Ja.

MR NTSHEPE: My involvement was keeping the documentation and I think to a limited extent the administration – the lawyers which related to the documentation. And the rest – and if I remember and then
20 the rest of the negotiating and the negotiations with this – with the employees – in fact it hit me very hard this suspension.

CHAIRPERSON: Hm.

MR NTSHEPE: It hit me very hard this suspension.

CHAIRPERSON: The suspensions.

MR NTSHEPE: Yes.

CHAIRPERSON: Yes.

MR NTSHEPE: In fact – yes. And – but I was asked to act and I believe my responsibility had to do with the company. The matters relating to my seniors because we – they were my ...

CHAIRPERSON: Yes.

MR NTSHEPE: Although they – we were colleagues but Riaz was my senior.

10 **CHAIRPERSON:** Yes.

MR NTSHEPE: And we worked very closely. Very, very close. In fact the – this even affected the relationship we had.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes which is very sad for me. So when that happened you know I make a choice it is a – I focus in the work that I have been doing and I am doing this work. And I think to a certain extent if I remember then it is 2016 in terms of lawyers that they are doing their work or – or where
20 we keep the documents that I was involved in. But in the detail of the actually disciplinary itself where they met or I have never been there – I do not even know where that was so I was not involved.

CHAIRPERSON: Okay alright. Can you attend to the air conditioner it is – maybe if it would make such a loud noise.

Okay Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. So as I understand your evidence you were not involved in the negotiations.

MR NTSHEPE: For the settlements?

ADV KENNEDY SC: For settlement.

MR NTSHEPE: No I was not.

ADV KENNEDY SC: And you were not involved in giving instructions to the lawyers or to your – any of your colleagues in relation to the settlement negotiations.

10 **MR NTSHEPE:** The money – no I was not involved.

ADV KENNEDY SC: And you were not involved in discussing let alone giving your views on the possible offers to be made or the acceptance of the offers to be made with the board members?

MR NTSHEPE: No I was not involved.

ADV KENNEDY SC: Yes. Now I appreciate your evidence that you cannot recall – you could not recall until I showed you your signature signed in this agreement.

MR NTSHEPE: Yes.

20 **ADV KENNEDY SC:** So I cannot ask specifically whether you read this agreement.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Well perhaps I can. Now that you remember because you have been shown the page where you signed that. Can you remember whether you looked

through this agreement?

MR NTSHEPE: I – in fact the reason why I cannot even remember that I signed it because I – as I say I signed many documents I do not believe I read this document.

ADV KENNEDY SC: Yes.

MR NTSHEPE: I do not even know what – I mean what [00:04:38].

CHAIRPERSON: Ja but Mr Ntshepe you would not have signed an agreement without reading it would you? Would
10 you have done that?

MR NTSHEPE: I trust the individuals sometimes who bring me the document. To have brought the document in good faith and they understand exactly what is in it. And the reason that they are asking me to sign is more procedural than for me to understand exactly what is it.

CHAIRPERSON: No hang on Mr Ntshepe. You cannot be serious. An agreement is something very serious.

ADV KENNEDY SC: Yes.

CHAIRPERSON: A colleague says here is an agreement
20 sign. You will not read it you will just sign because you trust your colleague?

MR NTSHEPE: This agreement in particular I do not remember reading it. The settlement agreement. I am being honest.

CHAIRPERSON: Yes, yes.

MR NTSHEPE: Yes.

CHAIRPERSON: Shoo that is dangerous. Mr Kennedy.

ADV KENNEDY SC: Does that perhaps explain why you understood that the contents of the memorandum of understanding were the same as the contents of the memorandum of agreement in the VR Laser.

MR NTSHEPE: No.

ADV KENNEDY SC: You read those.

MR NTSHEPE: Ja.

10 **ADV KENNEDY SC:** Okay.

CHAIRPERSON: I mean what worries me Mr Ntshepe is I mean as it happens I think with regard to Mr Mhlontlo he was - what you were signing was that the company would pay him 24 months or an amount equivalent to 24 months' salary plus other amounts. But if you were not – if you were – you were prepared to sign without reading it could have been any amount that you could have been signing entering into an agreement with – you could have been signing an agreement that said he was going to be given R100 million.

20 **MR NTSHEPE:** Chair I do not believe the people I was working with especially Mr Mhlona that he would have been devious to do that to me. I am being honest Chair.

CHAIRPERSON: But they might have thought it was fine but you would have thought it was not fine.

MR NTSHEPE: Yes I tried...

CHAIRPERSON: They might have thought there was nothing wrong in offering Mr Mhlontlo for example R100 million so they would have thought – they would thought well it is – it is fair. He has been around in this company for X number of years and we are not – we have no proof that he has done anything wrong. So R100 million is fine. But if you had read and you came across the clause which says he must be given that amount you would have said no, no, no, but I am not prepared to sign. I think this is wrong. But if you do not
10 read you will not know that. You might discover when it is too late that you have signed something that you should not have signed and you have committed the company to huge financial commitments.

MR NTSHEPE: I take your point Chair.

CHAIRPERSON: Hm. Mr Kennedy.

ADV KENNEDY SC: May I ask you Mr Ntshepe I know you cannot recall and it is not fair to expect you to recall every single fact but as the Chair has pointed out this was quote a momentous situation it was not just a routine one of many
20 hundreds of documents that you would have to sign from time to time. These were colleagues that were now leaving the employ you say that even their suspension had caused you some anxiety and pain. You were now going to lose from the permanent employ of Denel its Group CEO whom you would now replace Mr Saloojee and you would lose the

Group CFO Mr Mhlontlo who you must have worked with closely not so?

MR NTSHEPE: Yes.

ADV KENNEDY SC: As well as Ms Africa. Does the same apply to – sorry you nodded can you just confirm in the record you worked for some time with Mr Mhlontlo?

MR NTSHEPE: Yes correct.

ADV KENNEDY SC: And his departure or his suspension also pained you is that right?

10 **MR NTSHEPE**: Correct.

ADV KENNEDY SC: And did the same apply to Ms Africa?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now do you recall who this official was who came with the document asking you to sign it?

MR NTSHEPE: I think it was Finance.

ADV KENNEDY SC: It was Finance?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Can you remember who in Finance?

20 **MR NTSHEPE**: I would – I would think the CFO but I cannot totally confirm that.

ADV KENNEDY SC: Yes. The acting CFO at that time was Mr Mhlwana.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes and he of course would now be replaced by – sorry he would now replace Mr Mhlontlo not

so?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. Now did he tell you even if you did not read the document did he tell you boss I would like you to please sign this agreement because the board wants you to. You do not need to read it but I can tell you what it is about.

MR NTSHEPE: Well...

ADV KENNEDY SC: He must have told you for you to be
10 able to trust him surely?

MR NTSHEPE: Yes. I think he did but I – I am assuming that he did but I cannot recall in detail that this is what he said because I will be able to answer in a precise manner to say this is what he said.

ADV KENNEDY SC: Yes. Well I would like to ask...

MR NTSHEPE: But I am sure he did say something. I mean I would not sign a document without him briefing me.

ADV KENNEDY SC: Yes. And do you recall if he told you what amount would be paid or what the package would be in
20 terms of the agreement?

MR NTSHEPE: Two – say two years.

ADV KENNEDY SC: Yes it is actually two years – 24 months.

MR NTSHEPE: Yes.

ADV KENNEDY SC: As the Chair has pointed out. Did he

tell that when you were signing this you were committing the organisation by your signature on behalf of Denel to settle with Mr Mhlontlo was R6.6 odd million equivalent to 24 months in addition to an incentive bonus and in addition to the extra month that would still be worked out until the notice period. Did he tell you that this is what it was going to cost your organisation Denel if you signed this?

MR NTSHEPE: He might have told me but I do not remember.

10 **CHAIRPERSON:** He might have told you?

MR NTSHEPE: But I do not remember.

CHAIRPERSON: You do not remember.

MR NTSHEPE: Yes.

CHAIRPERSON: Hm. Well when you add the other amounts I think the amount- I think Mr Mhlontlo's said the amount comes to about R9 million altogether but the ex gratia part was – or the equivalent of his two years' salary which translated to about R6 million. R6 million something. So that is what you were signing, committing the company to.

20 And then included in the other amounts in addition to the R6 million was an incentive bonus and I asked him the question whether the policies or rules were to the effect that you get an incentive bonus if you are recognised as having done your job well. He said yes.

MR NTSHEPE: Correct.

CHAIRPERSON: You accept that?

MR NTSHEPE: Yes.

CHAIRPERSON: Yes. Mr Kennedy.

ADV KENNEDY SC: Thank you. But in this case Mr Ntshepe Mr Mhlontlo had not done either well or badly in his job for the past year almost because he had been suspended during that period yet he was paid a further I believe it was R1.6 million if you look at clause 11 on page 731 is amounting to R1 656 411.00 that is in addition to the R6.625
10 million that he would be paid as the Chairperson has pointed out as an ex gratia payment. So the – so the bonus seems to have been called a bonus even though it would not have been an incentive for anything because he was now leaving and where he had worked for the past year.

MR NTSHEPE: No he did work up until September – he did – Chair he did work up until September.

ADV KENNEDY SC: Up to September.

MR NTSHEPE: Ja because the year starts in April up until September.

20 **ADV KENNEDY SC:** Yes. But this was not...

CHAIRPERSON: This – ja it was not pro rata was it? Well does it get calculated according to the financial year?

MR NTSHEPE: Yes.

CHAIRPERSON: Or calendar year?

MR NTSHEPE: Yes according to the performance in that

financial year.

CHAIRPERSON: In that financial year.

MR NTSHEPE: Yes.

CHAIRPERSON: You see now for – he – they were suspended in September 2015 that would have been about six months before that financial year ended but the payment was happening I think in about August of 2016 in regard to Mr Mhlontlo. And from the beginning of that financial year in April up to August he had not worked because he was on
10 suspension.

MR NTSHEPE: Correct.

CHAIRPERSON: So in regard to the previous financial year it is about six months that he had not worked that is the 2015/2016 financial year. In regard to the 2016/2017 financial year he had not worked for eight months before – no, no, no for about six months before he left. So in each financial year he had not worked for six months or so.

MR NTSHEPE: Correct.

CHAIRPERSON: Hm okay.

20 **ADV KENNEDY SC:** In fact Chair if I may

CHAIRPERSON: Yes.

ADV KENNEDY SC: Draw the attention of the witness to Clause 11 at the end which in fact seems to clarify the point at which it was to be paid. It says he would paid payable at the same time as with the rest of the employees no later

than 31 October 2016.

CHAIRPERSON: Oh okay.

ADV KENNEDY SC: Mr Nthsepe what I would like to put to you is that it seems highly improbable that you would have been unaware of at least the ballpark figure that was to be paid to Mr Mhlontlo in terms of the settlement. Firstly because it would have been reckless for you as Group CEO to sign anything that was committing the organisation to substantial amounts without knowing what they are. The
10 Chair has already asked you that question. Do you want to add anything to what you have said?

MR NTSHEPE: What I am saying Chair is that I think Mr Odwa I cannot – Odwa Mhlwana would have ...

CHAIRPERSON: Sorry – I am sorry just repeat that.

MR NTSHEPE: I think Mr Odwa Mhlwana who was the CF – acting CFO might have briefed me about this document and in terms of the amounts I do not remember I have to be honest. I do not remember exactly what amounts they – the settlement was. And I believed because of the position
20 where I was sitting it was necessary for me to sign this document as tabulated here. Because it would have had to be signed at highest level in the organisation. But they – the exact amount of the settlement I cannot – I cannot vouch to that. But I know exactly what the amount is.

ADV KENNEDY SC: Yes my question was – my question

was phrased deliberately on the basis that you would at least to have known what the ballpark figure was. Maybe not the exact rands and cents but that you would have known that it would have been 24 months equivalent and you would have known how much Mr Mhlontlo was earning not so roughly?

MR NTSHEPE: Yes he was – yes I knew – I would not know roughly – I would not know yes.

ADV KENNEDY SC: Yes. And you would have known also that – that he was getting the other benefits and I put it to
10 you that only must you have found that out because it would have been reckless for you to sign it otherwise. But secondly is it not a matter of simple human nature that you as a colleague of these individuals who are now leaving you are – you have been anxious when they were suspended. They have now been facing a disciplinary process which never gets to the point that it is actually starts let along concludes. You were paying – you as acting GCEO were allowing the organisation to pay them during this period of extended suspension no so? Correct?

20 **MR NTSHEPE:** Not me as such paying I believe that because the ultimate accountability of the organisation is the board and the board was paying them this money.

ADV KENNEDY SC: Yes. But you were aware that they were being paid during this period by Denel.

MR NTSHEPE: I knew there was a settlement but I knew....

ADV KENNEDY SC: No, no. No Mr Ntshepe we are at cross purposes I am sorry to interrupt. I do not mean to be rude. I am talking about the payment while they were being suspended – while they were on suspension. You must have known that they were being suspended on full pay.

MR NTSHEPE: Yes, yes I did.

ADV KENNEDY SC: Yes. So you knew that this process that you were not involved in suspend the decision to suspend them – or the decision to pay them during
10 suspension or to negotiate a settlement. You were on the side lines because the board was deciding that and you gave no input according to your evidence.

MR NTSHEPE: The input I never gave an input in terms of the firstly the settlement I never gave an input.

ADV KENNEDY SC: Yes.

MR NTSHEPE: In terms of the disciplinary process itself.

ADV KENNEDY SC: Yes.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes I am summarising what you have
20 said about this already.

MR NTSHEPE: Yes.

ADV KENNEDY SC: We do not need to go over that again if you do not mind. So – but what I am saying to you now surely it is significant as the Chair was suggesting to you earlier. It must have been significant to you whether as

GCEO in your official capacity or even just in your normal human capacity as an individual you must have thought wow I am glad to hear that the board has resolved this with Mr Mhlontlo . Did you feel that?

MR NTSHEPE: Yes I am not sure if I was glad but because...

ADV KENNEDY SC: But you were aware that they – they were reaching the settlement.

MR NTSHEPE: Yes there was a settlement.

10 **ADV KENNEDY SC:** Yes.

MR NTSHEPE: Because there was an end of the whole process.

ADV KENNEDY SC: Yes.

MR NTSHEPE: Yes.

ADV KENNEDY SC: This cloud that was hanging over Denel.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Executive team.

MR NTSHEPE: Yes it was yes.

20 **ADV KENNEDY SC:** Was now being resolved correct?

MR NTSHEPE: Yes there was a settlement.

ADV KENNEDY SC: Yes. And money was going to be paid to Mr Mhlontlo. Surely just at the level of human curiosity let alone as Group Chief Executive you would have been curious to know is Mr Mhlontlo going to leave without any

pay or is he going to be paid a package and what is it? How much is he going to get paid? Maybe not down to the rands and cents but roughly how much.

MR NTSHEPE: Being honest I did not – I means even as Group Executive or as the Chief Executive or as a human being I must.

ADV KENNEDY SC: Both.

MR NTSHEPE: I would – I trusted that the CFO whatever he put and agreed on the settlement with the board is genuinely
10 enough it is not an issue whereby I should come and interfere. I believe it was genuine enough.

ADV KENNEDY SC: Are you saying you saw the figures or you were told by Mr Mhlontlo – sorry Mr Mhlwana the ball park figure that was going to be paid and you did not – you did not interfere.

MR NTSHEPE: I have to be honest. I do not remember.

ADV KENNEDY SC: You do not remember.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Okay. Alright. Thank you. May I just

20 **ADV HYDE:** Well – oh.

ADV KENNEDY SC: Sorry Chair after you.

CHAIRPERSON: Okay. Did you ever form a view as to whether the board's decision to suspend these three executives was justified or fair? Did you ever form a view on that issue at the – during – before they left – the three

executives left?

MR NTSHEPE: Chair with respect and with respect for the people who were involved can you allow me not to answer that question?

CHAIRPERSON: Well I do not know if I will allow you. But let me ask you another question. Did you - did you ever form a view whether it was justified – the board was justified in giving them the amounts of money that it gave them effectively to get rid of them because I do not think it is
10 anything else other than that?

MR NTSHEPE: I formed a view in terms of the process being completed.

CHAIRPERSON: Please just start – just start again.

MR NTSHEPE: Chair I formed a view for the process being completed that now we can – it is either I ...

CHAIRPERSON: You formed a view after?

MR NTSHEPE: Yes when – yes

CHAIRPERSON: Yes.

MR NTSHEPE: The process had been completed.

20 **CHAIRPERSON:** Yes.

MR NTSHEPE: I say largely I was not involved directly into the process of the suspension because I could have been conflicted because they were my colleagues, they were very close with me and – and that would be left to the board to decide how they going to execute that action. However I

was the in a sense as I say a custodian of the documentation of all the documentation that was involved. Forming a view about the fairness or the unfairness of the suspension...

CHAIRPERSON: No I will allow you not to express a view on the suspension but I think I will – I would want to find out whether you formed a view or not on whether the board was justified in paying out the amounts that it paid out to them to effectively get rid of them?

MR NTSHEPE: Now that I know no it was too much.

10 **CHAIRPERSON:** You thought it was too much?

MR NTSHEPE: Now that I know.

CHAIRPERSON: Now – yes.

MR NTSHEPE: Yes.

CHAIRPERSON: Yes but at that time did you have a view whether the board – whether the board was justified in paying so much money in order to get rid of them.

MR NTSHEPE: Usually if you I think an executive leaves who has a five year contract it is either you buy him out. So this could have been a problem – the process of buying the
20 executives out. Yes the amounts – the amounts. But if it was just an ex gratia amount to get rid of them I do not think that would have been the correct

CHAIRPERSON: Justified.

MR NTSHEPE: Justification. But if you buying out the contract because you have a contract with the individual I

think that is a procedure which happens in other organisations. So I would – would not have opposed that.

CHAIRPERSON: But of course even if you are talking about buying out a contract which effectively means if you had a five year contract with – with us.

MR NTSHEPE: Yes.

CHAIRPERSON: And after you have worked for one year we do not want you anymore. We say we will pay you for the balance of the period you know. But even on – even on that
10 you would – it would be necessary would it not be to make an assessment whether it is justified because it might be a lot of money that you are going to spend. Not your money company's money.

MR NTSHEPE: Yes. Mr Mhlontlo was I do not know – I do not want to say it in public how much he was earning. He was earning money equivalent into – for two years equivalent to the money which was paid out.

CHAIRPERSON: Ja.

MR NTSHEPE: Yes

20 **CHAIRPERSON:** Yes but what I am saying is the fact that a company or a board might resort to what you call buying out that on its own should not – does not indicate that it is justified or not justified. It depends on what the reasons are and so on is it not?

MR NTSHEPE: Correct Chair.

CHAIRPERSON: So then I go back to this – then I go to this question. You being the person that was asked to sign the settlement agreements was it not your duty to satisfy yourself whether it was justified to enter into these settlement agreements with these terms including the amounts to be paid to them. Because in the end even though the decision may have come from the board I take it that as Group CEO as the person who was required to sign you would have – you would have been entitled if you
10 thought that this was wasteful expenditure or something like that to say I am not signing. It is not in the interest of the company that this - such large amounts be paid in the circumstances. I am not prepared to append my signature.

MR NTSHEPE: Chair as I said in Mr Mhlontlo case the ball park amount to which I have been told is within his salary. I will have to find out the – what the others authorised were paid.

CHAIRPERSON: Yes.

MR NTSHEPE: And the – in terms of his bonus I think I did
20 not see anything wrong. Or do I see anything wrong for him to get a bonus all the time that he worked.

CHAIRPERSON: Yes but the ex gratia?

MR NTSHEPE: Ex gratia?

CHAIRPERSON: 24 months' salary for him to leave?

MR NTSHEPE: Well he – is that ex gratia or is it a buying

out?

CHAIRPERSON: Called it ex gratia in the settlement agreement.

MR NTSHEPE: Yes but ...

CHAIRPERSON: In the settlement agreement that you signed.

MR NTSHEPE: Yes it is buying out what the – I am sure the contract was a...

CHAIRPERSON: It was not the balance of his contract?

10 **MR NTSHEPE:** It was not.

CHAIRPERSON: Ja his contract was – he said what was left was something like 30 months and what they gave him was the 24 months meant that he lost about six months.

MR NTSHEPE: Yes.

CHAIRPERSON: Ja.

MR NTSHEPE: The question...

CHAIRPERSON: So my question is whether you do not accept that you had a duty in regard to whatever settlement agreements you signed as Group CEO to satisfy yourself that
20 this was justified because otherwise you could be committing the company to pay an amount to make payments that would be fruitless expenditure.

MR NTSHEPE: It is correct Chair and as you have explained the amount.

CHAIRPERSON: Ja.

MR NTSHEPE: Though they might call it ex gratia in my mind it is buying out of the contract. You say it is 30 months and they paid him for 24 months.

CHAIRPERSON: But you would have had – you had proper reasons for wanting to buy an employee, is it not? You cannot just buy out an employee as you please.

MR NTSHEPE: Yes, that is ...[intervenes]

CHAIRPERSON: There must be proper reasons.

MR NTSHEPE: I am sure you would, yes.

10 **CHAIRPERSON**: Yes. So my question goes to exactly that, whether you did not think it was part of your duty to satisfy yourself that you are signing something that you could defend ...[intervenes]

MR NTSHEPE: Yes, there is ...[intervenes]

CHAIRPERSON: ...namely, were there proper reasons for this to be done by the board.

MR NTSHEPE: The issue, Chair. That matter, as Mr Mhlontlo indicated. It was taking a long time to be resolved. And not only that. It was affecting the
20 organisation because it was in the news almost every day and that matter needed to be closed.

And to me, those were very strong reasons to say we need to resolve this matter. And if we buy out the contract, that of Mr Mhlontlo, in the end, although it is called ex-gratia....

I have no objection because I think it would have been a matter of resolving the matter, the issue and ...[intervenes]

CHAIRPERSON: But I ...[intervenes]

MR NTSHEPE: I would not even think that it is wasteful expenditure because in essence he is contracted for the next 13-months(?).

CHAIRPERSON: Well, I am not sure if that is a proper answer because what if the right thing to do, which is in the best interest of the company, is to allow them to come back
10 if the company cannot put up charges against them?

They were suspended on the basis that they are going to face charges. Why was it taking so long if there were proper grounds for them to be charged?

If there were proper grounds for them to be suspended, in the first place. So did that not indicate that there were no proper grounds for them to have been suspended in the first place?

Did that not indicate that there were no proper grounds to sustain the charges? Because, otherwise, you just call them
20 to a disciplinary hearing, they face the charges. If they are found guilty and they are dismissed, that is it. If they are found not guilty, they resume their work. That is it.

Why must there be a payment of millions of money to them without determining whether they are guilty or the allegations that are made against them?

MR NTSHEPE: Chair, the ultimate decision to pay them out, it did not come from me.

CHAIRPERSON: No, no, no. I understand that.

MR NTSHEPE: Yes. The matter to say that they should come back or not come back, it was out of my, can I say, jurisdiction. I am not sure if it is ...[intervenes]

CHAIRPERSON: But would you not be able to say, if you took the trouble to look at the matter and say: Why is the company reaching a point where it must pay out such
10 amounts?

And you ask yourself where is the justification. They were – we were told that they were being suspended to face disciplinary hearing. Why are they not facing disciplinary hearings?

I am not going to sign if this is being used illegitimately instead of letting them face a hearing and let them be found guilty or innocent.

MR NTSHEPE: Chair, I am not sure if that is totally true that they did not face any hearing.

20 **CHAIRPERSON**: Well, there was no hearing. That is the evidence I have heard. There were charges that were formulated and sent to them.

MR NTSHEPE: Yes.

CHAIRPERSON: And Mr Mhlontlo has testified and Mr Saloojee testified last year that they were keen to face

the charges and there is correspondence from their attorneys to the attorneys of the board, where they were saying: We are ready. We actually want the charges. We want the hearing. We want to clear our names.

And at some stage, the board instead of agreeing to that, said no, let us have a mediation. They agreed but what they wanted, as they have testified, is a disciplinary hearing where they would be cleared.

Actually, if I remember correctly, when Mr Mhlontlo was
10 testifying he even said, even though he took the settlement, the amount, he signed the settlement – he was still concerned that in the public domain, his name had not been cleared because Denel had publicly said certain things about them when they were suspended. And I think when they were – when they departed.

MR NTSHEPE: Yes, I hear you Chair what you are saying.

CHAIRPERSON: Yes.

MR NTSHEPE: But I do not think it is totally ...[intervenes]

CHAIRPERSON: But you do not think that you would have
20 refused to sign ...[intervenes]

MR NTSHEPE: No.

CHAIRPERSON: ...if you did not agree that they should be made – given those amounts to leave? You think ...[intervenes]

MR NTSHEPE: Yes, looking ...[intervenes]

CHAIRPERSON: ...as long as the board made that decision, you would have gone along?

MR NTSHEPE: Yes, I would have gone along.

CHAIRPERSON: Yes. Okay. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. May I then just in conclusion on this point Chair, ask the witness this?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: You have given evidence earlier in relation to Ms Mahlalela to the effect that if she had a
10 different view to her colleagues about non-compliance with procurement and whether the job should have been done in-house.

You felt that it was obligatory that it was required of her that she should have recorded this and brought it to the attention of her superiors or even the Ministry of Public Enterprises.

Why does the same not apply to you if you have now expressed the view that you think that the ex-gratia payment of R 6,6 million of public funds at a time when Denel was not
20 in a healthy financial state?

Was it not incumbent on you to have drawn to, at least, the attention of the board, let alone the minister, that you felt that this was too much. This was inappropriate.

And as the Chairperson has pointed out. If there is substance to the charges, let the process run and let it run

quickly. If there is not substance to the charges, drop the charges and let them resume their jobs.

Was it not incumbent on you to express any concerns you had or you are saying you did not have concerns?

MR NTSHEPE: Chair, the amounts that have been – the one that I have been quoted in, for me, it looks like it was the buying out of the contracts and the board was very much aware of the whole process, what is happening And for me to be – to go along with the board as an acting...

10 In fact, I was not even a board member then. I was acting. And they have charged with this responsibility. I believe the board took their decision to say let them settle and my job was to run the company, not deal with the ...[intervenes]

CHAIRPERSON: But your job... [laughing] Running the company includes running the company properly, and it is not running the company properly if you are going to play millions of the company's money to people when there is no justification and you do not even want to find out whether
20 there is justification.

Running the company properly includes making sure that whatever decisions you make including signing a settlement agreement with an executive to leave, that you know that there are proper grounds. It does not mean just going along with what the board says.

Actually, as Group CEO, as far as I am concerned, you are supposed to be able to take a view on certain issues, even if it means disagreeing with the board and say I do not agree. That is what you are required when you are CEO.

MR NTSHEPE: Yes.

CHAIRPERSON: And therefore, in terms of these, I am surprised that you do not seem to – these settlement agreements, you do not seem to have taken the trouble, even to read the settlement agreements, to see whether the
10 terms of the settlement agreements were such that you would be comfortable to append your signature to the settlement agreements. It seems that you took the view that whatever the board wants, I will facilitate. I will sign.

MR NTSHEPE: Precisely ...[intervenes]

CHAIRPERSON: I do not think that is a proper approach or attitude of a Group CEO.

MR NTSHEPE: As I said Chair. My job was to act as an acting GCEO at that point in time. The settlements, I was not involved in, firstly, in negotiating them. I think
20 Mr Mhlontlo said that. I mean, we met with Mr Odwa Mhlwana.

And secondly, I fully trusted our CFO that he will do the correct and he will know exactly what it is that he is settling on.

And from what you are telling me, is that, actually it is

between the ballpark of what I would have expected him to pay.

I mean, in terms of the 13/30-months(?) that he still had the contract with notwithstanding his salary, now much he was earning per year and the bonus because he did work I think six months or so.

And I think if it is one point something, it was prorated. I am not sure. I think it was prorated. I would not remember the details, ja.

10 But I do not find any anomaly in saying that the settlement came to these amounts. I mean, senior executives in organisations, they earn salaries whereby when you have to buy out - somebody's contract, the amount is huge.

CHAIRPERSON: Well, let us leave out the issue of buying out Mr Ntshepe because the settlement agreement is here.

MR NTSHEPE: Yes.

CHAIRPERSON: And it does not talk about buying out. It talks about an ex-gratia payment.

20 **MR NTSHEPE:** Yes.

CHAIRPERSON: The board decided that they should get ex-gratia payments. Actually, on the basis of this settlement, on the basis of the fact that you are the one who signed this settlement agreement, one would be entitled to say, you are the one who decided to give Mr Mhlontlo an ex-gratia

payment of so much because that is where your signature is.

MR NTSHEPE: H'm.

CHAIRPERSON: So. But I am focussing on your approach, your attitude towards the board and the signing of the settlement agreement. And I am saying, it is a bad thing for a CEO of a company to sign a settlement agreement without reading it. Number one.

Number two. I am saying, it is a bad thing for a CEO of a company to sign such an agreement to effectively get rid of
10 executives without satisfying himself whether there were proper grounds for getting rid of the executives because effectively, these amounts were paid so that they could go.

I am saying – I am suggesting to you that a CEO who looks after the interest of the company, would want to satisfy himself whether there are proper grounds.

Because if there were not proper grounds, and if it is seems to him that it was not in the interest of the company to enter into this transaction or to this settlement because there are no proper grounds.

20 He would be duty bound to say to the board this is wrong, this is not in the interest of the company and I am not prepared to sign the settlement agreement. Do you want to comment on that?

MR NTSHEPE: My comment Chair would basically say that the circumstances at that time were very difficult in Denel

whereby you – we needed to move forward than standing still and having a lot of noise around Denel at that point in time.

If and when the negotiations came to the issue of settlement, I did not oppose it. And once the settlement amount has been calculated, that was to me, that was the responsibility of Finance because they – especially the financial director.

And from the figures that you are telling me or the SC is telling me, it was within the ballpark. It is not an
10 irresponsible amount. I mean, six point six from ...[intervenes]

CHAIRPERSON: Ja, but that is part of my concern Mr Ntshepe. You seem to keep on wanting to look at how much only whereas, although that factor, I am saying the first thing is.

You have to satisfy yourself whether getting rid of these executives is the right thing. Are there proper grounds? Because if there are no proper grounds, it might not be in the interest of the company to get rid of them.

20 **MR NTSHEPE:** We are coming back to the issue of saying. Basically, the opinion to ask me: Did I think it was a correct thing to suspend them or not?

CHAIRPERSON: No, no, no. It is different. You remember I asked you two questions.

MR NTSHEPE: Yes, yes.

CHAIRPERSON: Two opinions on two issues.

MR NTSHEPE: Yes.

CHAIRPERSON: Firstly it was whether the suspension were fair.

MR NTSHEPE: Yes.

CHAIRPERSON: And then it was, whether it was justified to get rid of them and get them paid the amounts that they were paid.

MR NTSHEPE: Yes.

10 **CHAIRPERSON**: And I said with regard to whether the suspensions were fair, I am quite happy not to insist that you give your opinion. But I said with regard to the other one. I would like your opinion and based on that, because you were the person signing.

MR NTSHEPE: Yes.

CHAIRPERSON: And therefore, signing the settlement agreement and therefore committing the company to pay millions of money. And I was saying to you, before you could do that, you would be expected to see whether there are
20 proper grounds to do this because otherwise, you would be doing something that you should not be doing.

MR NTSHEPE: Yes. The... I think we are going to go around the circle Chair because I am going to say again that there was a lot of noise in the system.

CHAIRPERSON: Oh, okay.

MR NTSHEPE: Yes.

CHAIRPERSON: Well, I remembered what you said about noise.

MR NTSHEPE: Yes, yes.

CHAIRPERSON: That is your justification?

MR NTSHEPE: And the point is. We needed Denel to move forward.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

10 **CHAIRPERSON**: Ja, okay. No, on that, I think we do not have to go back.

MR NTSHEPE: Yes.

CHAIRPERSON: That is what you advanced to justify signing the settlement agreement.

MR NTSHEPE: Yes.

CHAIRPERSON: And not looking into whether there were proper grounds to get rid of the executives or not.

MR NTSHEPE: I do not think I had the mandate to look at that Chair.

20 **CHAIRPERSON**: You did not think it was your place?

MR NTSHEPE: Within my scope of work.

CHAIRPERSON: Yes.

MR NTSHEPE: If there is proper grounds or not.

CHAIRPERSON: Even if you would be the one to account because I guess you were the accounting officer, were you

not?

MR TSHEPE: [No audible reply]

CHAIRPERSON: As Group CEO.

MR NTSHEPE: Ja, the accounting ...[intervenes]

CHAIRPERSON: Accounting Officer.

MR NTSHEPE: ...is the board.

CHAIRPERSON: So there is an accounting authority and an accounting officer, is it not?

MR NTSHEPE: Yes, yes.

10 **CHAIRPERSON**: Yes. Were you not the accounting officer in the board?

MR NTSHEPE: Yes.

CHAIRPERSON: Accounting authorities?

MR NTSHEPE: Yes, because I represented the board into the company.

CHAIRPERSON: Yes.

MR NTSHEPE: I would take myself within the company.

CHAIRPERSON: Okay alright. Mr Kennedy.

20 **ADV KENNEDY SC**: Thank you. I would just like to touch on one last question on this and then I just have one final brief topic about the termination of his own employment. I understand you are hesitant to express any opinions as to the grounds to justify then being paid out to leave the service.

But Mr Mhlontlo in particular, has raised as a concern,

why was he being paid such a big amount if he was guilty of it, of the misconduct? Why did they not complete the disciplinary process? And why were they so keen to get rid of him?

What he has suggested, and Mr Saloojee also hinted at this in his evidence, is that the reason why there was such a desire to get rid of them, rather than to actually discipline them, if they were genuinely guilty of misconduct, where was the case? Where was the evidence?

10 So what they have suggested is that they were being removed deliberately from Denel because they were seen as an obstacle to certain transactions that later proved so controversial.

MR NTSHEPE: I do not agree with that Chair.

ADV KENNEDY SC: Are you able then to express an opinion on this?

MR NTSHEPE: Yes, I can express an opinion on this.

ADV KENNEDY SC: On what basis?

CHAIRPERSON: Yes? Yes.

20 **MR NTSHEPE**: There was a transaction for Dubai BA Systems which later became Land Systems South Africa which cost the company R 855 million. And there were two banks that were involved One was Nedbank and the other one, I think it was ABSA.

Nedbank was given the impression that we only need a

certain bridging fund amount which we will be able to pay in six months. And we do have the other amount. It is the Denel money.

In other words, Nedbank was going to fork out the 450 or 455 and the 400 is Denel money whereas the truth was Denel did not have money. Actually, we were struggling to pay the suppliers at that point in time.

So firstly, I cannot believe that the issue was that they were just got rid of because they wanted to get rid of them
10 because they are not doing any – something.

But I think, for me, that was the major, major issues because they could not – when it went to the board, they could not account exactly, firstly why would you not tell the truth, the bank, that you are also going to borrow the 400 from ABSA? You do not have the money. So you got it from ABSA but you tell Nedbank that no I do have the money.

And then, the time that when this thing was reported, I think 250 or 255, within two weeks was due and the board heard it for the first time at that board meeting.

20 I think that – this thing started probably at the Audit and Risk and when it came to the board meeting. That is when the first time they heard that in two weeks' time Denel must pay Nedbank the 255 million and we did not have it or Denel did not have it.

So I think that, for me... In fact, I even sat with the

Group CEO outside the meetings because they wanted an *in camera* meeting. And then we sat outside for two hours and – because we got along very well.

We were not even thinking suspension at that time whereas they were talking about this issue that the matter of the money being due in two weeks' time and we do not know where we are going to get the money from.

CHAIRPERSON: So are you saying that they have done something wrong?

10 **MR NTSHEPE:** In terms ...[intervenes]

CHAIRPERSON: Therefore, the suspension ...[intervenes]

MR NTSHEPE: For me ...[intervenes]

CHAIRPERSON: And maybe... But that they should face disciplinary charges and that they... Ja, that they should face disciplinary charges, was justified because you – this is what you are aware of what they have done wrong. Is that what you are saying?

MR NTSHEPE: For me Chair. Telling the board in two weeks' time that they have to R 255 million was a serious
20 matter and the money is not there.

CHAIRPERSON: Yes, but what I am saying is ...[intervenes]

MR NTSHEPE: And Chair, the decision ...[intervenes]

CHAIRPERSON: You are suggesting that they have done something wrong.

MR NTSHEPE: In that particular issue, yes.

CHAIRPERSON: Yes. And now if they have done something wrong, why were the charges not pressed against them and persuade?

MR NTSHEPE: I think they were pressed, if I remember well.

CHAIRPERSON: No, but we have just told you there is evidence here that there was no hearing that took place. Actually, the fact that you signed settlement agreements indicates that no hearing was concluded. Actually, they say -
10 Mr Mhlontlo and Mr Saloojee say no disciplinary hearing started in substance.

There were dates when it was supposed to start and when they arrived, there were – the company had failed to give them documents and they had a discussion about documents. But they were ready to face the charges.

MR NTSHEPE: Chair, with due respect. I think there were hearings. It is not true that there were... There might not have been a final decision making but there were hearings.

CHAIRPERSON: But are you saying that there were
20 witnesses who gave evidence in disciplinary hearings?

MR NTSHEPE: [No audible reply]

CHAIRPERSON: Because we agreed that they were suspended. We agreed that they were given charges. The charge sheets, they were given that. And we – I have just told you that they said, dates were fixed when the

disciplinary hearings were supposed to or was supposed to proceed but it did not proceed.

And on one occasion when it was supposed to proceed, there was an issue about documents which the company had failed to provide or they provided documents which could not – they could not make sense out of them and then the hearing did not proceed. So are you saying that there were witnesses who gave evidence in disciplinary hearings?

MR NTSHEPE: I think there were hearings. Whether there
10 witnesses in the final or... As we know, there was no final hearing whereby a decision by the company was made but the – because this matter took a year. So there was not only one meeting as far as I remember.

CHAIRPERSON: But we are not talking about meetings, hearings. Hearings are where witnesses give evidence.

MR NTSHEPE: Yes.

CHAIRPERSON: That is what I am talking about.

MR NTSHEPE: Yes.

CHAIRPERSON: I am telling you that both Mr Mhlontlo and
20 Mr Saloojee have testified here and said no such thing took place. So you are saying, you think there were hearings. So I want to know whether you mean – you are denying what they are saying, namely no witnesses gave evidence.

MR NTSHEPE: I beg to differ. In my understanding, there were hearings ...[intervenes]

CHAIRPERSON: But do you know for sure or did you hear from somebody because these were the people who were facing allegations. These are the people who would have taken part in the inquiries. They have come here and said under oath: No witnesses gave evidence. Are you saying that you are disputing what they said? Were you at those hearings?

MR NTSHEPE: No, I was not in those hearings Chair.

CHAIRPERSON: So on what basis can you dispute what
10 they are saying?

MR NTSHEPE: As I said, I was keeping the documentation.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes. And the documentation show that there were hearings whereby Mr Mhlontlo met I think Denel lawyers.

CHAIRPERSON: Yes. Do not talk about meeting. Talk about witnesses giving evidence. Because meetings did happen but not hearings. That is what they say.

MR NTSHEPE: Well, witnesses in this case would be the
20 banks, I think.

CHAIRPERSON: H'm?

MR NTSHEPE: The witnesses in this case, for me, it would be the banks because they were the ones who were being owed the money.

CHAIRPERSON: Yes, but do you know whether witnesses

gave evidence?

MR NTSHEPE: No, I do not know that one.

CHAIRPERSON: Yes. So I am saying to you, therefore, they – why if they have done wrong, according to what you say, why the company did not call witnesses, have a disciplinary hearing and subject them to a hearing and make a finding rather than paying them millions without them facing those allegations?

MR NTSHEPE: The final decision Chair was not mine.

10 **CHAIRPERSON**: No, no. I accept that it was not yours but I come back to this question. If you signed the settlement agreement, certainly you signed Mr Mhlontlo's one, to say the company will pay him R 6 million when you knew that according to you he had done something terrible wrong? How would you justify paying him?

Signing the settlement, to say he must be paid so much and even say he must be paid an incentive bonus when you did so, knowing that as far as you are concerned, he was guilty of something serious?

20 **MR NTSHEPE**: I cannot judge Chair that he was guilty or not guilty. I am just stating the facts as they were at that point in time.

CHAIRPERSON: Yes, but you say you were aware that as far as you were concerned they had done something wrong and you think it was serious. And one would have thought

that when an employer is aware of that, they would put – they would subject an employee to a proper disciplinary hearing rather than ...[intervenes]

MR NTSHEPE: Correct.

CHAIRPERSON: ...pay them large amounts of money when they think they have done something wrong. It does not...

MR NTSHEPE: I can speculate if you allow me, maybe why in the end it never came into a finality in terms of disciplinary?

10 **CHAIRPERSON**: Well, I do not know why you want to speculate. [laughing] I do not think you should speculate. If you do not know the reason, you do know the reason.

MR NTSHEPE: Okay I can leave it, seeing that I do not know the reason.

CHAIRPERSON: Yes.

MR NTSHEPE: I do not know the final reason, yes.

CHAIRPERSON: Yes, okay alright. Mr Kennedy, I know we have gone beyond one o'clock but I do not know how far we are from finishing with...

20 **ADV KENNEDY SC**: I think five minutes.

CHAIRPERSON: Okay let us try and finish so that he can be released and then when we come back, we take another witness.

ADV KENNEDY SC: Thank you, Chair. Just a final question on this point. As Group Chief Executive Officer or be it

acting at that stage, you were the accounting officer, as you confirmed earlier. In terms of the law, is it not correct that the accounting officer, yourself, was responsible to ensure proper disciplining of staff?

MR NTSHEPE: Of staff, yes but not of board members.

ADV KENNEDY SC: Were they board members?

MR NTSHEPE: Yes, they were board members.

ADV KENNEDY SC: Right. So you are saying that you had no responsibility to ensure that they were disciplined if they
10 were ...[intervenes]

MR NTSHEPE: Board members ...[intervenes]

[Parties intervening each other – unclear]

ADV KENNEDY SC: Sorry. Please do not interrupt while I am putting a question. I will give you an opportunity to answer it once I am done.

MR NTSHEPE: Apology.

ADV KENNEDY SC: Just please bear in mind that when it is recorded, the poor person who has to transcribe this, will not be able to work out who is saying what. Are you saying that
20 the fact that these individuals, Mr Saloojee, Mr Mhlontlo and Ms Africa were not only employees of Denel but board members that disabled you from disciplining them?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Well...

MR NTSHEPE: I did not – if I can expand?

ADV KENNEDY SC: No, if that was your view I understand it. Whether that is legally correct is perhaps something that can be argued at a later stage. Mr Mhlontlo (sic) I would like now to pick up on something you mentioned earlier. You said that you were charged for not doing your – for allegations of not doing your duties in relation to the board. Did I hear you right?

MR NTSHEPE: No, no, I did not ...[intervenes]

ADV KENNEDY SC: I misheard you. You resigned from
10 your position as Group CEO.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Just shortly after the new board had come in, it is after the board under Mr Mantsha that ceased to hold office.

MR NTSHEPE: Correct.

ADV KENNEDY SC: And a new board under Ms Malahlela as its Chairperson came in, is that right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. Now Ms Malahlela has given
20 evidence before the Commission that you and others in particular Mr Mhlwana who were implicated in allegations of wrongdoing that that was being investigated and in fact a disciplinary process was brought against Ms Mhlwana who was then dismissed, is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Yes. But she testified that although the investigation was underway and the likelihood was that you would have been disciplined, you abruptly resigned and thereby avoided a disciplinary process.

MR NTSHEPE: No, it is not because I avoided the disciplinary process.

ADV KENNEDY SC: So why did you resign?

MR NTSHEPE: I resigned for one, personal health reasons because by that time my blood pressure, my sugar
10 was a mess and I realised that I have to make a decision but also it – I mean, I could see that the new board and the old board, there are huge differences and maybe another person can come and take the leadership especially in the CEO position. I do not have any other income, it was not an easy decision but I – sometimes you make difficult decisions because of the circumstances.

ADV KENNEDY SC: Thank you, Chair, we have no further questions of this witness.

CHAIRPERSON: I need to mention something to you, Mr
20 Ntshepe as being – as part of being fair to you, over the past two and a half or so years I have heard a lot of evidence about what has been happening in various SOEs, that includes Denel because I heard some evidence last year already in regard to Denel. One of the matters that has caught my attention, particularly of late, is the

question of the type of people that should get appointed to boards of SOEs, what should South Africa look for, what type of people should be part of boards of SOEs because one of the things that – one of the questions that arises within the context of allegations of state capture as well as high levels of corruption that has happened in various SOEs and government departments, particularly SOEs, is whether these SOEs had the right kind of people in the boards but also the right kinds of people in senior
10 management such as Chief Executive Officers and Chief Financial Officers and Chief Procurement Officers, those type of people because one is forced to ask the question how was it possible that some of the things that have happened in SOEs, in terms of corruptions and certain corruption in certain transactions, how was it possible for these things to happen while all of these people were there? Maybe some of them were part – were party to some of those transactions and irregularities. Maybe some were not party but they did not do their job the way they
20 should have done their job. You understand?

MR NTSHEPE: I hear what you are saying, Chair.

CHAIRPERSON: So it is within that context that in part I am concerned about your evidence that you may have signed a settlement agreement without reading it and that you may have just gone along with what the board said

what the board wanted because seems to me that Group CEOs for these SOEs must be people of a certain type and must be people who will decide this wrong, this is right and if it is wrong, I'm not going to allow it and even if comes from the board, if I think it is wrong, it is wrong, I will not be party to it.

Now then a CEO who will say well, as long the board wants, that is what the board wants, I will go along. So I am mentioning that because at least part of it
 10 emerged from your evidence and it concerns me. I do not know if you want to say anything. You might not have anything to say but if you do want to say something I am giving you that chance.

MR NTSHEPE: Thank you, Chair. I would conclude by saying that I do admit that mistakes were made. I cannot deny that.

CHAIRPERSON: That is important to make that admission because somebody who does not see that a mistake was made or mistakes were made makes it difficult to say how
 20 do we resolve things? But if somebody at least is big enough to say I can see that here we made mistakes or I made mistakes and I take responsibility for my mistakes and for my decisions, at least that person could contribute to saying well, what should be done going forward to make sure that these things do not happen again, what type of

people should occupy certain positions and so on. But I interrupted while you were just saying – you had just said you accept that certain mistakes happened.

MR NTSHEPE: The perception might be wrong, okay, but the perception is that outside and maybe with the people I have engaged with is that – is that though mistakes were made, does it warrant a hearing such that an individual will – must face the whole of South Africa and express themselves and in a sense being exposed to how
10 competent or incompetent that individual is, one.

Or could it have been – could it have been another method adopted to come to the same conclusions? I think the State Capture Commission did a fantastic job by revealing these mistakes. I would also say that it is – sometimes the people who come here especially if you are being cross-examined, you feel like a decision has already been made, it is just you fitting – you will be asked the same question ten times until you come to a point where you are required to come to.

20 So that is my honest opinion about this matter but the issue of correcting the boards, yes, yes. And it is not only in South Africa that the state owned companies have problems with boards. Many countries, actually other countries have even got rid of state owned companies and privatised them. So, as a growing democracy, I think we

are learning, it is a learning curve where we are going and how we are going to get there.

So I am not saying that there should not have been an inquiry, the inquiry is fine. However ...[intervenes]

CHAIRPERSON: There is a perception that the Commission has long made its decisions.

MR NTSHEPE: I am being honest that [inaudible – speaking simultaneously]

CHAIRPERSON: Ja, no, no, it is...

10 **MR NTSHEPE:** Ja.

CHAIRPERSON: It is a perception that gets articulated by certain people from time to time.

MR NTSHEPE: Yes, I ...[intervenes]

CHAIRPERSON: You are not wrong to mention that you are aware of that perception.

MR NTSHEPE: Ja.

CHAIRPERSON: You are not wrong for mentioning that.

MR NTSHEPE: But I am a citizen of South Africa and I grew up in this country, I will abide by the laws of this
20 country.

CHAIRPERSON: Yes.

MR NTSHEPE: If I am needed here, that is why I am here, I ...[intervenes]

CHAIRPERSON: Well, thank you for your input, Mr Ntshepe. I mean, we will always try the best we can to

treat everyone fairly.

MR NTSHEPE: Correct.

CHAIRPERSON: We try.

MR NTSHEPE: Yes.

CHAIRPERSON: We are not saying that we are perfect, we are not perfect but we will keep on trying.

MR NTSHEPE: Correct.

CHAIRPERSON: But if may be that in the eyes of certain people out there when either the evidence leaders or
10 myself we ask questions, certain questions, people feel uncomfortable about those questions.

MR NTSHEPE: Yes.

CHAIRPERSON: And that is when they think we have made up our minds.

MR NTSHEPE: It is true that, you know, I mean...

CHAIRPERSON: You see, certainly as far as I am concerned, some of the questions I ask is to actually – actually, not some, all of them, is to either get clarification or to get an opportunity – to give you or a witness an
20 opportunity to give me their side of the story, their own perspective. I could sit here and listen to whatever you are saying and in my own mind and say you are talking nonsense.

MR NTSHEPE: Correct.

CHAIRPERSON: But say nothing, as you nothing.

MR NTSHEPE: Yes, correct, correct, Chair.

CHAIRPERSON: And then make findings in the report.

MR NTSHEPE: Yes, correct.

CHAIRPERSON: Which criticise you but you never got a chance to try and influence me.

MR NTSHEPE: Correct.

CHAIRPERSON: So when I put questions, even what you might as difficult questions, I am affording you an opportunity to say to me no, that is not the right way of
10 looking at it, here is the right way, at least according to me as a witness.

MR NTSHEPE: Correct.

CHAIRPERSON: You know, here is another way and therefore influencing my thinking but it seems that some would prefer that we just keep quiet and just write the report. So we will do everything we can to be fair to everybody but we will not allow that to detract from our function to try and establish the truth.

MR NTSHEPE: Correct.

20 **CHAIRPERSON:** And ask even uncomfortable questions just because people will say – will accuse us of having made up our minds. We will do our job and we will ask questions but throughout we will be doing our best to be fair and I can assure you that there is no decision that has been taken but if you are giving evidence and I am

concerned about certain things, I am going to ask you and you should see that as a benefit because I am raising with you something that might be troubling me about your evidence and I am giving you a chance to explain it to me and if you explain it to me, you are giving me the benefit of your side of the story.

MR NTSHEPE: Correct.

CHAIRPERSON: You understand?

MR NTSHEPE: I totally, totally agree with you, Chair.

10 **CHAIRPERSON:** Yes.

MR NTSHEPE: And I really appreciate for you giving me this opportunity to express myself.

CHAIRPERSON: Yes.

MR NTSHEPE: And it is a pleasure.

CHAIRPERSON: Yes, yes.

MR NTSHEPE: Thank you.

CHAIRPERSON: No, thank you very much, Mr Ntshepe, for coming to the Commission to assist the Commission, we appreciate it very much. If we should need to ask you
20 again to come back we will ask you but I see that your legal representative seems to want to say something. I do not know whether he wants to re-examine. Let me find out from him.

MR FENI: Chair, I thought I was going to address, Chair.

CHAIRPERSON: Yes.

MR FENI: I thought the Commission would allow some form of ...[intervenes]

CHAIRPERSON: Of re-examination.

MR FENI: Of re-examination.

CHAIRPERSON: No, we do allow it if you would like to re-examine, we might probably have to do it after lunch if you insist on it but I have seen that more and more practitioners tend to ask one or two question or say no, I am covered, but if you want we will give you because you
10 are given that right in terms of the regulations.

MR FENI: Yes, I think I have got three questions, Chair.

CHAIRPERSON: Oh. Well, if it is three I think we can take them now so that when we take the lunch break you and your client can be released.

MR FENI: Okay.

CHAIRPERSON: Okay, alright, you may re-examine. It might be convenient if you re-examine from where you are if that is convenient for you but if it is not convenient Mr Kennedy will allow you space to do so from where he is.
20 Just allow somebody to sanitise first?

MR FENI: Thank you, Chair.

CHAIRPERSON: Thank you.

MR FENI: Mr Ntshepe, it would appear from the last questions of my learned friend that a perception has been

created to some of the witnesses who came to testify that you were chosen to replace Mr Saloojee and to be a [indistinct] 17.39. Did you get that sense?

MR NTSHEPE: Yes, I hear you.

MR FENI: Were you chosen to act as a CEO and subsequently appointed a permanent CEO to favour a certain or a particular individual or an entity?

MR NTSHEPE: I was asked to act and I applied for the Group CEO position I believe in a fair manner whereby
10 there were other applicants for the job. So for me to say that I was chosen, I would only – it will only apply when I was asked not to leave until the meeting, that is when I found surprised that I have to act. But to be a permanent CEO, I was not chosen, I still believe I qualified. It also was taken to cabinet.

MR FENI: Subsequent to your appointment as an Acting GCEO is there anyone in the board who approached you and asked you to favour a certain individual or entity in your dealings at Denel?

20 **MR NTSHEPE:** As Acting GCEO, no.

CHAIRPERSON: As GCEO?

MR NTSHEPE: As GCEO it was not a long time, Chair, and – yes.

CHAIRPERSON: Oh. And but it did not happen either during the short time.

MR NTSHEPE: No, it did not happen.

CHAIRPERSON: Okay.

MR FENI: In your dealings at Denel did you endeavour to favour a particular individual or a particular entity?

MR NTSHEPE: Of Denel or outside Denel?

MR FENI: Outside Denel.

MR NTSHEPE: I did not favour any entity outside Denel. I, however, was instrumental in helping outside entities to have business with Denel or be partners with Denel but I
10 did not favour any. There were – as a business development and new business development my responsibility was to create or helped – I would not create but helped to create partnerships with companies, especially black owned companies to be involved in the defence industry.

MR FENI: You indicated in your evidence before the Chairperson that you – Denel had been involved business transactions with VR Laser for quite a while. Correct?

MR NTSHEPE: It is correct.

20 **MR FENI:** For how long?

MR NTSHEPE: As far as I remember, 2003. 2003, 2004.

MR FENI: And then there came Salim Essa?

MR NTSHEPE: Correct.

MR FENI: Now the question I want to ask you, is why did you support the joint venture between Denel and VR

Laser?

MR NTSHEPE: To me it made sense to get into the Indian market, back. Denel was bruised before. We had spent a lot of money – in fact I think my estimate last time was an underestimation, it could have been far more than that. And for us to be able to get into the Indian market it was difficult now because we had been out for more than 10 years in the Indian market and it made sense to me that we should have a partner who we will share the risk because
10 India is not an easy market. Many companies actually even folded because of the Indian market, it is not an easy market. And mitigate the risks to the holding company which is Denel Group and if there is any mishap in the future because in India mishaps happened very frequently if you have a contract, a huge contract. It only – and only be contained in that division and there was also the issue of, as I have indicated, the amount of investment that VR Laser Asia was prepared to put in fact.

MR FENI: You testified that you came to know that Salim
20 Essa is associated with the Guptas.

MR NTSHEPE: Yes.

MR FENI: Did that knowledge have any influence on you to support VR Laser in the joint venture with Denel?

MR NTSHEPE: I continued as I started when I was introduced to Salim Essa and who he associated with, I

separated that from the interaction which I was – as it was
Instructed to maintain the relationship but I cannot deny
that he was associated with the Guptas.

MR FENI: Was there any financial benefit that flowed
between Denel and VR Laser?

MR NTSHEPE: Funding benefit? There was delivery of
products, for instance the Casspirs, about 40, 45 Casspirs
to – Chair, if you allow me, I cannot mention other
countries because it is very difficult in this environment
10 because it can be - [indistinct] 25.03 a serious issue for
the country whereby all those Casspirs were manufactured
by – especially the hulls but the final assembly in terms of
the integration, you know, the radios and all that was done
by Denel or other suppliers. So there was benefit for
Denel that we were able to meet our contract, then there
was benefit for I think VR Laser in terms of – I am talking
VR Laser South Africa, not Asia. In Asia there was no
benefit at all but VR Laser South Africa, there was benefit
for them because it was revenue for them.

20 **MR FENI:** Are you ...[intervenes]

CHAIRPERSON: Okay. Well, if you are not done we will
have to adjourn. You said three questions, I think you are
approaching ten, if I am not mistaken.

MR FENI: I am almost there, Chair. I am almost there.

CHAIRPERSON: Well, you are going to tell me one and it

will end up being three. If you have one more then I will allow you to ask that one then we can adjourn but if you have got more I think we should adjourn and then your punishment will be to have to wait and come back after lunch.

MR FENI: Chair, let me – can I ask two, Chair?

CHAIRPERSON: Okay, alright.

MR FENI: Thank you, Chair.

CHAIRPERSON: Strictly two.

10 **MR FENI:** So you are referring to the time when – starting from 2003?

MR NTSHEPE: Yes.

MR FENI: Would you say you have during your tender as a GCEO and Acting GCEO you have acted in the best interests of the organisation?

MR NTSHEPE: Yes, I with all confidence I believe I have acted in the interest of the organisation.

MR FENI: My second last question. Chairperson put it succinctly that Mr Mlambo was still seized with a decision
20 whether or not to approve a request that was made to him. Now it appeared that later on, many years thereafter, when Mr Mlambo gave testimony in this Commission, that he declined to approve the request that was submitted by Ms Malahlela because it did not make business sense. Did Mr Mlambo ever mention to you of that [indistinct] 28.26

MR NTSHEPE: When I was doing my consultations with the SC I did mention that we never had a discussion with Mr Mlambo. He never mentioned it.

MR FENI: What do you make of the fact that Mr Mlambo came to this Commission and gave a reason he never gave before?

MR NTSHEPE: Mr Mlambo said a lot of things which I would take personally but as a matured individual, I should not. I think Mr Mlambo, to me, he – he is not grounded
10 especially though he has been – had some time in the SCM environment but in terms of posturing or presenting himself to the company because I do not think he has managed that skill to be able to posture himself because he has a lot of experience in that, I cannot deny that, but posturing himself into playing that role – I will give you, for instance, if you allow me, Chair, I – when ...[indistinct] with a certain personality you cannot have a personality which makes people want to see the ...[indistinct] you must be a person whereby from somebody who from the lower ends up to
20 very high places in government they will very much like to have a conversation with you, but I think Mr Mlambo has not managed that skill as yet. I might be wrong.

MR FENI: My last question.

CHAIRPERSON: Well you gave, you said two and you have – you did three now you want to do a fourth one.

MR FENI: That is the last one.

CHAIRPERSON: H'm.

MR FENI: Were you a Gupta accolade?

MR NTSHEPE: A Gupta what?

MR FENI: A Gupta associate?

MR NTSHEPE: No, no, no, but the company that I worked with the individual, Mr Essa, was very much associated with the Guptas.

CHAIRPERSON: Yes.

10 **MR FENI:** Thank you Chair.

CHAIRPERSON: Okay, thank you. We are going to then adjourn, thank you very much Mr Ntshepe, you are now released.

MR NTSHEPE: Thank you, thank you.

CHAIRPERSON: Thank you. It is nineteen minutes to two, we are going to resume at twenty to three. We adjourn.

ADV KENNEDY: As it pleases.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Are we ready?

ADV KENNEDY SC: Yes, thank you Chair. With your leave may we then call as our next witness Dr Stefan Nell.

CHAIRPERSON: Thank you, please administer the oath or

affirmation.

REGISTRAR: Please state your full names for the record?

DR NELL: Stefan Nell.

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

DR NELL: No, I don't.

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

DR NELL: Yes, I do.

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

DR NELL: [Duly sworn, states].

CHAIRPERSON: Thank you, you may be seated.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Mr Kennedy are we running considerably behind schedule?

ADV KENNEDY SC: I'm afraid we are, Chair.

20 **CHAIRPERSON:** Yes, okay, alright.

ADV KENNEDY SC: Chair, there are two Bundles that need to be referred to in these proceedings for this witness. The one is Denel Bundle 9 and the other is Denel Bundle 10.

CHAIRPERSON: Yes.

ADV KENNEDY SC: There is one affidavit in Bundle 9 and two affidavits in Bundle 10.

CHAIRPERSON: Okay.

ADV KENNEDY SC: May I take the witness through the introductory formalities to then seek your leave to admit them as...[intervenes].

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: As Exhibits. Dr Nell, thank you for cooperating with the Commission, may I confirm with you,
10 you have, in fact, provided three affidavits?

DR NELL: That's correct Chair.

ADV KENNEDY SC: Right, can I ask you please – you should have Bundles 9 and 10 there, do you?

DR NELL: That's correct, Chair.

ADV KENNEDY SC: Please open Bundle 9 and is it correct that there's a marker there, marked A?

DR NELL: That's correct Chair.

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

20 **DR NELL:** Correct, Chair.

ADV KENNEDY SC: Now, you have raised, by way of an email, a concern that you have in respect of one of your affidavits where you made, what you referred to in your email, as a *bone fide* mistake. You will want to correct that in a moment, not so?

DR NELL: Correct, Chair.

ADV KENNEDY SC: As I understand it, that mistake arose in the second affidavit, not the first?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right, so – is there anything you want to raise in respect of the first affidavit which requires correction?

DR NELL: No, nothing Chair.

ADV KENNEDY SC: Right, thank you. May I take you
10 please to page 33, and if you can look at the black
lettering not the red but the black lettering on the top left-
hand side of each page, is that your signature?

DR NELL: That is correct Chair.

ADV KENNEDY SC: And we see on the foot of the page it bears the date 31st of January 2020. Do you confirm – sorry have you been through the contents of this affidavit?

DR NELL: I have, Chair.

ADV KENNEDY SC: And can – do you confirm under oath
now that the contents are true and correct as far as your
20 knowledge goes?

DR NELL: I do, Chair.

ADV KENNEDY SC: Right, thank you. The next affidavit is the one in the other Bundle, Bundle 10 and that should appear as – at flag B, is that correct?

DR NELL: Correct, Chair.

ADV KENNEDY SC: And you will see the first page of that is at page seven and it runs to page 30 and 31, the foot of page 30, is that your signature?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: And you signed that in front of a Commissioner of Oaths.

DR NELL: I did.

ADV KENNEDY SC: And the date of that is the 4th of February 2020.

10 **DR NELL:** Correct, Chair.

ADV KENNEDY SC: Alright if I can just have a moment Chair. Now, if I can take you please to page 14 of this Bundle, paragraph 6621. 6621, I understand, is the passage, according to your email that you want to make clear to the Chair has to be corrected.

DR NELL: That is correct.

ADV KENNEDY SC: And what is the point of correction there?

20 **DR NELL:** Those specific tests were under contract from Armscor not from LMT.

ADV KENNEDY SC: So, LMT, on the second line where it says,

“These tests were conducted by CSIR under contract from LMT”

LMT, should read Armscor?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Now, have you in fact, corrected that in your later affidavit?

DR NELL: Yes, I did Chair.

ADV KENNEDY SC: Okay, we'll come to that in a moment. Subject to that correction, do you confirm that you've been through this affidavit?

DR NELL: I do Chair.

ADV KENNEDY SC: And do you confirm that the contents
10 are true and correct as far as your knowledge goes?

DR NELL: I do Chair.

ADV KENNEDY SC: Alright, now the correction that you have referred to, is that made in the final affidavit that is marked C?

DR NELL: That is correct.

ADV KENNEDY SC: And that appears at page 470.

DR NELL: 470?

ADV KENNEDY SC: 470, Bundle 10 yes, do you have that?

20 **DR NELL:** I have 427 and 479, I think.

ADV KENNEDY SC: Sorry just give me the page number that you're referring to?

DR NELL: It's page 477 and 478.

ADV KENNEDY SC: May we just have a moment. What appears on 477?

DR NELL: It's a paragraph 73.

ADV KENNEDY SC: I see, no I want to refer you first to the first page of the affidavit so that we can identify it, please look at page 470.

DR NELL: Yes, I am there.

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

DR NELL: That is correct Chair.

ADV KENNEDY SC: And if I can refer you to the last page
10 at 482.

DR NELL: Yes.

ADV KENNEDY SC: It appears that the affidavit was signed on the 19th of October 2020, is that your signature at the top?

DR NELL: That's correct, Chair.

ADV KENNEDY SC: Again, you signed it in front of a Commissioner of Oaths.

DR NELL: Correct.

ADV KENNEDY SC: And you drew our attention, a
20 moment ago, to page 477, is it not 475. Your email referred us – and you indicated a request you wanted to deal with upfront with the Chair, you referred us in an email to paragraph 5723 at page 475.

DR NELL: That is correct Chair.

ADV KENNEDY SC: So, does this contain the correction

that you have referred to earlier it wasn't – it was Armscor that placed the order?

DR NELL: Yes.

ADV KENNEDY SC: Apart from this – from this aspect – sorry does 5723 contain the correct facts?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right, now have you been through this affidavit, and I think you've confirmed that, you've been through the contents of this affidavit and you confirm
10 the correctness?

DR NELL: I do, Chair.

ADV KENNEDY SC: Chair, may we then ask formally for leave to introduce these three affidavits into evidence?

CHAIRPERSON: That's fine I see that on this last one it is not material but it's page 482.

ADV KENNEDY SC: 482, yes.

CHAIRPERSON: No, it's something not material but it says, "deponent of signature" instead of "signature of deponent".

20 **ADV KENNEDY SC:** Yes, indeed.

CHAIRPERSON: Okay, alright we go back to number 9?

ADV KENNEDY SC: Yes, if we can deal with Bundle 9, the affidavit from page eight, if that could be admitted, Chair as Exhibit – either W24 or W24.1, whichever you prefer.

CHAIRPERSON: Okay, well Dr Nell, you said you went through this one, you believe that what you say here is true and correct, is that right?

DR NELL: That is correct, Chair.

CHAIRPERSON: But you have decided to give me a name that is not mine here in this affidavit. Look at paragraph 1.4 in the affidavit.

DR NELL: Affidavit number A?

CHAIRPERSON: Just affidavit in Bundle 9.

10 **DR NELL:** Paragraph 1.4?

CHAIRPERSON: Ja, can you see the name you decided to give me, that is not mine?

DR NELL: I received this from the Commission Chair, so I apologise if there's a mistake.

CHAIRPERSON: Ja, I am certainly not Jacob. So, I think, Mr Kennedy, that page will need to be replaced with a corrected...[intervenes].

DR NELL: Thank you we will do so, thank you.

CHAIRPERSON: Okay, alright.

20 **ADV KENNEDY SC:** Dr Nell will you be willing to sign an amending affidavit, just to correct this?

DR NELL: I will, Chair.

ADV KENNEDY SC: Yes, initial the page please, thank you.

CHAIRPERSON: Okay the statement/affidavit of Dr Stefan

Nell starting at page eight of Denel Bundle 9 is admitted as Exhibit W24.1, let's put it that way.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: And then we would ask you to admit the second affidavit, you'll find that in Bundle 10 from page seven, if that may be admitted as Exhibit W24.2?

CHAIRPERSON: The affidavit/statement of Dr Stefan Nell starting at page seven of Denel Bundle 10 is admitted as
10 Exhibit W24.2.

ADV KENNEDY SC: Thank you Chair, and the final affidavit we would ask to have admitted is in the same Bundle 10, page 470. We ask that, that be admitted as Exhibit W24.3.

CHAIRPERSON: The affidavit of Dr Stefan Nell starting at page 470 is admitted as Exhibit W24.3, okay.

ADV KENNEDY SC: Thank you Chair, may we proceed to put questions to the witness?

CHAIRPERSON: Ja.

20 **ADV KENNEDY SC:** Thank you. Dr Nell can we start with your first affidavit in Bundle 9. It's Exhibit 24.1 and you'll find that from page eight, Chair with your leave, may I lead the witness on what appears to be uncontroversial issues?

CHAIRPERSON: Yes, ja.

ADV KENNEDY SC: Are you there Dr Nell?

DR NELL: I am.

ADV KENNEDY SC: Right, thank you. You have a doctorate in what, Dr Nell?

DR NELL: In the Mechanical Engineering Chair.

ADV KENNEDY SC: Right, and your professional background is set out at pages 9 and following, is that correct?

DR NELL: Correct, Chair.

ADV KENNEDY SC: Now, you had, at one stage, were
10 involved with LMT, is that correct?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: What was your role there?

DR NELL: I was the founder and the Chief Executive Officer, Chair.

ADV KENNEDY SC: And when was it founded?

DR NELL: In March 1999, Chair.

ADV KENNEDY SC: And were you a shareholder in LMT?

DR NELL: Yes, I was Chair.

ADV KENNEDY SC: What was your original shareholding
20 before Denel purchased a portion of the shares?

DR NELL: It was 40%.

ADV KENNEDY SC: Now, were you – you've since left LMT, is that correct?

DR NELL: That is correct Chair.

ADV KENNEDY SC: When did you leave?

DR NELL: In September 2016.

ADV KENNEDY SC: Right, and your affidavit indicates that Denel purchased a majority shareholding, 51% in LMT as a certain stage, is that right?

DR NELL: That is correct Chair.

ADV KENNEDY SC: When was that?

DR NELL: That was – the process started round about May 2011 that time period.

ADV KENNEDY SC: And did you then sell any of your own
10 shares to Denel?

DR NELL: Yes, our shareholding was reduced.

ADV KENNEDY SC: What was your own shareholding reduced to?

DR NELL: 8%, then.

ADV KENNEDY SC: Right, and did you retain the position of CEO of LMT when Denel took over the majority shares?

DR NELL: Yes, I did Chair.

ADV KENNEDY SC: Until when?

DR NELL: Until March 2016, then.

20 **ADV KENNEDY SC:** You resigned in when, September 2016?

DR NELL: September 2016.

ADV KENNEDY SC: Yes, your affidavit refers at page 11, to that resignation on the 19th of September 2016. Now, you have referred to charges that were initially brought and

then later dropped, is that right?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Disciplinary charges?

DR NELL: Yes, Chair.

ADV KENNEDY SC: And who brought those charges?

DR NELL: It was brought against me by Mr Jan Wessels who was then appointed as CEO in my stead, but I state in my statement that it was on behalf of Denel that he did that.

10 **ADV KENNEDY SC:** Now you say, at the foot of page 10, paragraph 3.6,

“I continued as CEO but was suspended, again, due to the insistence of Denel Board Members on the LMT Board who forced the, then CEO, Mr Jan Wessels and the then LMT HR Manager, Mrs Melanie van Aarde to bring charges against me”,

Mr Wessels has told the commission’s legal team that he – when he was provided with a 33 Notice as is called here, to comment on your allegations he says, he
20 disputes that he was forced. Do you maintain that he was, in fact, forced?

DR NELL: I maintain that Chair.

ADV KENNEDY SC: On what basis?

DR NELL: We had a cordial relationship, Chair, and I could not understand why he would do such a thing, we

were working well together and then one day he walked in with these charges and presented it to me. Also, I heard from the HR Manager that these things were done in a way, from Denel, on Denel's side and not from LMT's side.

ADV KENNEDY SC: Now, you've referred to the broad nature of the charges on the top of page 11, that it was for, "bringing the company in disrepute after I and my fellow founding shareholders applied to the North Gauteng High Court to put LMT Holdings into business rescue".

10

Is that correct?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right, but then they were later dropped, those charges?

DR NELL: Correct, Chair.

ADV KENNEDY SC: And you were then, again, demoted. So, was this a second demotion by Mr Johan Steyn?

DR NELL: That is correct.

ADV KENNEDY SC: And – so who demoted you the first time?

20

DR NELL: I was requested or informed by Mr Odwa Mhlwana who was a Board member at that stage that they will – they need a person with a lot of experience, more experience than I had to take over the business as the business was on upward trajectory and they had to put in

Mr Jan Wessels as the CEO, in my place and I had to go to – reduced to the position of COO.

ADV KENNEDY SC: And that was the first demotion?

DR NELL: That was the first one.

ADV KENNEDY SC: And the second demotion, after the charges were dropped?

DR NELL: Mr Jan Wessels then resigned, Chair, and in his place was appointed Mr Johan Steyn, he was also the current CEO of Denel Legal Systems and when I returned
10 after my suspension, they again demoted me to Marketing Manager.

ADV KENNEDY SC: How did you feel about that?

DR NELL: I felt very bad about that and decided to resign.

ADV KENNEDY SC: Do you still hold shares in LMT?

DR NELL: That is correct, Chair, in the Holdings company.

ADV KENNEDY SC: And you mentioned in your consultation with us, as the legal team, something about a
20 liquidation application, what is the current status in that regard?

DR NELL: Chair, the shareholder, and the Board of LMT Holdings, they decided to put the company in voluntary liquidation, this was done in June 2020. We haven't had any further feedback on that and requested a shareholders'

meeting which will be arranged in the next few weeks to get an update on it.

ADV KENNEDY SC: What happened to the earlier application that you and your fellow founding shareholders brought in the North Gauteng High Court for business rescue?

DR NELL: Chair, it was the minority shareholders that brought the application, it was thrown out, as it was not urgent, it was opposed by Denel as not being urgent.

10 **ADV KENNEDY SC:** And subsequently there's been an application for the actual liquidation of LMT Holdings?

DR NELL: That is correct, that was in June this year whilst that court application was in 2016, July.

ADV KENNEDY SC: Right, now Dr Nell I'd like to go through the rest of this affidavit fairly quickly because your affidavit has been very clear and in the course of all the evidence that we've been leading in this current session, two weeks ago and earlier this week, we've been placing particular focus on particular transactions and not all of
20 those transactions are necessarily the focus of your affidavit here, you deal with other things as well. So, if I might ask you, very briefly to turn to page 12 and just in very brief terms, just summarise, for the benefit of the Chair, what the point – the crucial point is that you want to emphasise in relation to LMT's relationship to Patria

Vehicles. Patria Vehicles is a company based in Finland, is that right?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: And they were the originators of particular type of armoured vehicle, is that correct?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Now, what was the nature of LMT's relationship with Patria?

DR NELL: Chair, we designed a vehicle which was the
10 best design for Armscor in a competition that was part of a tender process and when the results of the competition came about we were contacted by Patria from Finland requesting if we would like to be their representative in South Africa for this upcoming project Hoefyster and that was our role, we represented Patria and we did some work for them under contract from Patria.

ADV KENNEDY SC: When was that contract concluded?

DR NELL: The first agreement, Chair, was in 2004 and the second one was signed in 2006.

20 **ADV KENNEDY SC:** Okay, so was that when your history, your relationship with Patria began as far back as 2004?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right, now you refer, at the foot of page 13, paragraph 5.11 to the contract that was awarded to DLS in May 2007 amounting to R8.8billion, was the cost

estimated at May 2007 when the project was awarded?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right, and you refer to two phases, phase one value of R1.2billion that was signed in May 2007 – signed between, is that between Armscor and DLS?

DR NELL: Correct, Chair.

ADV KENNEDY SC: Right and then phase two, a further R7.6billion for production was signed in September 2013 and you say at the top of the next page, according to your
10 knowledge phase one is still, not yet, fully completed. Now, the Chair's already heard evidence in that regard which bears out what you have said, and the project is many years behind schedule, how many years, to your knowledge?

DR NELL: Approximately – the first phase is approximately 12 years behind schedule.

ADV KENNEDY SC: Now, that phase two, am I right in understanding cannot start until phase one is completed?

DR NELL: In the normal way of things, that is correct,
20 Chair.

ADV KENNEDY SC: Right, now are you able, in a sentence or two, to summarise any views you may have as to why you believe this phase one of the project has been delayed for so many years?

DR NELL: Chair, it's my personal opinion that the vehicle

platform is fairly simple and fairly advanced as it came directly from Patria and it only had to – it only had to undergo a few changes. The challenge came onto the turret and the gun and the missiles and everything that goes on top, I think that was a bit more complicated than what was anticipated by Denel.

ADV KENNEDY SC: Now you then proceed, on page 14, paragraph 6, to deal with some financial challenges that LMT was facing and your background sketches that, as far
 10 back as 2006 to 2008 you were awarded several contracts by Mercedes Benz and then you refer to the recession in 2009. Just summarise, for the Chair please, why there were financial difficulties in those years, that's before the majority shareholding was acquired by Denel?

DR NELL: .Chair, we are a company that used to grow organically, so we didn't have a big shareholder behind us that could fund us in difficult times. So we basically grew too quickly and we grew out of our cash but in the award of the contract from Mercedes Benz they promised us quite a
 20 number of projects in the future to manufacture projects for them ...[break in audio] for them but then in the economic recession that hit Europe in 2008/2009 resulted in them cancelling these contracts and we lost a big part of our potential revenue at that stage.

ADV KENNEDY SC: Now, at the top of page 15 you refer

to a call from Mr Reenen Teubes who has of course given evidence in this Commission about two weeks ago and he called you in March 2010.

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Just explain to the Chair, why he called you, what was the purpose of the discussion?

DR NELL: He called us – he called me to arrange a meeting between myself and him and Mr Burger as he has heard that we are experiencing some difficulties and he
10 just wanted to find out what was going on.

ADV KENNEDY SC: Had you interacted with Mr Teubes prior to this call?

DR NELL: Not on this specific subject, Chair, we worked together on Hoefyster project us being from Patria and him from Armscor, but not on this specific subject.

ADV KENNEDY SC: Right, and so he said that there was an interest, because LMT was facing some financial issues, Denel was interested in what?

DR NELL: Mr Burger requested from us if we are
20 interested in selling our shares to Denel.

ADV KENNEDY SC: So, was that Mr Burger after the initial discussion with Mr Teubes on the phone?

DR NELL: Yes, Mr Teubes gave me a call and then requested a meeting. We then had a meeting, and, in that meeting, which was attended by Mr Teubes and Mr Burger,

Mr Burger requested or tried to find out if we are willing to sell our shares.

ADV KENNEDY SC: Did you get, from either of them, any indication as to the reason why Denel was interested in buying shares in LMT, presumably they weren't just interested in helping you out of financial difficulties as an act of generosity?

DR NELL: It is my understanding, Mr Chair, that Mr Burger wanted to consolidate the industry as he had a
10 mandate from the Department of Trade and Industry, and he wanted to consolidate the military vehicle industry.

ADV KENNEDY SC: Now some of the evidence already led has suggested that Denel was interested, not only in consolidating the industry at least between its divisions and in relation to its ability to meet its client's requirements but also that there was a concern to have LMT's capacity to strengthen Denel's in-house capacity for purposes of the Hoefyster contract.

DR NELL: That is correct, Chair.

20 **ADV KENNEDY SC:** Did you confirm the evidence of other witnesses, in that regard?

DR NELL: Yes, I do.

ADV KENNEDY SC: Thank you. Now, what came of these discussions, your affidavit then goes on for a few pages to deal with various events, I'm not going to take you through

all of that. What was the upshot of all these interactions, was a deal done in terms of which Denel purchased the shares in LMT?

DR NELL: Yes, Chair the deal was eventually done after an offer of purchase agreement was changed into a full share purchase.

ADV KENNEDY SC: Right and the - which Denel purchased a 51% shareholding in LMT.

DR NELL: That is correct Chair.

10 **ADV KENNEDY SC:** Did it provide any financial assistance to Denel at that stage either before or after the purchase of its shares to address financial issues that Mr Teubes had started off the conversation referring to?

DR NELL: Chair that is correct. They placed a contract on risk on us to manufacture turrets for them and part of that agreement was a pre-payment which they provided to us against security which we had to offer.

ADV KENNEDY SC: Now you refer on page 17 in paragraph 6.17 and paragraph 7 to a trunnion machining contract. Is
20 that the turret contract that you referring to or is it something different?

DR NELL: It is the same thing.

ADV KENNEDY SC: The same. Now tell the Chair please about this contract?

DR NELL: Chair this contract was negotiated with Denel

already or Denel Land Systems already in 2009. One of the Denel Land Systems employees said that they could go with LMT if our price was right and the price was agreed upon already in 2009.

Then in 2010 based on the fact that we were the front runner on this contract DLS awarded the contract on risk to us and provided the pre-payment to us.

ADV KENNEDY SC: Was that the R12.7 million approximately?

10 **DR NELL:** That is correct Chair.

ADV KENNEDY SC: If we look at page 20 you refer to that in bold in paragraph 7.10 and in the table at the foot of the page which sets out how it is made up. Is that correct

DR NELL: That is correct.

ADV KENNEDY SC: Okay. Now there is a reference to IP intellectual property of LMT. How did that arise and what was its relevance in relation to these dealings?

DR NELL: Chair we had to provide a vast amount of security to DLS in order to – to obtain this pre-payment and one of
20 the stuffs – things that we could offer as security was our intellectual property. And we had Spoor and Fisher to evaluate our property – our intellectual property and this was ceded to Denel as well as shares as security.

ADV KENNEDY SC: As security for the upfront payment of R12.7 million?

DR NELL: That is correct Chair.

ADV KENNEDY SC: Right. Now if I can ask you to turn please to page 21. This refers to the option of purchase agreement. Is that the option to purchase shares that you mentioned earlier in your evidence?

DR NELL: That is correct Chair.

ADV KENNEDY SC: And that was then changed into another agreement. What was that agreement?

DR NELL: That was an agreement where the pre-payment
10 was changed into equity and they purchased 51% of the business approximately a year after this agreement was signed.

ADV KENNEDY SC: Right. And then you refer on page 23 to the result of the agreements that have just been outlined in your affidavit 8.6 would be that LMT would become part of the Denel group and in-house supplier resulting in LMT becoming a preferred in-house supplier to Denel fulfilling the shareholders vision for LMT that you refer to above. Just explain to the Chairperson please the shareholder
20 presumably are the – are the shareholders which included yourself who founded LMT many years before, is that right?

DR NELL: Correct.

ADV KENNEDY SC: Right. Now what was your vision for LMT?

DR NELL: Chair we were quite – quite proud to be chosen

by Denel to be their partner and it was our vision that we would provide them with capabilities and capacity that they did not have at that stage. That was our vision.

ADV KENNEDY SC: Now we have seen reference to the advantage in paragraph 8.6 of your becoming a preferred in-house supplier to Denel. Now how did you understand that becoming an in-house entity within the Denel group would give you preferred in-house supply? Was that in terms of the agreements or in terms of what you had been told or what?

10 **DR NELL:** Chair already in the original agreement – option to purchase agreement there was a memorandum of understanding and in that memorandum of understanding it is mentioned that DLS would speak to Patria so that we as LMT could manufacture the hulls for them at that stage. So the – it is common cause that we were – we are going to manufacture these hulls for them.

ADV KENNEDY SC: Would that mean that it was not necessary for Denel to go out on tender as you understood it or do you not know?

20 **DR NELL:** Chair in a later document in the framework agreement they said they will use their best commercial efforts to ensure that the work will come to us. And it was my understanding that the whole reason why they purchased us was to manufacture these hulls for them and there are numerous evidence attached in my affidavit where they

explained this to the Denel board and the reason why they purchased.

ADV KENNEDY SC: Right. Now...

CHAIRPERSON: Wait – just – I am sorry will you just pull the microphone a little closer to you Dr Nell. The microphone can you pull it a little closer to you? I do not know whether the base moves or not. Or you might come a little closer. Ja.

ADV KENNEDY SC: Yes I think he has to sit forward I am
10 afraid.

CHAIRPERSON: Yes okay no that is fine.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Now when you are too far – speaking too far from it.

DR NELL: Oh sorry.

DR NELL: I do not hear you as clearly as I would like to.

ADV KENNEDY SC: Thank you. Now there is a reference in your affidavit to Pamodzi becoming involved, who were they?

DR NELL: Pamodzi was the 29% shareholder in LMT
20 Holdings.

ADV KENNEDY SC: And was there a reason why they were introduced into the shareholding under the new deal?

DR NELL: Chair yes at that stage we required a BEE partner and we were quite far advanced in negotiations with a partner. But we were requested by Denel Land Systems to

evaluate Pamodzi Investment Holdings as our BE partner which eventually they became.

ADV KENNEDY SC: So you had been looking to bring in a different entity as your BBBEE partner who was that?

DR NELL: That was correct Chair they were called Beryl Capital.

ADV KENNEDY SC: And DLS then asked that you look at Pamodzi instead?

DR NELL: That is correct Chair.

10 **ADV KENNEDY SC:** Who at Denel asked you that?

DR NELL: Mr Stephan Burger requested us to meet with Pamodzi.

ADV KENNEDY SC: Right and was the deal ultimately done with Pamodzi?

DR NELL: Ultimately yes Chair.

ADV KENNEDY SC: Yes. Now there is reference in your paragraph 8.7 to Denel DLS rather from the 28th June becoming involved in day to day management at LMT through the Joint Management agreement and – but you
20 remained on as CEO of LMT at that stage?

DR NELL: That is correct Chair.

ADV KENNEDY SC: Before your later demotion?

DR NELL: Yes correct.

ADV KENNEDY SC: Right. And you refer to DLS limiting the decision making powers in what sense?

DR NELL: DLS supported us on our board and we could not really make decisions like we used to make in the past. We had to run everything past them which was part of the Joint Management provisions.

ADV KENNEDY SC: That was what was agreed to between the parties, is that right?

DR NELL: Yes that is correct.

ADV KENNEDY SC: So you not criticising this as being an improper interference or are you?

10 **DR NELL:** No I do not.

ADV KENNEDY SC: Right. And it seems to me that it would make sense that now that Denel or DLS now has a majority shareholding they would take an active part in the management and that you the founding shareholders would no longer be able to operate completely freely and on your devices, is that right?

DR NELL: But Chair at this stage it was not yet a 51% shareholding it was still the option to purchase shareholding or contracts. But as part of the agreement they used to –
20 they participated in our decisions which we accepted.

ADV KENNEDY SC: Right. And then you set out from page 23 at the foot to the top of page 25 paragraph 9 how the advanced payment was used. Was this the R12.7 million advanced payment?

DR NELL: That is correct Chair.

ADV KENNEDY SC: And just without going into the detail that your affidavit sets out just in a sentence or two just summarise for the benefit of the Chair what was it in fact used for?

DR NELL: Chair we had a – about R190 million worth of contracts but unfortunately not sufficient working capital and we had some creditors that had to be paid. So we used the advanced payment to settle the creditors and to unlock the value of the contracts that we had in hand knowing very well
10 that we still need to complete the turrets and there is a presentation in my affidavit where we state to Denel in November 2010 that we still need to finish the turrets or start with the turret project that was scheduled to start in May – in March 2011.

ADV KENNEDY SC: Right thank you. Then if you would turn to page 25 you refer to the agreement with Pamodzi Investment Holdings and your affidavit deals with Mr Burger's statement to you paragraph 10.5 about him wanting or Denel wanting a different BBBEE partner you were going
20 for Beryl Capital that is referred to in 10.4 and then he then preferred Pamodzi. What did you feel about this – this preference or requirement that you should change your favoured BBBEE partner?

DR NELL: Chair it was strange at that stage but we wanted the deal to succeed and when we met with Pamodzi the first

time they seemed to be very competent and knowledgeable partners into our business.

ADV KENNEDY SC: Now you then deal on page 26 at the foot with a Malaysia turrets advanced payment – Malaysia LCT30 turrets. LCT30 is what the technical name for the type of turret is that right?

DR NELL: That is correct Chair.

ADV KENNEDY SC: Okay. I am just simply going to refer to it as the Malaysia turrets. And you got an advanced payment
10 for this as well, is that right?

DR NELL: Correct Chair.

ADV KENNEDY SC: In the sum that you indicate there of about R5.7 million. What was the Malaysia business – what did that involve? Was that – was that a business deal that you did with DLS or with – sorry that LMT did with DLS or who?

DR NELL: Yes correct Chair.

ADV KENNEDY SC: And so was DLS you say in 11.12 received an order from Malaysia for turrets similar to the
20 Hoefyster turrets to the value of R3 billion, is that right?

DR NELL: Correct Chair.

ADV KENNEDY SC: And then were you then sub-contracted as it were at LMT to supply these turrets for purposes of the Malaysia deal?

DR NELL: Correct Chair.

ADV KENNEDY SC: Right. And so presumably that would have had the price determined in terms of a contract as to how much it was per turret or whatever and when it would be paid, is that right?

DR NELL: Correct Chair.

ADV KENNEDY SC: And – so what was this advanced payment for?

DR NELL: The advanced payment was to start production of these turrets but they were delayed quite significantly and
10 they only started in around about 2013 if I remember correctly with that specific turret project.

ADV KENNEDY SC: Right thank you. So were you – sorry you then say – you refer to email correspondence in paragraphs 11.2 and 11.3 and then you refer in 11.4 to a disagreement between Pamodzi and DLS that – that had to do with the fact that Pamodzi only received 29 % of LMT for the – for its investment of R15 million is that how much Pamodzi put into the acquisition of their shares?

DR NELL: That is correct Chair.

20 **ADV KENNEDY SC:** And they had only received 29% of LMT that was the shareholding correct?

DR NELL: Correct.

ADV KENNEDY SC: Whereas Denel obtained 51% for only 12.7 % - 12.7 million and that was then resolved. Is that – was there in fact a disagreement that was ultimately

resolved?

DR NELL: Correct Chair.

ADV KENNEDY SC: Now you then refer to a letter from DLS stated – from DLS to Pamodzi stating future business operation – opportunities with LMT and you refer to the annexure. If I can take you please to that annexure it is page 593 I believe. In fact I am sorry Chair I think I have got the wrong reference. May I just correct that? It is in fact SN38 which we find at page 600. Is that the letter that is
10 referred to in your affidavit?

DR NELL: In my bundle it is on page 593.

ADV KENNEDY SC: It is in 593.

DR NELL: The letter.

ADV KENNEDY SC: So in fact the original reference I had was correct. Is that the letter that you referring to where Denel wrote to Pamodzi to resolve the issue and refer to future business opportunities?

DR NELL: Correct Chair.

ADV KENNEDY SC: Is that the...

20 **CHAIRPERSON:** Is that the one from Koenie Vos – that is not the one?

ADV KENNEDY SC: Is that at...

CHAIRPERSON: I am at page 593 on Bundle 9 – Denel Bundle 9.

ADV KENNEDY SC: Yes that is correct Chair.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So these are emails dated the 27th May 2011.

CHAIRPERSON: Yes.

ADV KENNEDY SC: 2011.

CHAIRPERSON: Yes that is how it starts. Am I on the right page?

ADV KENNEDY SC: I am sorry Chair.

CHAIRPERSON: That is how this page starts. I am
10 checking whether I am on the right page as the two of you.

ADV KENNEDY SC: Yes. Yes I understand that that is what the witness is directing me to.

CHAIRPERSON: Okay no that is alright then.

ADV KENNEDY SC: So it is the email of 27th May 2011 addressed from Koenie Vos is that right?

CHAIRPERSON: To Stephan Nel.

ADV KENNEDY SC: Chair I – the letter that was written to Pamodzi is on – in my bundle on page 593.

ADV KENNEDY SC: Yes. And is that the email of the 27th
20 May 2011?

DR NELL: No it is this letter.

ADV KENNEDY SC: I cannot see from that distance I am afraid. Oh I think I know what is happening. I think it is that you may be referring to – are you looking at the page numbers on the right hand side there?

DR NELL: Yes.

ADV KENNEDY SC: Yes you looking at the page number in red on the right hand side you see that?

DR NELL: Okay I am sorry then it is page 600 I apologise.

ADV KENNEDY SC: So it is 600 yes.

DR NELL: I apologise for that.

ADV KENNEDY SC: Thank you. So it is the letter from Denel Land Systems – DLS from its CEO Mr Burger and it is dated the 13th is it of June 2011?

10 **CHAIRPERSON:** I think you have lost me. At some stage I thought you and I were on the same page. I think...

ADV KENNEDY SC: We were but we have been directed to the...

CHAIRPERSON: I think that Denel – Denel has confused one of us.

DR NELL: No I apologise I ...

CHAIRPERSON: Okay let us start – let us start – at some stage we were on the same page you and I Mr Kennedy.

ADV KENNEDY SC: We were but we were both...

20 **CHAIRPERSON:** At page 593.

ADV KENNEDY SC: We were on the wrong page there.

CHAIRPERSON: Okay that is what I have not been told. What is the right page?

ADV KENNEDY SC: Yes the right page is 600.

CHAIRPERSON: Okay. In the same bundle?

ADV KENNEDY SC: Yes Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Just so you understand how the problem arose and I am not criticising Dr Nell for this it is confusing.

CHAIRPERSON: Ja.

ADV KENNEDY SC: He was referring to the page number in red on the top right instead of...

CHAIRPERSON: Oh okay.

10 **ADV KENNEDY SC:** Which is why we went to a different – to 593.

CHAIRPERSON: Yes okay alright.

ADV KENNEDY SC: Because we used the one on the left.

CHAIRPERSON: Okay we must just use the black numbers Dr Nell.

ADV KENNEDY SC: Yes thank you.

CHAIRPERSON: Ja for all pages – page numbers we just use the black ones. Yes okay I am there now.

ADV KENNEDY SC: Thank you Chair. So this is a letter
20 from Mr Burger as CEO of DLS 13th June 2011. Is that right?

DR NELL: Correct Chair.

ADV KENNEDY SC: And it is addressed to Mr Ndaba Ntsele I am afraid my copy is a bit difficult to - is it Ntsele?

DR NELL: Ntsele.

ADV KENNEDY SC: Ntsele CEO of Pamodzi. And it says:

“Future LMT business and order cover. We as DLS would once again like to express our appreciation for your positive intent during the transaction process and the last discussion held on the 9th June. Following your request on the potential business opportunities from DLS to LMT we anticipate that on Hoefyster and on other related business opportunities the value of this to be in excess of R1 billion over the next ten years. We are also of the opinion that DLS will change the face of LMT to be a renowned international business. Hope
10 this will endeavour to further strengthen our current business relationship.”

Now as I understand your evidence Dr Nell this was sent to Pamodzi in order to give some reassurance to Pamodzi who were uncomfortable about why they only got 29% of LMLT compared with Denel which got far more 51% where it had put in the R12.7 million whereas Pamodzi had put R15 million but got less of a shareholding.

DR NELL: Correct Chair.

ADV KENNEDY SC: So this was an assurance given to
20 Pamodzi.

DR NELL: Correct Chair.

ADV KENNEDY SC: Did you regard this as having any relevance to yourselves as LMT shareholders and directors?

DR NELL: Yes Chair it looked extremely promising for us in the business with Denel Land Systems.

ADV KENNEDY SC: And you – sorry Mr Burger refers here to this being so promising that it would mean that LMT would become a renowned international supplier. Had you been supplying at all in international market prior to DLS and Pamodzi taking shares in LMT?

DR NELL: Yes Chair we have.

ADV KENNEDY SC: At that stage were you big or small in the international market?

DR NELL: We were quite big. We were not compared – not
10 the same size as Denel but we – we had clients all over the world.

ADV KENNEDY SC: Did you understand this letter from Mr Burger effectively to be saying whatever your current – what your being LMT whatever the current involvement of LMT in the international market might be it would grow substantially?

DR NELL: I did Chair.

ADV KENNEDY SC: Yes. Now the – the ten – sorry I beg your pardon yes the ten years would – the next ten years
20 there would be business more than R1 billion to LMT is that what you understood him to be saying?

DR NELL: Correct Chair.

ADV KENNEDY SC: Yes. And right. Then on page 28 of your affidavit – just go back to 28 please. Then you refer to a purchase order July 2011 that followed just a few weeks

after the letter we have just looked at from Mr Burger to Mr Pamodzi, is that right?

DR NELL: Correct Chair.

ADV KENNEDY SC: So a purchase order was then sent by DLS and that we see in paragraph 11.8 was for 8 AV8 turrets similar to the Hoefyster turrets related services such as transfer of technology to Malaysia for the total price of R10 million and some rands with an advanced payment provision of 5000 – sorry R5.7 million approximately. Was that the
10 Malaysia turrets transaction that we have looked at already?

DR NELL: Yes Chair.

ADV KENNEDY SC: And did you understand this to be as it were the first of a line of orders that you would have expected if Mr Burger's promise of a lot more business coming your way. Is that how you saw this?

DR NELL: It could be Chair yes.

ADV KENNEDY SC: Right. Now in paragraph 11.12 you refer to 2014 where you commissioned a report from an independent project management expert to investigate
20 projects LMT executed for DLS. Why did you commission that report?

DR NELL: Chair at that stage there was a number of allegations going around about the quality of our products and the work that we do. And it concerned me a lot because at that stage we were delivering parts and components and

vehicles to clients like Mercedes Benz whose quality policy is extremely high. And we commenced this contracted this company to evaluate all contracts between LMT and DLS to determine what is the reason for the unhappiness and the constant blaming of – on us about poor quality and late delivery etcetera.

ADV KENNEDY SC: Now apart from the Malaysian contract that we have just had reference to were there other contracts and orders placed on LMT by DLS since you became part
10 owned by DLS or the share option kicked in?

DR NELL: Yes there were Chair.

ADV KENNEDY SC: Right. And so the complaints about performance were they related to quality and timing or what were they specifically dealing with?

DR NELL: Quality and timing Chair both.

ADV KENNEDY SC: Quality and timing. Was there any validity to those complaints?

DR NELL: Chair we do not take the blame – we cannot take the blame for everything and the study from the independent
20 contractor clearly indicated mistakes that were made on both sides. Mr Drevin also the previous - on- of the previous Denel witnesses indicated to that some of the drawings were not up to date when they provided it to us for delivery. Client furnished equipment was not delivered on time. So there was mistakes on both sides.

ADV KENNEDY SC: Did you do – so did the report in fact bear out that you could not take all of the blame for delays and quality issues?

DR NELL: Yes Chair it does.

ADV KENNEDY SC: Did it blame you at all and do you blame yourselves at all for any part of the problems?

DR NELL: Yes Chair we made our mistakes. We had our fair share.

ADV KENNEDY SC: Right. Now when – now that DLS and
10 Pamodzi had shares in LMT and in fact DLS had the majority shares – was it DLS or Denel SOC?

DR NELL: Denel the head office.

ADV KENNEDY SC: SOC Limited the head office. Right. Now that they had the 51% they in fact participated as you have said in the board and the management of LMT.

DR NELL: More in the board level from Denel at head office yes.

ADV KENNEDY SC: So they at that stage did not have their own people in the management ranks it was at board level.

20 **DR NELL:** No Chair they only had their people in the – on board level not on management level. They did provide us with a retired person that assisted us but I had to retrench him in 2012 on – at the request of Denel.

ADV KENNEDY SC: He was put into the management was he into the staff of LMT as opposed to the board, is that

right?

DR NELL: That is correct Chair as a General Manager.

ADV KENNEDY SC: Right. Now this report that came out that – that confirmed that many of the problems that had been raised were not due to your own fault. Did you commission that for your own knowledge or was that for purposes of providing it to Denel?

DR NELL: Chair we commissioned it to – for our own purposes and we also presented the result of the report to
10 our board and to the management of Denel Land Systems.

ADV KENNEDY SC: Right and why did you feel it appropriate to present it to them – to Denel both in the board and within their own company?

DR NELL: Chair I just felt that all the allegations – the constant allegations of poor quality and late delivery was unfounded and I needed some independent contractor to check this out for us and make sure whether we are at fault or not.

ADV KENNEDY SC: Now we have already seen reference to
20 a trunnion contract. You refer in paragraph 12 on page 29 to a cancellation of the original trunnion contract. And you refer to that being terminated by mutual consent in September 2012 at the request of Mr Burger.

DR NELL: That is correct Chair.

ADV KENNEDY SC: Which contract was that? Was that one

of the contracts we have looked at earlier?

DR NELL: Correct Chair.

ADV KENNEDY SC: Right. And which one was that? Was that – when was that concluded?

DR NELL: That is the 2010 contract with the ...

ADV KENNEDY SC: 2010 contract right. And – right. Now why did Mr Burger request you to agree to cancel that contract?

DR NELL: Chair it is my opinion that at that stage their
10 design was not yet far advanced enough to continue with production and they in any case transferred or changed the pre-payment into equity shares. So that is my understanding.

ADV KENNEDY SC: Right. And you agreed to that for LMT that cancellation?

DR NELL: I did Chair.

ADV KENNEDY SC: Why was that?

DR NELL: Because we knew at that stage that they are not going ahead with this contract and that they changed the
20 pre-payment into the equity shares.

ADV KENNEDY SC: Now you mentioned to us in consultation that a reference to a suspensive condition not being met. What does that relate to?

DR NELL: That is the condition that if the contract is not awarded by Armscor to Denel for phase 2 then the contract

will be [?].

ADV KENNEDY SC: Yes now let us be clear. So was the cancellation of the trunnion contract from 2010 that was because of lack of progress on the Denel side or lack of progress on the LMT side?

DR NELL: No lack of progress on the DLS side.

ADV KENNEDY SC: The DLS side. It was not raised for example that you were in breach of the contract or anything like that?

10 **DR NELL:** No Chair.

ADV KENNEDY SC: Okay. Now you then refer to Denel LMT loans in paragraph 13. Just sum up for us please in a couple of sentences if you may what this related to? When it took place, what was involved?

DR NELL: Chair around about 2019 we were involved in a shareholder meeting and we came to know that Denel laid claim to loans that were made to LMT to the value of about R370 million. As shareholders we were not aware of that. We were never consulted and Pamodzi made – wrote a legal
20 letter in response to Denel's claim that this claim should be paid. So we were not aware of this huge amount of loans that were made to LMT at that stage and it was extremely strange that such a big amount was provided to such a small company compared to the big Denel Group.

ADV KENNEDY SC: Now you then at page 30, paragraph

13.5. It refers again in the context of what happened in 2019. You refer seems by way of background to what you mentioned earlier which was the business rescue application. That was brought in 2016. Is that correct?

DR NELL: Correct, Chair.

ADV KENNEDY SC: By yourselves as the founding shareholders of LMT.

DR NELL: Chair, all the minority shareholders including Pamodzi.

10 **ADV KENNEDY SC:** Pamodzi as well?

DR NELL: Correct, Chair.

ADV KENNEDY SC: And you indicate that:

“Denel opposed our business rescue application on the basis that Denel will fund the business.”

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right. And were these loans that were made, as referred to on pages 29 and 30 and following, were they part of what was then promised by Denel in saying they were deposed the business rescue? They were now going to
20 be funding the LMT business?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Was this worth funding? I understand that you were one of the founding shareholders in LMT. It was your baby, as it were, and you had a vision for it. But you already mentioned that there were some financial

difficulties at an early stage before Denel purchased the 51%.

And then later, it appears that there were further financial difficulties. Was this company, LMT, in fact in serious financial difficulties when you applied for business rescue?

DR NELL: It was Chair. It related to the non-payment of one of the biggest clients we had at that stage.

ADV KENNEDY SC: Who was that?

10 **DR NELL:** It is a company called SCC in the Middle East.

ADV KENNEDY SC: I understand that stands for what? It is a Saudi company, is it?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Just tell the Chair please what it stands for.

DR NELL: It is a Security Control Company from Saudi Arabia.

ADV KENNEDY SC: And they were not paid?

DR NELL: They were not paying us.

20 **ADV KENNEDY SC:** They were not paying you. Sorry, yes.

DR NELL: Correct.

ADV KENNEDY SC: Yes.

DR NELL: They did not pay our invoices in full.

ADV KENNEDY SC: And were they entitled not to pay you in full?

DR NELL: Chair, we will – that is something that we still do not know at this stage. There was a change of management in that company and they then required a 12 million Dollar guarantee from the majority shareholder, Denel, at that stage which was not part of the original contract which when we signed it with them. So that was the result. They wanted this 12 million Dollar prepayment guarantee.

ADV KENNEDY SC: And then you refer to in paragraph 13.6 to two loans while you were still CEO up to March 2016.
10 And then you refer in 13.7 after your removal of CEO and then on the basis of documents furnished to you. It appears that further loans were made available by Denel to LMT.

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Was that when Mr Johan Wessels from Denel was seconded to LMT as CEO in your stead?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right. And then you refer to another agreement between Denel and LMT. I do not believe we need to take you to that Chair. But what was the essence of
20 that agreement? What was its purpose? Was it to make further loan financing available or what?

DR NELL: That was correct. That was between Denel and LMT Product, the operating arm of LMT.

ADV KENNEDY SC: Right. And then there is a reference to a need in terms of that agreement for financing to be applied

with the consent of the shareholders. And then you refer to a letter of demand having been sent by Denel. And there is a response from both Pamodzi and the other LMT minority shareholders. Would that be yourself, you and your colleague?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: And you respond to that letter of demand. What was the demand for?

DR NELL: The demand was from Denel for the loan to be
10 repaid Chair.

ADV KENNEDY SC: And were they entitled to demand that?

DR NELL: We as the minority shareholders Chair, viewed that the correct process was not followed when the loans were made to LMT in accordance to the MOI of the company.

ADV KENNEDY SC: And then in 13.11 you say it is unclear what the amount – what the money was used for. And then you refer to LMT now being placed in business rescue on the 4th of September 2019. So you attempted that in 2016 but Denel had opposed this, saying that it would provide loan
20 financing. Is that correct?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: It provided some loans but in September 2019, there was then an application to the high court for LMT to be placed under business rescue.

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Who applied for that? Was that the – again the minority shareholders such as yourself or was that the LMT company itself?

DR NELL: It was the LMT company itself.

ADV KENNEDY SC: Including the directors who came from Denel as the majority shareholder?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right. And you say here that the biggest creditor was Denel with around – with the loan of
10 approximately R 350 million.

DR NELL: Correct, Chair.

ADV KENNEDY SC: So does that relate to all the loans that were referred to earlier in your affidavit?

DR NELL: Only the loans that was paid from roundabout 2016.

ADV KENNEDY SC: I see. And then the business rescue plan was approved by the creditors of LMT on the 30th of October 2019 and that indicates that Denel would receive one cent in rand?

20 **DR NELL:** Correct, Chair.

ADV KENNEDY SC: Right. Why did it get to this dire situation at LMT?

DR NELL: Chair, I imagine it was because the funding that... We actually tried to obtain external shareholders to fund the business for equity finance but that was always

opposed because of PFMA Regulations by Denel.

And we had various shareholders, potential investors to the business that could provide sufficient cash with proof of funds to save this business. That was always opposed by Denel. And at the end, I think, Denel also just ran out of money and could not run the business.

ADV KENNEDY SC: Now in your concluding paragraph on page 32, you say you did not personally benefit from the acquisition by Denel of LMT shares. Why was that? Did you
10 not sell the shares in LMT to Denel in order to benefit yourselves as shareholders?

DR NELL: Correct, Chair. But we were only paid a hundred rand or something like that for the shares.

ADV KENNEDY SC: For the shares?

DR NELL: Correct.

ADV KENNEDY SC: And presumable you would have anticipated that if the business had grown particularly with the large volume of business that Denel was promising that your shares would then reflect that success in due course.

20 **DR NELL:** Correct, Chair.

ADV KENNEDY SC: And your shares themselves would be worth more and you would presumable be paid out in dividends substantial amounts.

DR NELL: Correct, Chair. The company was worth R 200 million in about 2016.

ADV KENNEDY SC: In 2016?

DR NELL: Yes.

ADV KENNEDY SC: At the time that the shares were bought by Denel?

DR NELL: Ja, when the shares were bought, we evaluated the company for capital at R 65 million.

ADV KENNEDY SC: Right. And at the stage that it was closed under business rescue, what was it worth then?

DR NELL: I think the liabilities exceeded the assets to such
10 an extent that the company was worth nothing.

ADV KENNEDY SC: The shares themselves were ...[intervenes]

DR NELL: Ja, the shares also.

ADV KENNEDY SC: Yes. So does that explain why you still have the shares?

DR NELL: Yes.

ADV KENNEDY SC: In LMT?

DR NELL: Yes.

ADV KENNEDY SC: Yes. Now I would like to take you to a
20 passage which I would like you to explain please to the Chair so that he can understand what you say. It is the middle paragraph, the second paragraph on page 32.

“A yellow carrot was dangled in front of our noses in that LMT would become part of Denel and therefore a preferred in-house supplier resulting in our dream

being realised.

The opposite took place.

The prepayments resulted in 51% shareholding into Denel way below the market value of the shares
Our shareholding was diluted.

We lost control of our company.

I was replaced as CEO and later resigned and with
the new management of LMT, drove the company
into the ground resulting in LMT products now being
10 in business rescue, LMT Holdings to follow soon
after.”

Now when you resigned from LMT - just remind us when
that took place?

DR NELL: September 2016 Chair.

ADV KENNEDY SC: And were you alone in resigning as a
member of the Management Team at LMT?

DR NELL: Chair, no. Fellow shareholders resigned as well.

ADV KENNEDY SC: Right. Is there anything that you
would want to add to what we have just dealt with in this
20 affidavit Dr Nell before we move to the next affidavit?

DR NELL: No, nothing Chair.

ADV KENNEDY SC: Right. Thank you. Chair, if I might
just have a moment?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: That brings us then, Dr Nell, to Bundle

10.

CHAIRPERSON: Before you go to Bundle 10 Mr Kennedy.

Let us take a short adjournment.

ADV KENNEDY SC: As you please Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS FOR A SHORT BREAK:

INQUIRY RESUMES:

CHAIRPERSON: Okay let us proceed.

ADV KENNEDY SC: Thank you, Chair. We are now in
10 Bundle 10 and we would like to deal with Exhibit W24.2 from
page 7.

CHAIRPERSON: Yes.

DR NELL: Now Dr Nell, you again in the affidavit set out
the same background you gave previously about your
professional qualifications, et cetera. But if I can then get to
the substance of your affidavit from page 12.

You deal with LMT's relationship with Patria. Is there
anything here that you have added that you need to draw to
the attention of the... I am sorry. I am looking at the wrong
20 page. May I just have a moment, Chair?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: If you refer to page 11, you seem again
to deal with relationship between LMT and Patria. Why did
you provide these details will you appear to already have
dealt with, at least some of the details in the first affidavit?

DR NELL: Chair, Just for the sake of complete this added it in this affidavit as well.

ADV KENNEDY SC: Right. Thank you. then we come to a new topic at page 13, paragraph 6 which is CSIR landmine tests on the Patria AMV. Now we have already looked at 6621 which is then corrected and your correction that you put on the record here and reflected in your third affidavit says that to the effect that there were tests conducted by CSIR under contract from - not from LMT but Armscor.

10 **DR NELL:** Correct, Chair.

ADV KENNEDY SC: What were these tests for?

DR NELL: Chair, Armscor placed a contract on the CSIR to evaluate the land mine protection of all the contenders of Project Hoefyster. And at that stage, they invited us as one of the contenders. I think the only contender at that stage to prove or to demonstrate our landmine protection to them.

ADV KENNEDY SC: And was that in terms of specific specifications?

DR NELL: Correct, Chair. it was done in accordance with
20 ...[indistinct] and all spec RSA Mill Standard 37. [Speaker is not clear]

ADV KENNEDY SC: Now have you heard the evidence of Mr Nalepe(?) and Mr Nkosi in relation to landmine... Sorry, sorry. In relation to specifications and baselines, etcetera?

DR NELL: Correct, Chair.

ADV KENNEDY SC: And did you hear the evidence that was given in relation to criticism of the land mine tests that were undertaken by the CSIR on your vehicles?

DR NELL: I heard Chair.

ADV KENNEDY SC: What do you say about that?

DR NELL: Chair ...[intervenes]

ADV KENNEDY SC: I am so sorry. If I might just put a very brief summary to you? In essence what appears to be at the heart of the concerns raised by the witness, seems to be
10 this.

That LMT's vehicle that was sent for tests, had to be tested on a broad range of specifications that were laid down in terms of the South African National Defence Force's own specifications that required strength of the vehicle in various respects to ensure ultimately the safety of the men of women who would serve as soldiers on behalf of the nation.

And the concern that was expressed was that the first test was failed miserably by LMT. Is that correct?

DR NELL: That is correct, Chair.

20 **ADV KENNEDY SC:** Yes. And can you tell the Chair please why it failed so miserably?

DR NELL: Chair, there were two test series and each test series consisted of two tests, wheel detonation and the belly(?) detonation. The belly detonation was passed successfully. Oh, the wheel detonation.

The belly detonation failed and the reason why it failed, I can attribute it to the use of Armscor because Armscor very cleverly placed the mine as required by RSA Mill Standard 37 in the weakest position on the vehicle.

It was missed by us. We did all the previous tests where it actually passed this on our own. And then Armscor placed the mining at such a place which was the weakest position as required by the standard and that is why we failed.

ADV KENNEDY SC: So they test the what? The mine?

10 **DR NELL:** The mine, ja. The test mine.

ADV KENNEDY SC: The test mines. So the vehicle was required to be placed over a landmine or something similar.

DR NELL: Correct, Chair.

ADV KENNEDY SC: Was it to drive over it or simply have something explode under it while it was immobile?

DR NELL: While it was immobile Chair.

ADV KENNEDY SC: Immobile?

DR NELL: Immobile.

ADV KENNEDY SC: Yes. And are you saying that Armscor
20 did something wrong in placing it at a particular position?

DR NELL: No, Chair. I actually say they did the right thing. It shows the experience from Armscor to place the mine in such a position which was overlooked by us.

ADV KENNEDY SC: Presumable a landmine can be triggered in a whole range of different spots.

DR NELL: Correct, Chair. The standard requires that you place the mine in such a position which is the worst place from a survivability point of view.

ADV KENNEDY SC: Yes. So that you can see, not what would happen to the occupants of the armoured vehicle if the landmine was triggered at a relatively harmless place but at the worse place.

DR NELL: Correct, Chair.

ADV KENNEDY SC: Yes. Now you say that Armscor placed
10 the mine at the right place.

DR NELL: Correct, Chair.

ADV KENNEDY SC: So why was this a failure? Why did your vehicle not comply with it?

DR NELL: Chair, the vehicle that we tested was provided to us by Butler and Finland and it was an amphibious vehicle, which means that it could swim. And the position where they placed the mine was right below the bold(?) pump(?).

ADV KENNEDY SC: Bold out?

DR NELL: Bold pump is the pump that pumps the water out
20 of the vehicle whilst it is swimming. The vehicles of the South African Army will not – it is not amphibious and therefore will not be using this bold pump position. We later repeated the test at the same position but I am sure you are going to ask that question.

ADV KENNEDY SC: Ja, I will get to that but let us just deal

with the first question now.

CHAIRPERSON: But is the position that you accept. You do not criticise anybody for that failure of the test?

DR NELL: I do not criticise anybody Chair.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: But may I ask you? From LMT's point of view, why was an amphibious vehicle used for purpose of the test if in fact that was not the type of vehicle that would be supplied to the South African National Defence Force?

10 **DR NELL:** Chair, that was the vehicle that was supplied to us by Patria to be modified to comply with the requirements of the South African Army.

ADV KENNEDY SC: So if they had given you some other requirement, you would have complied with that other requirement which might have avoided the problem?

DR NELL: Yes, Chair. We will.

ADV KENNEDY SC: But can I ask you Dr Nell? It sounds like this was a mission was inevitable going to fail. Why did you not say to Armscor but why must we – or the defence
20 force for that matter – why must we put in an amphibian vehicle which will not have the same safety standards as the vehicle we are going to provide? It is going to be a waste of time.

DR NELL: Chair, it was... I think we thought that the vehicle will still go through a number of developments and

the test that we had done was based on that specific vehicle configuration only. Both formal and informal documentation from Armscor stated clearly that further tests will be done later on.

ADV KENNEDY SC: Now you had criticised... I think it was Mr Nkosi who criticised LMT and how it managed to get the second test done. Let us deal with the second test. You have heard the evidence about that and his criticism.

DR NELL: I did Chair.

10 **ADV KENNEDY SC:** Right. And his criticism clearly seemed to imply that what was being done was that LMT was effectively wood-winking the process which should have gone for a second test in the first place because if it failed the first stage, you should not be allowed to go through to the second stage.

DR NELL: I totally disagree Chair.

ADV KENNEDY SC: Why is that?

DR NELL: After the failure of the first test which was paid for by Armscor. Armscor informed us that they need to gain
20 confidence in us and that specific email is in my bundle where they say that we need to repeat the test at our own cost to show them that we can actually do this.

It was critical to complete the test as soon as possible because we were close to the award of the tender and we need to show our client, Patria, as well as Armscor that this

vehicle can actually comply with what we stated it can do.

ADV KENNEDY SC: Did you explain to Armscor that the reason why you had failed the first test so miserable was because you were required to put an amphibian vehicle which proved to be vulnerable even though you thought originally that it would pass the test okay?

Did you explain to Armscor that actually it is not really our fault?

It is because of the fact that we were told put in the
10 amphibian vehicle and we did and the amphibian vehicle failed, not because we do not know how to make such a vehicle but because the design of it is such that there is a vulnerable point?

DR NELL: Chair, the reason for the failure was very well described to Armscor in both a report and in a presentation that was given to them before we did the second test.

ADV KENNEDY SC: So then, what I am really leading to is, why would it make sense for Armscor to say we need to gain confidence in your product because of the first failure if you
20 present – if you did in a presentation, explained to them what had happened? Why were they lacking confidence?

DR NELL: I think they needed to be shown a real test, not type of study. That is why we did the second test.

ADV KENNEDY SC: And what was the outcome of the second test?

DR NELL: We passed the second test. And I would like, for clarity Chair, to state that it was not a cut and paste exercise that was in the testimony of Mr Nkosi. We went through a detailed engineering process which involved a lot of tests and simulations before we did the change onto the vehicle. And all that information was provided to Armscor as part of the pre-test evaluation.

ADV KENNEDY SC: So this was ...[intervenes]

CHAIRPERSON: I am sorry.

10 **ADV KENNEDY SC:** Sorry, Chair.

CHAIRPERSON: The second test, was it effectively the same test that you had failed before as a first test but the difference is that since the first test you had fixed the problem or did you bring in a different type of vehicle for the second test?

DR NELL: Chair, it was exactly the same vehicle.

CHAIRPERSON: Yes.

DR NELL: We just rectified the mistake.

CHAIRPERSON: You rectified the mistake?

20 **DR NELL:** Correct.

CHAIRPERSON: Well... So if that – if you – if it was the same vehicle but you rectified the mistake, then your earlier evidence that the problem was the type of vehicle, the problem that led to the dismissal failure of the first test, it was the type of vehicle, then it cannot be right.

That evidence cannot be right because it means there was simply a problem in that vehicle. It was not the type of vehicle that was a problem. Once you had fixed the problem, you passed the test with the same vehicle.

DR NELL: Correct, Chair. We removed the bolt pump that was not to be fitted onto South African vehicles.

CHAIRPERSON: Yes.

DR NELL: But then it became the vehicle that was supposed to go into production.

10 **CHAIRPERSON:** Yes, but am I correct to have understood your evidence earlier to have said, the problem was the type of vehicle that you had used? Did I understand your evidence correctly earlier?

DR NELL: Ja, that specific vehicle was an amphibious configuration.

CHAIRPERSON: Ja.

DR NELL: But we removed the propellers and all these things that made it amphibious but the bottom part where that bolt pump was fitted in, we left out.

20 **CHAIRPERSON:** Okay.

DR NELL: It was taken outside.

CHAIRPERSON: Okay.

ADV KENNEDY SC: So you say it was a mistake on your side?

DR NELL: Correct.

ADV KENNEDY SC: Right. So there can be no cause for complaint and you have not in fact raised a complaint about the fact that you – that there was a dismal failure on the first – at the first test.

DR NELL: Yes, that is correct.

ADV KENNEDY SC: Right. And it seems to make sense in the light of what you have just said that Armscor still needed to be persuaded through a second test that they could have confidence in your vehicle.

10 **DR NELL:** Correct, Chair.

ADV KENNEDY SC: The vehicle that you submitted for the second test, was that a no-amphibious vehicle completely? Was it a different design? Or was it simply what had been the amphibian vehicle was just a few things added or a few things taken out?

DR NELL: Chair, it was exactly the same vehicle that was used in the previous test. We just rectified the mistake by changing the floor and going through various engineering studies to make sure that it did not expect the same or did
20 not – will not get the same as previously.

CHAIRPERSON: So I take it that you would agree – you would then concede that the dismal failure was well deserved by LMT because it was your mistake?

DR NELL: Ja, ja.

CHAIRPERSON: Yes, ja.

DR NELL: Yes.

CHAIRPERSON: Okay. No, I just wanted to make sure that whatever criticism may be levelled at LMT or is levelled at LMT, we know that you accept that. You are not saying that the criticism was unfair. That is not what you are saying.

DR NELL: No.

CHAIRPERSON: You accept that it was a mistake on your part and then you rectified it and then you passed the second test.

10 **DR NELL:** That is correct, Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Chair, may I continue?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: Thank you. Dr Nell, you were further criticised by Mr Nkosi in his evidence that you should not have actually proceeded to the second test at all. If you get it wrong the first time, then you cannot proceed to a second test in his view as to how the system should work.

20 **DR NELL:** Chair, my response to that is, that anybody can ask the CSIR to certify or test their vehicle for landmine protection. This is what they do and this is what we did. We requested them. We placed an order on them to redo the test for us at the request of Armscor to show confidence in them again. And I do not think that – that is unfair.

CHAIRPERSON: I am sorry.

ADV KENNEDY SC: So the first test ...[intervenes]

CHAIRPERSON: On a lighter note, I guess Mr Kennedy you fail the exam or you get yourself and then you pass. Maybe that was the problem. [laughing]

ADV KENNEDY SC: Yes.

CHAIRPERSON: [laughing]

ADV KENNEDY SC: Dr Nell. So the first test was paid for by Armscor.

DR NELL: Correct, Chair.

10 **ADV KENNEDY SC:** And that was the failure. And so they then said you should proceed if you want to persuade them that you have actually got the ability to fix the problem to go through a second test after you made the modifications and this time the test would have to be paid for, although requested by them, at your expense.

DR NELL: Correct, Chair.

ADV KENNEDY SC: Yes.

DR NELL: We paid for it and we requested the test to be conducted.

20 **ADV KENNEDY SC:** Yes. It seems to be Mr Nkosi's allegation or suggestion that something sneaky was done here by LMT to do something improper by getting a second test even if it was at your own cost.

DR NELL: Chair, I deny that. As I say, anybody can go and rewrite the exam if you do it – if you write the correct exam

paper. So CSIR is there for anybody to come and do tests. They would require Armscor to verify that the test is done correctly and this is what we have done.

CHAIRPERSON: Of course, it depends whether the rules or the regulations or policies permit the rewriting. Permit doing the second test when you failed the first test. If they do not permit it, then it would not be right if somebody has failed to let them do it.

It may well be that in a certain situation, it can be said:
10 Well, you cannot do the second test. You will have to wait for the next round of test or something.

I mean, I do not know the details but it would depend on the rules. If the rules or policies permit doing a second test when you have failed the first one, that is fine but if they do not permit then it would not be fine.

But it just depends on whether there are rules dealing with that or not.

DR NELL: Chair, I am not aware of any such policy.

CHAIRPERSON: Yes. The redoing of tests or doing second
20 tests. In your experience, have that been – had that been allowed to other people before or you do not know?

DR NELL: Yes, Chair we failed and other companies failed tests many times.

CHAIRPERSON: Ja and you were allowed to repeat?

DR NELL: You have to pass the test.

CHAIRPERSON: Yes, okay. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. Then a further criticism was raised by Mr Nkosi and that is that is that the test, both the first and the second, only tested your vehicle for certain aspects but not others.

DR NELL: Chair, we – the test was conducted exactly as required by RSA Mill Standard 37. We provided the information that was required. CSIR came to inspect the vehicle. They gave us an inspection list which we did.

10 We followed then all the requirements and we provided all the information as required by RSA Mill Standard 37.

And if I may? You have to do things to pass such a test. You need to survive the injury criteria which we did. And you need to provide the repairability of the vehicle after the detonation.

And in both these cases for the second test, we provided this in a form of a report which was distributed to Armscor.

ADV KENNEDY SC: Now is there anything you want to add on the CSIR test or can we move on?

20 **DR NELL:** I have nothing to add. Thank you, Chair.

ADV KENNEDY SC: Right. Thank you. You deal in paragraph 7 on page 15 with delays in finalising the platform, the hulls procurement process. Just sum up for the Chair please what your evidence is in relation to the delays.

DR NELL: Chair, we were required to provide what we call

wrong prices or rough order of magnitude prices by DTLS in 2012. And we were again required to provide updated prices in 2014. I think the reason for that was that the development of the project or the vehicle at that stage did not proceed as it was thought it would and therefore there was a delay in the whole process.

ADV KENNEDY SC: May we now proceed with your section dealing with the acquisition of LMT by Denel on page 16, paragraph 8. That relates to the same issues that we have
10 dealt with before but here you flesh out some additional details. Is that right?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: I would just like to refer you to one if I may. At 8.4, you refer to a pre-statement by Mr Saloojee the CEO of Denel at the AADD 2012 Show. And if I can just read into the record what he said:

“Our acquisition (meaning Denel’s acquisition) of LMT (meaning the majority shareholding) means that we will in future be able to manufacture and supply
20 through life support for the complete badger locally with LMT responsible for the vehicle and tarot hulls and DLS providing system integration.”

Now Mr Saloojee has told us and gave evidence to this effect that when he made the statement, it was shortly after he became Group CEO. The actual decision to acquire a

stake in LMT was taken by his predecessors before he joined Denel. Do you confirm that?

DR NELL: I confirm.

ADV KENNEDY SC: Yes. But he says that he never had an intention to exclude LMT and intended to honour this statement. Was this a further assurance that you received this time in public that Denel would channel a lot of business to LMT?

DR NELL: Especially the Hoefyster Hull Manufacture,
10 Chair.

ADV KENNEDY SC: Yes. But can I ask you this? Was that – was this – that was surely not a guarantee that Denel would always give its business to LMT even though it was now going to be in-house, as it were?

Surely, if you were producing an item that was not of good quality that, for example, did not have the correct safety standards or that you were going to cost Denel a great deal more.

Would you accept that Denel would not then have to
20 procure such items from you in those circumstances if it could get a better, safe and/or cheaper product from other sources?

DR NELL: Chair, I concede but then we should just now about their concerns about safety and quality and the problems that they raised.

ADV KENNEDY SC: Yes. Now may we then turn on page 17 to the 2012 quotation process. This is for the platform, Hulls Contract. That was the 212 originally, was it?

DR NELL: That is correct, Chair. And I would like to again state, these were wrong prices that was acquired. In other words, rough order of magnitude. It was not fixed or firm prices. It was just to give them an idea of how much these vehicles will cost to manufacture.

ADV KENNEDY SC: Yes. And is that the – so there were
10 three firms that were approached for quotations. You being the one, VR Laser being the other and I think the third entity was DMD.

DR NELL: Chair, at that stage, we were not aware of other competitors.

ADV KENNEDY SC: Yes. How did you become aware of the fact that other competitors had been asked to put in quotes, to participate in a competitive process against LMT?

DR NELL: Chair, there were a number of rumours going around but I think it was an honest mistake by
20 Mr Van den Heever who also gave testimony here.

He sent an email and if you read through the email train below, he said that VR Laser is also being evaluated or will also be visited by Patria. That was an absolutely honest mistake from him and this is how we really confirmed that things are going to other suppliers as well.

ADV KENNEDY SC: Yes. Is that the... Is that the email that you refer to in paragraph 10.1 on page 18?

DR NELL: Correct, Chair.

ADV KENNEDY SC: And 10.2.

DR NELL: [No audible reply]

ADV KENNEDY SC: Now whether or not Mr Van den Heever was making a mistake and whether it was an honest mistake or whatever, it is not my particular focus for present purposes. Did it come as a surprise to you that VR Laser
10 had been asked to compete with you as well as another competitor?

DR NELL: Yes, Chair it did come as a surprise to us.

ADV KENNEDY SC: Why was that a surprise to you? Is it not important that a state entity like Denel should be following a competitive process?

DR NELL: It is important for them to follow. Just inform us about this change in the process. After everybody make promises to us that this will be work that will be coming to your side.

20 **ADV KENNEDY SC:** Now you referred also to the Patria site inspection visit, the heading at paragraph 10. Just tell us in a sentence or two what that relates to and why it is significant in respect of the quotations submitted by VR Laser?

DR NELL: Chair, as have been mentioned previously. We

have been working with Patria since 2004. So Patria knew our capabilities. They knew what we were busy doing. They knew how we do things in the business because we have been working for ten years already.

And then we got a letter to say that they are coming to inspect our premises and the way we work. And they have been on site permanently for almost ten years. So they know exactly how we work. So they came to visit us.

We did not really know exactly why. The purpose was
10 stated in the email to check out capabilities and things that we can do. So.

But later on we learnt that there was an extremely negative report that was published by Patria. That report was never given to us. We never had access to that. If we had access to that report we would have made the necessary changes immediately to rectify the mistakes.

ADV KENNEDY SC: You would not have asked Patria to rewrite its report? You would rather to try do changes to the vehicle so that they could then re-inspect it and then be
20 satisfied that it was now up to scratch. Is that right?

DR NELL: Chair, yes. We would rather rectify mistakes in our processes and our quality if that has been identified by them.

ADV KENNEDY SC: Now the Patria report that you have just referred to. Is that the one dealt with in your affidavit,

page 19, paragraph 11?

DR NELL: Correct, Chair.

ADV KENNEDY SC: And the Patria report came out saying that you – that VR Laser was superior to yours. Is that right?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: In fact, considerable superior to yours.

DR NELL: They said that some changes to our processes and capabilities, we can only be evaluated or considered for
10 the hulls.

ADV KENNEDY SC: Yes. Dr Nell, I understand your evidence that you were expecting a lot of business from Denel, better business once they acquire the 51% shareholding. There was reference to something in that regard in the agreement that you referred to earlier.

There was reference also to that in a letter to Pamodzi that you referred us to. And it was also apparent from Mr Saloojee's press statement that we have referred to already.

20 But would you not agree with me that if Patria, the original designers and manufacturers of the basic vehicle that was at stake here.

If Patria – was it not desirable that Patria should in fact undertake an inspection of the vehicles of the three bidders who were then making quotations to see who was the best

from a safety and technical point of view?

DR NELL: Yes, I would agree to that.

ADV KENNEDY SC: You would agree with that?

DR NELL: Yes.

ADV KENNEDY SC: So you are not saying, are you, that Patria or Denel were wrong. That Patria was wrong in coming to do an inspection or Denel was wrong in asking Patria to do an inspection. They were entitled to do that. Is that right?

10 **DR NELL:** They were entitled.

ADV KENNEDY SC: Yes. Surely, it is of the benefit of the nation and also its soldiers who have to get into these vehicles and go into combat where they may go over landmines, that the very best quality is identified and cost-effective and competitive that that would then be secured for that benefit.

DR NELL: I agree, Chair.

ADV KENNEDY SC: Right. Now what I am interested in is your suggestion to the Chair that what should have
20 happened is this. If Patria does an inspection, which you have confirmed they were entitled to do and it was in the national interest for them to do it, where they came out with a report saying VR Laser is far better than LMT and LMT, they could be considered but they are certainly not as good as VR Laser and they have got a number of

negatives, drawbacks about them. You seem to be suggesting that you were entitled then to have a second chance, is that appropriate?

DR NELL: Chair, if we knew that there was a report that could damage our future chances of getting work, I would expect or think that it would be appropriate for us to be given the report to see where we did wrong. The reason why I saw that is we have been working for Patria for ten years, they know our processes, we have supplied them
10 with many components in the past. Why suddenly the negative approach? This was my concern.

CHAIRPERSON: But if they are entitled to come to your site and you conduct inspections and the inspections reveal something that you might regard as negative, why are they not entitled to reflect that in the report because you see, you have to make it clear whether your complaint is that they did not give you the report or the complaint is that they included negative findings or whatever in their report or both. Which one? Is it your complaint or is it
20 both?

DR NELL: Chair, they are entitled to inspect the facility at any time. I think we were unhappy with the fact that we did not know the exact purpose and what they are really going to look at when they came to inspect us and if we knew what was the output of their report, we would have

rectified it immediately.

CHAIRPERSON: Yes, well I do not know the details but we all know that where somebody is entitled to come to your site or premises and conduct an inspection sometimes there are good reasons for them not to notify you in advance before they come because they want to see how you operate as you do because if they notify you in advance you might – they might not be able to find the real situation because then you will change certain things.

10 **DR NELL:** Yes.

CHAIRPERSON: So you accept that there may be those situations?

DR NELL: I accept that, Chair.

CHAIRPERSON: Generally speaking. Okay.

ADV KENNEDY SC: This was a different situation though to the CSIR test, I understand that, as you put it earlier, it is like writing an exam or the Chair suggested it might be similar to writing a test and you might be able to have a rewrite provided you, in this case, pay CSIR for the cost.

20 But how many visits did you feel would have to be undertaken by Patria to eventually be satisfied? I mean, if they were to give you a second chance the first time around and you did not match that the second time around would you then be saying well, they should have given you yet a further chance. What I am suggesting to you, Dr

Nell, is that perhaps those witnesses from Denel, who have expressed concern about quality issues on LMT's part may have some sort of point that you would be – if you are going to be considered for the award of a contract you should be not just good on price and certainly your tender reflect – your quotes reflected that you were substantially lower than VR Laser and some questions have been raised about why VR Laser was so high but what I am suggesting is, as some witnesses have suggested, I am not saying this

10 is necessarily my own opinion, but I am putting to you the version of some of the other witnesses that there were already concerns about quality, there were already concerns about performance and so forth, they were entitled to go out to the marketplace, as you have conceded, they were entitled to have you satisfy Patria, which was the originator of this vehicle, to come and look at it objectively from a technical point of view and then not only had you failed the first CSIR test but the Patria test you do okay with but not nearly as good as – as well as VR

20 Laser. Is that not a fair comment on their part?

DR NELL: It could be a fair comment. When they came to visit us, they did not investigate how we welded Patria floors or Patria hulls, they investigated or they walked through our workshop and just had a look at the general process in general. At that stage we were – we had

manufactured more than 50 of these Patria floors for customers all over the world. So if they wanted to investigate that, they could have had a look at that, but I concede they could come and have a look at any time.

ADV KENNEDY SC: Yes is that not the point and it is perhaps to your credit that you do make that concession. The first part though suggests the criticism that they should have done the test in a different way but that is surely up to the examiner, it is not the student, but the
10 examiner who has to determine what the test will not include.

DR NELL: I agree, Chair.

ADV KENNEDY SC: You concede that, yes. And you concede that Denel was entitled to take the Patria report seriously.

DR NELL: Yes, if that meant something to them and it added to supply their valuation, yes, I do.

ADV KENNEDY SC: Yes. Now some of the witnesses have expressed real concern about LMT's safety, the
20 technical side going as far as safety was concerned, particularly Mr Burger and he will give evidence on that later. Is your answer to those concerns if only you had given us a chance we would have fixed that?

DR NELL: Chair, before answering on that I can say that there are more than 100 Patria vehicles driving around all

over the world saving many lives in Afghanistan with clients using floors welded by us.

So I disagree with the fact that there is a safety concern on our products. Even the Mercedes Benz cabs fitted with floors that we supplied and they saved many, many lives in Afghanistan. So our floors were definitely not of poor quality, they were actually of extremely good quality. But it is really up to Denel or Denel Land Systems, they can use all this information to make a supplier choice.

10 **ADV KENNEDY SC:** Now the vehicles that were supplied to the United Nations where they used in Afghanistan or elsewhere? Were they not used in Africa?

DR NELL: That were different vehicles, Chair, those were Casspir vehicles.

ADV KENNEDY SC: Casspir vehicles, different from this but also armoured vehicles, not so?

DR NELL: Correct, if I may clarify on that, Chair.

ADV KENNEDY SC: Yes.

20 **DR NELL:** Those vehicles were manufactured from a very specific type of steel of which DLS know of. We received the steel from the steel supplier and the steel required a very specified – specific way how you prepare the steel to weld it. When we received the steel from the supplier we noticed that the steel was severely corroded. We informed the supplier thereof, they said that we can use the steel.

The allegations that safety was an issue due to our poor welding is not – is unfounded. We contracted a world-renowned metallurgist to evaluate the cracking in those specific vehicles and they found that it was due to corrosion in the plates while they were stored at the steel supplier and that specific report is also in my bundle.

So we did not – we built many Casspirs for Denel and not only those ones to the United Nations and not one of them failed except these five which were built from steel
10 that was corroded severely.

ADV KENNEDY SC: But do you concede that Denel was entitled to take it seriously the fact that at least five, even though it might have been hundreds elsewhere and other parts of the world like Afghanistan, as you mentioned, they were entitled to at least raise the questions and have a concern that they would need to have resolved before they could comfortably give business to you in future?

DR NELL: That is correct, I concede that.

ADV KENNEDY SC: Yes. And let us accept for a moment
20 also your evidence that a Casspir is not the same as this particular type of vehicle for purposes of the Hoefyster. I do not have any difficulty with that but it is something that Denel in awarding a contract for hundreds of – the different type of vehicle in Hoefyster project, different to the Casspirs should again have needed satisfaction on for the

new vehicles, correct?

DR NELL: Correct, Chair.

ADV KENNEDY SC: Yes. And so you send your vehicle through to the CSIR. It fails the first one dismally, it manages to get through the second one but then when Patria comes for their visit, their one and only visit, they find you are really not as good as VR Laser and in fact there are some problems.

Now I understand your approach is but they were
10 not that serious that we could not resolve. Am I doing justice to your overall point?

DR NELL: You are right, Chair.

ADV KENNEDY SC: Yes. But was it illegitimate or irrational for Denel to say well, we are really concerned about it. Denel may be giving us assurances that those five vehicles that were in Africa, the United Nations, that they had a corrosion and that was only because your steel manufacturer had let you down and it was a different type of vehicle and you sorted everything out and yet the CSIR
20 said no, you failed first time and Patria said, although they did not fail you, you were not as good as VR Laser. It seems, I am putting to you, to be legitimate and responsible approach by Denel to say we are still concerned about LMT's ability to provide a safe vehicle.

DR NELL: Chair, yes, I agree but to fail your first landline

test of your first design is not uncommon. I do not think that is the big issue but yes, I agree, that Denel, if they had concerns, those are valid concerns.

ADV KENNEDY SC: Yes.

CHAIRPERSON: I think maybe the challenge was that you were being compared with somebody else. If you were not being compared it might have been easy for Denel to say okay, fix this and then give us comfort that we can give you the job going forward but when you are being compared
10 with somebody else it depends what they find with the other person.

DR NELL: I agree.

CHAIRPERSON: Ja, if they find absolutely no problem or whatever problems they find with the other person, if those problems on the other person are much less serious than yours then you are likely to lose out. You understand?

DR NELL: I agree, Chair.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: May I put a different perspective
20 from other witnesses? So the witnesses I have referred to who took a dim view of the technical safety aspects, some of them in fact contended particularly Mr Burger, if one looks at the documents, that VR Laser must get the award of the Hoefyster platform hulls contract because LMT just was not able to achieve safety. That was the extreme, if I

can put it.

The other extreme approach of other witness is that Denel was – or those people in Denel were really trying to favour VR Laser using as a pretext the safety that LMT might have had a few problems but they could easily be fixed up but you have conceded that they had to be assured that the technical safety was satisfactory and good, not so?

DR NELL: I agree, Chair, yes.

10 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: Mr Kennedy, I am mentioning this so that you can if necessary help me if my recollection of the issues and the evidence is not right. Is the position that even though DLS, Mr Burger and whoever, who were critical of LMT's abilities, capabilities, capabilities and so on, even though they may have had a point or some points, those are points that ought to have been dealt with in the course of following a competitive – an open competitive tender process.

20 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: As opposed to them raising those points outside of that process.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Is my thinking in terms of the issues right?

ADV KENNEDY SC: With respect, it is.

CHAIRPERSON: Sorry?

ADV KENNEDY SC: With respect, it is, yes.

CHAIRPERSON: Yes, okay, okay.

ADV KENNEDY SC: Yes, we confirm ...[intervenes]

CHAIRPERSON: No, I just wanted that as we proceed.

ADV KENNEDY SC: Yes.

CHAIRPERSON: I will make sure that we – I am not missing anything, ja.

10 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: Okay.

ADV KENNEDY SC: And is it not correct that in one of the contracts you raised a concern that LMT was not being given a proper chance as an in-house entity?

DR NELL: That is correct, Chair, yes.

ADV KENNEDY SC: And there was then a resolution achieved where VR Laser got the initial business but LMT was promised further business thereafter.

20 **DR NELL:** Chair, yes, that specific situation arose when Mr Teubes gave me some options to work with. My problem with that – and that happened in October 2014, was that the process of requesting LMT with an RFP, us compiling a tender, getting it approved by the board and then submitting it back to DLS, that process was never allowed to be followed.

I had to – I was put under pressure to sign an agreement which was not to the benefit of the shareholders or of the business and what I did not understand at that stage is why did the board not allow me to put this under the board. So the whole thing never – nothing came from it at the end.

ADV KENNEDY SC: Was that the contract that we have just been dealing with, the 217 platform hulls or is that a later contract?

10 **DR NELL:** That was the same contract.

ADV KENNEDY SC: The same contract. Yes. And did you in fact get business in addition to what was allocated to VR Laser were some of the platform hulls or at least some components awarded to you?

DR NELL: My recollection, Chair, I left the business in September 2016 and I think in that time period of September 2016 the award of the internal fit of the vehicle was awarded to LMT. I think it was R20 million or something which is a drop in the ocean compared to the
20 bigger contract.

ADV KENNEDY SC: And in fact there was reference to the interior fit and including or in addition to that would be the rear doors, were you aware of that?

DR NELL: I am aware of that, Chair, but I am not aware that it has been awarded, the rear doors.

ADV KENNEDY SC: I see. But to go back to the issue of whether you should have been given a second chance and a chance to fix it up and so forth, do you believe that that issue was influenced at all by the fact that LMT was now a largely – it was owned largely by Denel and in fact controlled by Denel and that various assurances had been given to you as the founding shareholders as well as Pamodzi, that you would be given substantial business now that you were part of a Denel group?

- 10 **DR NELL:** It was our approach that if it complies with the requirements of the agreements that we would give a – we would be given a chance if it is commercially viable and within the rules of PFMA and that was the case.

ADV KENNEDY SC: Right, may we turn on page 21 to paragraph 13, the BBEE certification requirement during the evaluation process. Just tell us what this is about, Dr Nell, please?

- DR NELL:** Chair, the original request for a proposal did not require us to provide a BBEE certificate and during
20 the clarification meetings we had with DLS we were required to provide our BBEE certificates. I informed the meeting at that stage that we are busy with a re-evaluation, our current BEE certificate expired and we were then given two weeks to provide a new updated BEE certificate.

We then consulted with the auditors who did our BEE adjudication, they did supply us with a valid BEE certificate before the 14 days were over which were then submitted to DLS in response to their requirement the clarification meeting.

ADV KENNEDY SC: Now we get to page 22, paragraph 14. It is headed:

“Allegations of poor performance, delays and quality concerns made by DLS against LMT.”

10 We have dealt with that it seems in some detail, is that correct?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: I just want to pick up a couple of points, if I may, page 23 paragraph 14.4 you refer to the cracking of Casspir hulls delivered to DLS and eventually to the United Nations. On the 11 November 2014 Dr J J – I seem to remember that you confirmed in consultation there was mistyping – there is a typing error, it should be Dr Marais and Associates.

20 **DR NELL:** Correct.

ADV KENNEDY SC: M-a-r-a-i-s. Presented a report to LMT which vindicated LMT and then you have a copy of that report to your affidavit. Did that vindicate you on the basis that – of the explanation you have already given or summarised earlier, the corrosion of the metal, etcetera?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: Right. Now you the – and I would like you to comment on this please or explain why you have used these words. 14.5:

“I submit that considering the timing of the compilation of all these trumped allegations of underperformance was a ploy to slander and castigate LMT as an incapable entity that Denel could not trust to execute a Hoefyster Burger.”

10 Oh so sorry, “order”. Now you then continue the next paragraph 14.6:

“Interestingly Stephan Burger raised these allegations. He as the very same person who a few years back had approached LMT and branded LMT as the strategic and critical partner in the Hoefyster programme whilst at the same time he was singing praises of VR Laser Services.”

Just let us unpack that please, Dr Nell. Do you stand by the terminology that you have used in your affidavit that
20 the allegations of underperformance were trumped up?

DR NELL: I agree, Chair.

ADV KENNEDY SC: You stand by that?

DR NELL: Yes.

ADV KENNEDY SC: You are not agreeing with me, that is not my terminology, that is your own that you put in the

affidavit.

DR NELL: I agree with what I say here.

ADV KENNEDY SC: Yes. Is that despite the fact that earlier you accepted that there were some failings on the part of LMT which you have indicated were not insuperable?

DR NELL: Chair, yes, I agree. At that stage we delivered many, many vehicles to many, many international clients and to all these negative or allegations of poor quality, late
10 delivery, pointing fingers only to us was not acceptable. There are always two sides to a story and this is why we contracted this guy to do the evaluation for us of all the contracts between them because not one of our other clients we had so many complaints as we had with DLS.

ADV KENNEDY SC: But you say further that:

“These trumped allegations of underperformance was a ploy to slander and castigate LMT as an incapable entity.”

DR NELL: Chair, that was my interpretation of the
20 situation at that stage.

ADV KENNEDY SC: Do you stand by that still today? Is that still your opinion?

DR NELL: I still do, Chair, yes.

ADV KENNEDY SC: Yes. Now LMT by this stage of course was in-house, it was within the Denel Group.

DR NELL: That is correct, Chair.

ADV KENNEDY SC: And DLS was a sister entity within Denel, not so?

DR NELL: Correct, Chair.

ADV KENNEDY SC: It was a division of the Denel company whereas you were – your company was a separate company but controlled by Denel.

DR NELL: Yes, Chair.

ADV KENNEDY SC: Now why do you make these very
10 serious allegations that their allegations were not just serious against you but in fact wrong and not just wrong but actually slanderous, in other words, defamatory. They were out to harm your reputation as a capable supplier, that this was a ploy and that this was trumped up. In other words, they are concocting a case, it is not just that they had an honest opinion that you were poor performers but that they were making out a lie. Is that not essentially what you are saying?

DR NELL: Chair, we had many clients that were satisfied
20 with our products, we saved many, many lives. So say that our vehicles are unsafe is incorrect. Our welders and the welding processes that we use in the company are all – they are all certified in accordance with South African Institute of Welding, it was just beyond me that people could say these things about our products which saves so

many lives and which we have delivered so many to different clients all over the world.

ADV KENNEDY SC: Now just to pick up, I am going to skip 14.6 at the moment because I will come back to that. I just want to pick up what you just said about LMT now being under the control of Denel. You pick – you take up that threat in 14.7, you say:

10 “It should be further be noted that Denel controlled the LMT board with 51% shareholding and could have easily intervened is these allegations are true. On LMT board level we refuted all these claims indicating that it was in fact DLS who, due to poor contracting, is responsible for most of the issues relating to the perceived poor performance.”

So effectively you are saying when DLS blame us for poor performance it is not a genuine truthful criticism, it is trumped up, they are trying to slander us, defame us.

20 And secondly, where there were problems of performance it was not our fault, it was due to DLS’ fault. Is that what you were saying?

DR NELL: Chair, the contents of the report clearly state what were the reasons for the problems on these projects.

ADV KENNEDY SC: Yes.

DR NELL: We provided this report to our board, we also provided a report to DLS and there were some increase in

performance from both sides and we started to work well together but at that stage there were no more further contracts placed by DLS on us.

ADV KENNEDY SC: Now I would like to go back to 14.6. You seem to be saying that there was a measure of hypocrisy on the part of Mr Burger. Is that correct to infer?

DR NELL: That is correct, Chair.

ADV KENNEDY SC: And is your point that that Mr Burger had supported the purchase by Denel some years before of
10 a majority shareholding in LMT because it would enhance the capacity in-house and that you would – your production capacity would be good particularly for the Hoefyster project?

DR NELL: That is correct, Chair. I indicated in a board meeting already in 2013 that we have sufficient capacity and capability to weld I think four of these Patrias per month in our existing facility.

ADV KENNEDY SC: But Mr Burger's evidence, according to his affidavit, and he will be called as a witness, as I
20 understand his evidence, part of it is this. That however attractive you may have looked some years back when Denel purchased the majority shareholding LMT there was a disappointment that crept in because in fact there were serious production and safety issues that concerned him. So does that not explain why there is an apparent

inconsistency? It is all very well to say Mr Burger originally promoted the idea of purchasing a majority shareholding in your company at that time but the fact that later he was saying no,. no, no, we must give it to VR Laser, not LMT, is that not explained by his belief that in fact in the interim the intervening period quality had arisen as a serious problem?

MR NEL: Mr Burger is entitled to his opinion, Chair, that is what he saw.

10 **ADV KENNEDY SC:** But you seem to be saying that he is not entitled to his opinion if it is not a genuine opinion. You seem to be saying it is not a genuine opinion, it was a ploy, is the word that you used, it was trumped up. In other words, it is basically a misrepresentation of the truth which he undertook deliberately. Those are very serious allegations against Mr Burger and those of his colleagues at Denel that either agreed with him or followed his lead.

CHAIRPERSON: In other words, the impression that emerges from what you say here is that you do not believe
20 that he held that opinion honestly about LMT, you do not believe it was a *bona fide* opinion even it was wrong because they could have – he could have a wrong opinion but still held in good faith. What emerges is that you seem to be saying he knew that what he was saying was not true, he had some agenda to say these things about –

these untrue things about LMT. I think that is what Mr Kennedy is trying to check with you, whether that is what you intend saying.

DR NELL: Chair, I agree with that. Responses we received from other clients at that same time, not the same as what we received from him at that time.

ADV KENNEDY SC: If I can just pick up that line, that concept at the foot of page 24 in paragraph 15.5 you say:

10 “I submit further that the performance and quality
 concerns raised by Mr Burger were a deliberate
 attempt to discredit, taint and diminish ...[indistinct]
 of LMT in order to render it incompetent for the
 Hoefyster programme and to promote the business
 of VR Laser Services.”

So here it seems very clear Dr Nell you are excluding the possibility that Mr Burger may have just mistakenly but genuinely believed that there were serious safety problems. Presumably you would accept that in some situations people are entitled to their different opinions,
20 that is what you in fact made the point of earlier.

DR NELL: I agree Chair.

ADV KENNEDY SC: And people can be genuine and *bona fide* and truthful in formulating their opinions.

DR NELL: Correct Chair.

ADV KENNEDY SC: But you are saying no it wasn't that,

Mr Burger was not entitled to voice an opinion that said that LMT was incapable of producing a safe vehicle because nobody could possibly have genuinely believed that instead he was trying to promote V R Laser.

DR NELL: Chair Mr Burger is entitled to his opinion, I know what we were capable of and what our quality was at that stage.

ADV KENNEDY SC: But on what basis do you say that Mr Burger, who was entitled to his opinion, was actually trying
10 deliberately to discredit your reputation in order to promote the business of V R Laser. What do you base that on?

DR NELL: Chair I based it on the fact that the constant negative information that came from that side towards our capabilities was just – why didn't the Board address that – or my Board address, take it up with me. If these allegations were true we should have intervened excessively into the business, and the way we did business, but our Board, I presented it and the Board accepted our response.

20 **CHAIRPERSON:** Your last answer just before Mr Kennedy asked his previous question I thought it represented a position you were taking maybe as a result of this discussion, which was different from what you are saying here, so it is important to know what your last position is. I thought that is what you – the position you were taking

was I hear what you are saying but what I am saying is Mr Burger was entitled to his opinion, I think he was wrong and that is where it ends, as opposed to saying he is entitled to his opinion but he is only entitled to his opinion if it is in good faith, even if it is wrong, but in this case he was not expressing an honest opinion about the capabilities of LMT, he was – he knew that these – this criticism of LMT was unjustified, it was not based on any facts and he was doing this for his own agenda to discredit
 10 LMT, so there is a difference between the two. The one is you are not attributing any malice on his part, but you are saying he is wrong.

The other one is you are not just saying his opinion is wrong, you are saying it goes beyond that, he knows that it is wrong, but he nevertheless goes around expressing this view because of some other motive or agenda, which one is your last position on the issue?

DR NELL: Chair I maintain that he is entitled to his opinion, he never spoke to me about the quality, I never
 20 had personal interaction or correspondence going into this. It was in our view at that stage what was going on. It was just – it isn't based on any evidence or emails or anything, it is based on our perception, whether that was right or wrong.

CHAIRPERSON: Okay, okay.

ADV KENNEDY SC: Thank you Chair. Now I would like to skip over a few of the next paragraphs because I think we have dealt with them as much as we need to from the point of view of – in the previous evidence that you have given.

May I take you to page 26, paragraph 18, and you refer to DLS having negotiations with LMT starting in September, 25th of September 2014, and you refer to the minutes of a meeting, if I can ask you please to turn now in
10 the same bundle to page 406.

DR NELL: Yes I am there Chair.

ADV KENNEDY SC: Are you familiar with these minutes?

DR NELL: I am Chair.

ADV KENNEDY SC: Is that your signature and name at – on the bottom left?

DR NELL: Correct Chair.

ADV KENNEDY SC: So do these reflect what in fact happened at the meeting?

DR NELL: That is correct Chair.

20 **ADV KENNEDY SC:** Did you prepare the minutes yourself

DR NELL: No I did not.

ADV KENNEDY SC: Okay but you are happy with the contents as ...[intervenes]

DR NELL: I am happy Chair.

ADV KENNEDY SC: Now just tell the Chair please what

was the purpose of this meeting?

DR NELL: Mr Wessels as a member of the LMT board wanted to get some middle-way and to solve the current issue of Denel or DLS wanting to award the contract to VR Laser, and on our side we said that we also need to be involved in some way or another.

ADV KENNEDY SC: Again sorry to interrupt, we are still talking about the Hoefyster Hulls, the turret hulls?

DR NELL: Correct Chair.

10 **ADV KENNEDY SC:** Yes, right. So you had complained that you were not being properly treated particularly as an in-house entity and there was an attempt to resolve your – the – what some documents have referred to as an impasse?

DR NELL: Correct Chair. We received a number of proposals from DLS and I wanted to present these proposals to the LMT Board to get their approval to continue with the proposals made by DLS. I was requested not to present it at the Board, and Mr Wessels was
20 requested by the LMT board to go and solve this in some amicable way, and this is what I referred to previously where I wanted DLS to provide me with an RFQ, we would follow the process of quoting and then get Board approval. I cannot sign anything on my own, it is beyond my delegations of authority to this value of contract.

ADV KENNEDY SC: Now your affidavit then continues to set out in some detail with reference to various annexures various attempts that were made to put forward proposals to seek your agreement on behalf of LMT, is that right?

DR NELL: That is right Chair.

ADV KENNEDY SC: And then you say in paragraph 18.8:

“I again refused to sign these documents after obtaining legal advice.”

Now why were you taking legal advice, was there a legal
10 issue that you were concerned about?

DR NELL: Chair the issue was that the proposals made was not in the best interests of LMT or the business. The money that was to be made and the responsibility we had to take was not in sync, and I wanted to know and I wanted to know if that is in my fiduciary duty to sign such a document without getting board approval.

ADV KENNEDY SC: What essentially was being proposed by Mr Wessels?

DR NELL: Mr Wessels tried to get a view that could
20 support both DLS and LMD to make sure that everybody gets a fair share of the deal.

ADV KENNEDY SC: And ultimately you refused the proposal from Mr Wessels. Was any resolution, any other resolution achieved?

DR NELL: Chair as I said before I wanted the process to

be followed, the correct process to be followed. I as a director or CEO cannot just sign anything to that value. It is totally beyond my delegation of authority and I needed Board approval to sign such a document.

ADV KENNEDY SC: Then may I take you in the same bundle to page 460. You have referred to this communication in the text of our affidavit, page 460 appears to be an email from Mr Dennis Mlambo, he was Group Supply Chain Executive or head at head office level,
10 is that correct? Sorry, you are not there yet, 460, look on the left hand side remember. I am not sure you are looking at the right one, 460, the number on the left hand side, top left? Do you have 460 now?

DR NELL: I have yes.

ADV KENNEDY SC: And is it correct that this is an email that the 14th of November 2014 from Mr Dennis Mlambo to yourself?

DR NELL: That is correct Chair.

ADV KENNEDY SC: And he of course at the time was the
20 Head Office Group Head of Supply Chain Management, is that right?

DR NELL: That is correct.

ADV KENNEDY SC: Had you had dealings with him previously?

DR NELL: Yes I have Chair.

ADV KENNEDY SC: And if I may just read into the record Chair the brief content of the email;

“I learnt with a great deal of surprise this afternoon that LMT has taken a decision not to supply the ...[indistinct] DLS for the Hoefyster contract. I thought I should confirm that with you if that is indeed true before further engagements. I find that surprising given the time we have spent at Corporate Office debating the issue with DLS.”

10 Now you seem to be under the impression at that stage that LMT had taken a decision not to supply the hulls to DLS rather than DLS had taken a decision to award the contract to an entity other than LMT. How did it come about that – clearly he was wrong on this, not so?

DR NELL: That is correct Chair yes.

ADV KENNEDY SC: You had not taken a decision to supply these items to DLS, on the contrary you wanted to?

DR NELL: Yes we wanted to Chair.

ADV KENNEDY SC: Yes, how did it come about that this
20 email was sent to you.

DR NELL: Chair it all comes back to the various approaches made from DLS to us, one of the proposals was that they placed the contract for the hulls on us but we need them to place the contract on VR Laser, take full responsibility for quality, delivery and everything and for

that we can take a 5% mark-up. Now if you do the calculations it is not in the best interests of the company, if you follow that approach, at the risk of managing another business in doing something which you have no real control over, it is not worth the money, and I again iterate that I wanted Board approval to continue with this approach, which we did not get at that stage, and we just did not agree to the proposal, I did not agree with the proposal, again reiterating my fiduciary duty as a director
 10 and I wanted LMT Board to approve this proposal before I even signed but I was never given the opportunity.

ADV KENNEDY SC: Now just to look again at the last sentence of that paragraph Mr Mlambo expressed surprise at his – at what he understood the position to be that LMS had taken a decision not to supply the hulls, given the time he says we have spent at Corporate Office debating the issue DLS what did you understand that to refer to, was that the very process in which there had been interactions between LMT and DLS as to whether some solution could
 20 be achieved.

DR NELL: No Chair I think this refers to the discussions they had between DLS and head office.

ADV KENNEDY SC: And head office that you were not party to?

DR NELL: Yes we were not party to it.

ADV KENNEDY SC: Right, thank you. Then in your affidavit page 28 you deal with the Gupta Family and its linked company, Regiments Capital, and you refer to a conversation with Mr Ntshepe who was then Group Executive Manager for Business Development, sometime before what we have just been dealing with and that is on the 22nd of March 2013 about linking a Ghanaian client with a potential funder, what was that all about?

DR NELL: We were quoting for a project in Ghana and
10 required some capital or guarantees and I approached Mr Ntshepe and he referred me to Regiments Capital as a potential solution to our problems.

ADV KENNEDY SC: And what happened from that contact?

DR NELL: There were numerous correspondence between myself and Regiments Capital but in the end nothing much happened, the project was delayed.

ADV KENNEDY SC: Were you aware at that stage of any connection between Regiments Capital and the Gupta
20 Family or their business associates?

DR NELL: No I was not Chair.

ADV KENNEDY SC: Did you find anything out of the ordinary in Mr Ntshepe's approach to you?

DR NELL: No I only later on realised Chair that Regiments Capital was one of the companies linked to the

Gupta Family and this is why I included it in my affidavit.

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

Thank you Chair. In paragraph 20 in your conclusion paragraph you refer in the second part of that starting “I wish to state” that you have never personally benefitted etcetera from the sale, that is repeat it seems from what we saw in the first affidavit, correct?

DR NELL: It is exactly the same yes.

ADV KENNEDY SC: Right, and you say that the other
10 shareholders and you lost out in the whole process. I just want you to tell the Chair to what extent have you lost out and how has that affected your life if at all?

DR NELL: Chair we invested a lot of our own money into the business and – in the form of loan accounts, a significant amount, and if company would be put into business rescue or be voluntarily liquidated then we would lose everything, all the money that we have put in which was significant.

ADV KENNEDY SC: Now let us turn finally, if we may, to
20 your third affidavit, Chair that is to be found in the same bundle 10 from page 470.

CHAIRPERSON: What is the page number again?

ADV KENNEDY SC: 470.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Do you have it Dr Nel?

DR NELL: I have.

ADV KENNEDY SC: Now you have explained earlier that this was a third affidavit to fill in some details that you felt needed to be added to your previous affidavits, correct?

DR NELL: Correct Chair.

ADV KENNEDY SC: And it seems to cover much of what we have already dealt with.

DR NELL: Correct chair.

ADV KENNEDY SC: Is that correct? Now I don't want to
10 lose anything that may be important to the Chair, as far as I can see we have covered them as best we could, if we of course had three days to deal with your evidence we would go into much more detail, but we are just focusing on a particular issue that you have already heard we've identified. Is there any aspect of your third affidavit that you feel you need to bring to the attention of the Chair that has not already been canvassed in your evidence?

DR NELL: Chair I would like to note that the issuing of certificates is applicable only to that specific vehicle that
20 was tested on that specific day.

ADV KENNEDY SC: You're referring to the CSIR certificate?

DR NELL: The CSIR certificate.

ADV KENNEDY SC: Yes.

DR NELL: So you cannot use that certificate *infinite* for

other vehicles, if there is any material change to the vehicle design or to the type of skill or whatever you need to reset it and that's the first point. The second point is Mr Beetge on his own did not decide to issue the certificates to us after the second date, it was a collective effort by Armscor Quality, the CSIR that the process was in fact correctly followed and that's why the certificates were issued.

ADV KENNEDY SC: If I may just interpose for a second,
 10 Mr Beetge you refer to has not been, has not come out in your oral evidence today, it came out initially in Nkosi's evidence and you have responded in the second part of this latest affidavit to particular allegations made in Mr Nkosi's evidence, is that right?

DR NELL: Correct yes.

ADV KENNEDY SC: And Mr Nkosi gave evidence that prior to his own, Mr Nkosi's appointment he – to replace Mr Beetge, there was a period of overlap where he was understudying Mr Beetge in the transition period and Mr
 20 Beetge gave certain information to Mr Nkosi in relation to possible criticism of the initial and the second test at the CSIR. Is that the Mr Beetge you are referring to?

DR NELL: That is correct yes.

ADV KENNEDY SC: Right thank you. Chair we have no further questions for this witness, thank you very much.

CHAIRPERSON: Okay thank you very much Dr Nell for availing yourself to come and assist the Commission. Should we need you to come back we will ask you to come back but thank you very much, you are now excused.

DR NELL: Thank you sir.

ADV KENNEDY SC: Chair I see it is getting close to five thirty which was as I understood it earlier the outer limit that we were being allowed, we seem to have just sneaked in the completion of this evidence. We had planned
10 another witness, the attorney who is currently in George, but I am afraid we haven't got through to him. We are in your hands, if you wish to ...[intervenes]

CHAIRPERSON: Well I am prepared to sit till quite late to complete all the witnesses that we can complete today. I don't know whether Mr Seleka is already around. I think he is around, how long do you think your next witness will take, what is your estimate of how long he will take your next witness?

ADV KENNEDY SC: May I just confirm with my
20 colleague? An hour, possibly an hour and a half Chair.

CHAIRPERSON: Yes okay Mr Seleka maybe you can come closer. Yes you are excused Dr Nell. What is your estimate of how long your witness that we are going to deal with will take, 30 minutes, one hour, what was your estimation?

ADV SELEKA SC: We should be an hour Chairperson.

CHAIRPERSON: Should be about an hour?

ADV SELEKA SC: About an hour yes.

CHAIRPERSON: Okay alright, may I – I know that both you and your witness and her legal representative, if there is a legal representative, would have come here on the understanding that we would be able to start at five or as soon thereafter as possible. If I hear the evidence of the next witness which I am told might take about an hour and
10 a half that would entail considerable waiting on your part and on witness's part and the legal representative. Would you and the witness and all concerned be able to be patient and wait and once I am done with the other witness I would then hear your witness, or if another option depending what Mr Kennedy says might be if they are happy to take a break, and do whatever they want to do, after all he has been on his feet for the whole day, and then I hear your witness and then when I am done then they come back. I am flexible. I don't know what is your
20 situation?

ADV SELEKA SC: I will take the second option.

CHAIRPERSON: Mr Kennedy what do you think?

MR KENNEDY SC: We are quite happy to accommodate our learned friend on that score Chair, we are mindful of the fact that the other day my learned friend also had to wait

for us to complete our evidence that overran and that inconvenienced him and we are indebted to him for that, maybe also indicate it is going to take a little time to set up the video conference link so that perhaps can be dealt with while my learned friend takes over the podium and we give him his chance.

CHAIRPERSON: Yes, and after all your witness also will be testifying via video link from home or from wherever.

ADV KENNEDY SC: I am not sure exactly where.

10 **CHAIRPERSON:** Ja, but at least it doesn't involve travelling to the venue.

ADV KENNEDY SC: No.

CHAIRPERSON: Ja, ja, okay no I think that is fine, what I will do then I think I am going to adjourn to allow Mr Seleka to set up and you can have a break, stretch your legs and then I can when I come back I can then hear Mr Seleka's witness.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Okay I think let's take a 15 minute
20 break, so we will resume at quarter to six. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV SELEKA SC: Good afternoon

CHAIRPERSON: Good afternoon Mr Seleka, good afternoon everybody.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: We are now starting our evening session. We are done with our day session but we will continue later with the evidence relating to Denel but we will continue during the evening session. So this will evidence relating to Eskom and in particular to the suspension of relating to the suspension of executives. And Ms Klein is continuing her evidence. Ms Daniels.

ADV SELEKA SC: Ms Daniels.

10 **CHAIRPERSON:** Ms Daniels is continuing her evidence.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Okay alright. Are you ready to have her sworn in? Okay please administer the oath or affirmation.

ADV SELEKA SC: Thank you Chair.

REGISTRAR: Please state your full names for the record.

MS DANIELS: Suzanne Margaret Daniels

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

MS DANIELS: No.

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

MS DANIELS: 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.

MS DANIELS: So help me God.

CHAIRPERSON: Thank you. Welcome back Ms Suzanne – Ms Daniels.

MS DANIELS: Thank you Mr Chair.

CHAIRPERSON: Okay. Thank you.

ADV SELEKA SC: Thank you Chair. Now Ms Daniels Chair is going to complete her evidence on the suspensions. We will continue to use Eskom Bundle 08[a] and [b].

10 **CHAIRPERSON**: Yes okay.

ADV SELEKA SC: Yes. And Chairperson just for to recap on why she is in fact here it is also because of new issues that arose during her testimony in her last appearance and she was requested then to file a supplementary affidavit. She has done so Chairperson that supplementary affidavit is in Eskom Bundle 08[b]. That is right at the end of that file Chairperson and I think that is where the Chairperson should be.

CHAIRPERSON: I have got Eskom Bundle 08[b].

20 **ADV SELEKA SC**: Yes.

CHAIRPERSON: Yes and...

ADV SELEKA SC: And page 1050 Chairperson.

CHAIRPERSON: Page 1050.

ADV SELEKA SC: 1050 which is the last item in that file. We using the black number Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: And – so the - Ms Daniels testimony will turn mainly on this and we will put the version of the other witnesses to her.

CHAIRPERSON: Yes you may proceed.

ADV SELEKA SC: Thank you Chair. May I proceed Chair? Ms Daniels thank you for making yourself available on short notice. You will have also the reference bundle – not the reference the bundle I have just referred to Bundle – Eskom
10 Bundle 8 where your supplementary affidavit is contained.

MS DANIELS: Yes I do.

ADV SELEKA SC: You do have that. Ms Daniels I have gone through the affidavit and there were a couple of things you mentioned during your testimony in your last – in your previous appearance which the Chairperson has asked that they be contained in this affidavit. My recollection is that you had completed the evidence on the suspensions to the point of the exit negotiations. You testified about the meetings that took place. Is that on the 11 May 2015? Exit
20 negotiation meetings.

MS DANIELS: Yes and the 4th May Mr Chair.

ADV SELEKA SC: The 4th May yes.

MS DANIELS: Mr Chairman.

ADV SELEKA SC: And you related how those meetings took place.

MS DANIELS: That is correct.

ADV SELEKA SC: The recent affidavit now that I have mentioned that there is an affidavit by Mr Matshela Koko which he has subsequently submitted to the commission. I have provided you with a copy of that affidavit. That – in that affidavit and I simply want to read a paragraph – the affidavit will be part of the bundle of Mr Koko in due course. There is a paragraph in which he says speaking of the settlement or exit negotiations meeting of himself. He says:

10 “What Ms Daniels states in paragraphs 68 to
71 of her affidavit is broadly correct save
that I did not refer to her stories relating to
Zola Tsotsi that I could tell. I was specific. I
informed Ms Klein – Mr Khoza and Ms
Daniels of the Sumi Tomo affair as the
reason for Mr Tsotsi engineering my
suspension.”

If you break this paragraph down into its various components the first one is that your paragraphs the contents of your
20 paragraph 68 and 71 are broadly correctly. Now you will want to know what are those paragraphs. Those paragraph are in your first bundle Eskom Bundle 8[a]. And on page – it starts on page 19 - 19 Chairperson.

CHAIRPERSON: Oh this is in another bundle?

ADV SELEKA SC: It is in the [a] Eskom Bundle 8[a]. Page

19 paragraph 68. Are you there Ms Daniels?

MS DANIELS: Yes I am Mr Chair.

ADV SELEKA SC: Yes. So there you wrote:

“The board met Mr Matshela Koko on 11 May 2015 and the turn of this meeting was to dramatically different from the previous two I had sat in. The board was represented by Ms Veneta Klein and Mr Zethemba Khoza.”

Paragraph 69.

10 “Unlike the previous two meetings Mr Koko was given time to express his sentiments on the issue of his suspension quite in length. He was lyrical do not understand and shocked and surprised permeated his speech and the now legendary Eskom is in my veins was part of his rendition of his position at that moment.”

Paragraph 70

20 “He also portrayed his relationship with the previous chairperson Mr Zola Tsotsi as acrimonious and attributed his acrimonious relationship as the reason for him finding himself on suspension. He went at great lengths to impart to the board members that they had been misled and that he would not

make it difficult for the board if the board says you do not fit. He would accede and leave Eskom.”

Paragraph 71.

10 “Mr Khoza thanked him for his submission and Ms Klein started her conversation with an opening question of could you truly trust this board again? One again Koko emphasised that he believed that the reason for his present situation was the acrimonious relationship he had with Mr Tsotsi which led to a [00:09:37] between him and the previous board. At this point Ms Klein then asked could you come back and work with this board? Mr Koko retorted that he heard horror stories relating to”

CHAIRPERSON: Hang on one second. Please switch off cell phones and whatever may disturb us. Yes continue Mr Seleka.

20 **ADV SELEKA SC:** Thank you Chair.

“Once again Koko emphasised that he believed that the reason for his present situation was the acrimonious relationship he had with Mr Tsotsi which led to acrimony between him and the previous board. At this

point Ms Klein then asked could you come
back and work with this board?"

Now may I pause there because so far he has not said
anything that you have said is incorrect but he is about to
say what he said he did not say.

MS DANIELS: Okay.

ADV SELEKA SC: You follow.

MS DANIELS: Yes.

ADV SELEKA SC: Ja.

10 **MS DANIELS:** Okay.

ADV SELEKA SC: So broadly what you said Mr Koko says
is correct now the statement he singled this one out. He
says:

"Mr Koko retorted."

This is in response to the question by Ms Klein, could you
come back and work with this board?

20 "Mr Koko retorted that he had horror stories
relating to Zola Tsotsi and not the current
board. Ms Klein thanked him for his honesty
and took note that he had said I will come
back to Eskom. She exercised that this
confirmed that the trust element was intact
and that Koko was prepared to sit out and
wait. She confirmed that she respected what
he had told them and thanked him for being

open and frank.”

The only – the only query he raised with your statement is the one regarding horror stories you say he mentioned in regard to Mr Tsotsi. Now what do you – what is your response to that? Well I could ask you directly in the interest of time Ms Daniels whether your statement is it a correct reflection of what transpired in that meeting particularly in regard to Mr Tsotsi or do you think that is what was articulated by Mr Koko? What can you say to the

10 Chairperson?

MS DANIELS: Mr Chairperson in my supplementary affidavit I attach my notes from the meeting. It is ...

CHAIRPERSON: Is that in your supplementary affidavit?

MS DANIELS: Yes Mr Chair.

ADV SELEKA SC: It will be in the other file Chairperson.

MS DANIELS: This is.

ADV SELEKA SC: Bracket a – bracket b I beg your pardon.

MS DANIELS: Black number I just think 1076.

CHAIRPERSON: What is the page number for the notes?

20 **MS DANIELS:** Is that correct?

ADV SELEKA SC: What is the page number?

MS DANIELS: It is the black number Eskom 08 1076.

CHAIRPERSON: 1070?

MS DANIELS: 1076.

CHAIRPERSON: Okay. Yes.

MS DANIELS: And you will see that I can confirm that this is my handwritten notes from the meeting at that time. And I took them down without any editing. So what I say – what I write here are the words that was said at that meeting. And you will see at the top of page 1078 I have the words horror stories relating to ZT.

CHAIRPERSON: Sorry at?

MS DANIELS: 1078

CHAIRPERSON: 1078.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: What are you drawing my attention to on that page?

MS DANIELS: The first line says horror stories relating to ZT.

CHAIRPERSON: Yes.

MS DANIELS: So then when I say there VK it says: Hi thank you having said this and then in quotation marks I put “I will come back to Eskom and in brackets I put MK” So this is the conversation as I recorded it at the meeting of the 11 May
20 2015.

ADV SELEKA SC: Yes.

CHAIRPERSON: So when you wrote VK.

MS DANIELS: I was referring to Ms Veneta Klein.

CHAIRPERSON: Mr?

MS DANIELS: Veneta Klein.

CHAIRPERSON: Oh Ms Veneta Klein yes.

MS DANIELS: And when I have MK it is Matshela Koko.

CHAIRPERSON: Ja.

MS DANIELS: And when you see ZK it is Zethemba Khoza.

CHAIRPERSON: Okay.

MS DANIELS: And ZT is Zola Tsotsi.

CHAIRPERSON: Okay. Have you always had these notes with you?

MS DANIELS: Yes Mr Chairman.

10 **CHAIRPERSON:** Okay. Did you show them to the investigators or the legal team earlier?

MS DANIELS: Yes I did.

CHAIRPERSON: Oh okay. Alright Mr Seleka.

ADV SELEKA SC: Thank you Chair. So if you turn the page back Ms Daniels to page 1076 at the top of the page that is meeting with M Koko is that Mr Matshela Koko?

MS DANIELS: Yes that is correct Mr Chair.

ADV SELEKA SC: The date is 11 May 2015 that is the date you reference in your affidavit?

20 **MS DANIELS:** Yes that is the meeting that I attended where he was present.

ADV SELEKA SC: Did you base the contents of your affidavit on what is contained in this – your notes?

MS DANIELS: Yes that is correct Mr Chairman.

ADV SELEKA SC: So the affidavit is reflective of what is

contained here?

MS DANIELS: Yes that is correct Mr Chair.

ADV SELEKA SC: Did you share your minutes at a time with Dr Ngubane or any of the members of this delegation mandated to negotiate with the suspended executives?

MS DANIELS: They did not really ask for it so I did not share it with them Mr Chairman.

ADV SELEKA SC: Did you give any report back to the team delegated to negotiate or to Dr Ngubane? I believe you were
10 in Dr Ngubane's office at this time?

MS DANIELS: Yes that is correct. I gave him feedback on some of the – what happened at the meetings but because he was in contact with Ms Klein and Mr Khoza and Mr Khumalo I did not need to share my notes with him.

ADV SELEKA SC: I see. Anyway that is the only aspect the horror story – the horror stories which seems to be in contention or contended by Mr Koko.

MS DANIELS: Oh I wrote it down as he said it at the time Mr Chairman.

20 **ADV SELEKA SC:** Now let us go back then to your supplementary affidavit in sequence which is in that – that very same bundle where we are Chair page 1050. In your affidavit starting on page 1051 to page 1056 you relate or you reference five meetings which you had with Mr Essa or shall I say five different occasions on which you met with Mr

Essa. Are you on that?

MS DANIELS: Yes that is correct.

ADV SELEKA SC: Those pages?

MS DANIELS: Yes I am.

ADV SELEKA SC: The first meeting you reference is the one of the 10 March 2015 where you were called by Mr Matshela Koko to meet with him at Melrose Arch. That is the meeting where you meet with Mr Essa for the first time according to your affidavit and ...

10 **CHAIRPERSON**: Have you gone there to her supplementary affidavit or are you back on the other bundle?

ADV SELEKA SC: Back to the same supplementary Chair. The same bundle where her handwritten...

CHAIRPERSON: Okay.

ADV SELEKA SC: Page 1051.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: Thank you Chair. So page 1051 Ms Daniels from that page on talks about the five different occasions when she met with Mr Essa. Paragraph 4 is the
20 first occasion which is on the 10 March 2015 and that meeting was at Melrose Arch where you were called by Mr Koko. The details of that meeting are in your main affidavit. So you have testified here and at the Parliamentary Portfolio Committee about that meeting. You recall Ms Daniels?

MS DANIELS: Yes that I confirm Mr Chairman.

ADV SELEKA SC: That is the meeting where the suspension of the executives was mentioned and that an inquiry will also be started.

MS DANIELS: Yes that is correct Mr Chairman.

ADV SELEKA SC: And other details are mentioned which have been traversed in this evidence – in the evidence before this commission Mr Essa introducing himself to you as the Minister's advisor.

MS DANIELS: Yes that is correct Mr Chairman.

10 **ADV SELEKA SC:** The second meeting you reference is paragraph 5 of your affidavit which is a meeting you say it is in October 2015 where you meet with Mr Essa at Eskom's premises in Megawatt Park and that he was coming to meet with Mr Koko.

MS DANIELS: Yes that is what he told me Mr Chairman.

ADV SELEKA SC: And that seems to be a brief meeting nothing significant about it. You see him waiting for Mr – waiting to meet with Mr Koko and you say that he congratulates you on your appointment as the Company
20 Secretary.

MS DANIELS: Yes that is correct Mr Chairman. He actually drew my attention.

ADV SELEKA SC: He actually?

MS DANIELS: He actually – he was seated there on the couch.

ADV SELEKA SC: Yes.

MS DANIELS: And he actually you know greeted me.

ADV SELEKA SC: Did he in fact tell you that he was coming to meet with Mr Koko?

MS DANIELS: Yes he did say that.

ADV SELEKA SC: Did he tell you the reason for coming to meet with Mr Koko?

MS DANIELS: No he did not mention why he was meeting Mr Koko Mr Chairman.

10 **ADV SELEKA SC:** Did you and him – you and him speak about anything in relation to Eskom?

MS DANIELS: No not at that meeting Mr – not at that encounter Mr Chairman it was not actually a meeting. I was walking past delivering documents.

CHAIRPERSON: One second. Can you attend to the noise of the air conditioner. Somebody will – must just attend to that. Okay alright. Please – just repeat your answer? Oh you want him to repeat the question?

MS DANIELS: My apologies Chairman.

20 **CHAIRPERSON:** Okay. He – Mr Seleka will repeat the question.

ADV SELEKA SC: You were saying it was actually an encounter not a meeting?

MS DANIELS: Yes he was – he was in the waiting area and I was walking past delivering documents to the various

executives and that is how the encounter happened. So it was not a very long conversation.

ADV SELEKA SC: Then you reference three other meetings or encounters which take place now in 2017 and the first of those is on page 1052. Again it is a meeting at Melrose Arch but here I am going through this because you have already testified about it. Here it is not a meeting with him as such is you being taken to Melrose Rose by Mr Koko on the explanation that you were in fact going to meet with the
10 Minister.

MS DANIELS: Yes that is correct Mr Chair.

ADV SELEKA SC: That is in paragraph 6 of your affidavit. You said

“Mr Koko had asked me to accompany him to a meeting with Minister Brown to discuss the independent power producers. Instead we ended up at the offices of Mr Essa in Melrose Arch. At this stage the offices had moved. I did not [00:24:14] it was in the same building
20 as Glencore. I would later come to establish that those offices were the actual home of the Trillian Group Companies.”

You see that?

MS DANIELS: Yes I see that.

ADV SELEKA SC: Mr Koko has dealt with the allegation

pertaining to your or rather let me say your version pertaining to the meeting of 10 March 2015 and we have traversed that as well in your last appearance and according to him he had called you to come to Melrose Arch in order for him to obtain advice from you as a legal advisor he refers to you on what he says was his – a threat as communicated to him Mr Matona. A threat made by Mr Tsotsi that unless he reverses the suspension of Mr Sikasimbi Mr Tsotsi was going to suspend him and Mr Matona. Could you give the
10 Chairperson your response to that?

MS DANIELS: Mr Chair at no stage on the 10 March 2015 did Mr Koko ever mention the matter of Mr Matona in the context of a threat from Mr Tsotsi. The only conversation that I had was in his presence when Mr Essa told me that Mr Matona would be one of the four executives suspended.

ADV SELEKA SC: Ms Koko agrees that he met with you on the 10 March. He agrees that he met with you at Melrose Arch but he disagrees with you on the purpose of the meeting. And he disagrees with you on meeting with Mr
20 Salim Essa. So are you hundred percent sure that the purpose of the meeting and the people present at the meeting according to your version are correct?

MS DANIELS: I am hundred percent sure Mr Chairman that the purpose of the meeting was as I had testified earlier.

ADV SELEKA SC: Were you aware that in – back during the

inquiry by the Parliamentary Portfolio Committee of the testimony of Mr Abraham Masongo?

MS DANIELS: Yes I listened to Mr Masongo's testimony when he testified in Parliament Mr Chair.

ADV SELEKA SC: Are you aware that he also testified in regard to him attending at Melrose Arch?

MS DANIELS: Yes he had a similar experience if I recall Mr Chair.

ADV SELEKA SC: So Mr Koko will have to deal with that as
10 well.

MS DANIELS: Yes he would.

ADV SELEKA SC: Are you aware here before this commission of the testimony of Ms Nonkululeko Velele or Dlamini?

MS DANIELS: Yes I listened to her testimony as well Mr Chair.

ADV SELEKA SC: And what is your comment in regard to her testimony relevant to what we are talking about here?

MS DANIELS: I was quite I think pleased would be an
20 appropriate description to say that she could at least validate what I had said all those years ago and that you know it is true. I do not know about the second part of her testimony in terms of the – the way she talked about the successors but it certainly sounded as when Mr Koko phoned her to invite her to Melrose Arch the same as what had

happened to me. Mr Chair.

ADV SELEKA SC: Okay we do not have Mr Koko's version in regard to your meeting in general – on the third occasion shall I refer to it because you do not actually have a date. It says during 2017 where he takes you to Melrose Arch and you are outside the boardroom, he is inside the boardroom according to you with Mr Essa. They talk and talk for some time and thereafter they come out. Mr Essa then speaks to you about telling Mr Koko to stay off Twitter and you say that
10 will be an exercise in futility. That is in paragraph 7 of your affidavit.

MS DANIELS: That is correct Mr Chair.

ADV SELEKA SC: You also relayed that while you were waiting a gentleman walked by and introduced himself to you as Eric Wood. That is in paragraph 7.

MS DANIELS: Yes, that is correct Mr Chairman.

ADV SELEKA SC: Now who is Mr Eric Wood?

MS DANIELS: He was Mr Essa's partner in Trunnion. I am just not sure of the whole structure but he was one of the
20 partners in Trunnion.

ADV SELEKA SC: Was that your first, what shall I call it, encounter, meeting with him?

MS DANIELS: Yes, this was my first encounter.

ADV SELEKA SC: Would you meet with him later on?

MS DANIELS: No, this was the only time that I actually

...[intervenes]

ADV SELEKA SC: This was the only time?

MS DANIELS: ...I actually met him.

ADV SELEKA SC: Because when we come to dealing with the transactions, we understand that Mr Eric Wood was in the mix.

MS DANIELS: Yes, your investigation team has shown me some of that information but this was the only time that I physically encountered Mr Wood, Mr Chairman.

10 **ADV SELEKA SC:** So you did not deal with him at the time when Eskom concluded... Well, I do not know what. Invoked the services of Trunnion.

MS DANIELS: No, I did not Mr Chairman.

ADV SELEKA SC: Then the third encounter, you referred to it, is on page 1053 and you say it is in June 2017. It has to do with ...[intervenes]

CHAIRPERSON: Why do you say third?

ADV SELEKA SC: The fourth. I beg your pardon Chair.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Thank you, Chair. The fourth. You say it is in June 2017 and it has to do with you meeting with Mr Essa against the backdrop of a meeting where board members were discussing whether or not to bring back Mr Koko from his suspension.

MS DANIELS: Yes, that is correct Mr Chair.

ADV SELEKA SC: Well, the focus at this stage is really your encounters with Mr Essa. And you did testify that he could repeat to you what you have said in the meeting. Was it the meeting of the board or the meeting of Audit and Risk?

MS DANIELS: This was a special meeting of the Audit and Risk Committee, Mr Chairman.

ADV SELEKA SC: And as I recall, the debate was about the report that had been produced by Nkonki and Cliff Dekker. Is that correct?

10 **MS DANIELS:** Yes, that is correct Mr Chairman.

ADV SELEKA SC: Whether that report in making findings of no wrongdoing against Mr Koko, you could on the strength of it return Mr Koko from his suspension.

MS DANIELS: Yes, that is correct. That was the discussion.

ADV SELEKA SC: And why were you opposed to do that?

MS DANIELS: Mr Chairman, I felt that the report did not sufficiently interrogate the evidence that was collected. On both parties, both the legal firm and the auditing firm. They
20 took statements from the various witnesses.

They did not really interrogate them to a degree that one would have expected. And my recommendation was that the board, not just accept it at face value but actually get a counsel's view on where the gaps were in the report.

ADV SELEKA SC: And did you obtain counsel's view?

MS DANIELS: Yes, I did. The board had a discussion and then I was instructed to obtain counsel's view and which I did.

ADV SELEKA SC: Chairperson, Ms Daniels has provided us with copies of that opinion yesterday which we will incorporate into the bundle in... I think it is a significant... I have perused the documentation Chairperson.

It is a significant opinion in that it gives a critique on the report that was given and the shortcomings in the investigations in that report and what needed to be done in order to further those investigations. It is written by... Sorry, it was a legal opinion by one of my colleagues.

CHAIRPERSON: Yes-no, that is fine.

ADV SELEKA SC: Ja, we will incorporate it in the bundle Chair.

CHAIRPERSON: Yes. Of course, you will apply your mind, if you have done so, to the question whether we need it for the purposes of the evidence.

ADV SELEKA SC: Indeed Chair.

20 **CHAIRPERSON:** In terms of the issues.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or whether it is enough that certain developments happened after.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair. Now Ms Daniels, then the focus, going back to the focus of this exercise, is that subsequent to that meeting, you meet with Mr Essa at the filling station across Megawatt Park. And he is talking to you about why you are opposed to Mr Koko coming back. And at some point he says: Name your price. You remember that?

MS DANIELS: Yes, I do recall that Mr Chair.

ADV SELEKA SC: And that is where on your previous occasion he said he could – offered an amount of
10 R 800 million.

CHAIRPERSON: That part was covered last time.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is there anything new that needs to be...

ADV SELEKA SC: Ja.

CHAIRPERSON: Let us not go over ...[intervenes]

ADV SELEKA SC: I am moving on Chair.

CHAIRPERSON: Let us not go over evidence that was covered.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Let us only look at new things.

ADV SELEKA SC: That is right Chair. Thank you, Chair.

CHAIRPERSON: So that we do not waste our time.

ADV SELEKA SC: Then the last occasion Ms Daniels is on page 1056 and that too you had related it where you are called to Melrose Arch and you meet with other persons

there including AJ Gupta and it is a talk about the case, the court case involving the pension pay-out of Mr Molefe.

MS DANIELS: Yes, that is correct Mr Chair.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Ja, that too was covered.

ADV SELEKA SC: That too was covered, Chair.

CHAIRPERSON: That was the last encounter with ...[intervenes]

ADV SELEKA SC: Correct, Chair.

10 **CHAIRPERSON**: ...if I am not mistaken that she had with Mr Essa and then she met them with other people, the Gupta people in some apartments. Is that right?

MS DANIELS: Yes, that is correct Mr Chair.

CHAIRPERSON: Ja, so not let us go over that unless there is something new that is important that was not mentioned before.

ADV SELEKA SC: Yes. Chair, that takes care of the meetings. Now Ms Daniels, in this affidavit of Mr Koko which is yet to form part of the bundle. There are a couple of
20 things he mentions there about you. One of them is emphasising that...

He draws something we have not seen before which is that, there was a - the minister when dealing with the issue of Mr Molefe's pension pay-out, the minister issues a media statement and you were recording him, he is on suspension,

to tell him that the minister is throwing is the board under the bus.

The minister is going, essentially, at loggerheads with the board and you wanted advice from him. And he mentions a couple of times you called. How many times you spent on the call which is remarkable.

And one thing leads to the other and he comes to this point where he says your relationship with the board had broken down. He says you tell him that. It is unclear
10 whether it is your relationship, in fact, with the minister or with the board.

But then he says, you come to his house, you had a meeting with him and you asked him to intervene. And he says to you: But I cannot because you say you had a good relationship with the minister, to him. Please intervene. He says he does not and he cannot intervene. You became upset. And you walked out of his house.

And he thinks that is the reason why you have joined a team of people that are on a hunt for Mr Koko. Your
20 response.

MS DANIELS: Mr Chairman, I really think that is a bit ludicrous and it is also, I mean to bring a personal relationship here before the Commission, which is not the mandate of the Commission to investigate. It is actually quite spurious.

There are a couple of issues in there. There was a breakdown between myself and the board which had really started late 2016. So you know, I have not given evidence of that just yet.

As Mr Seleka said, he only gave me the affidavit last night because he got it late. But there was a breakdown in the relationship within the board and there were incidences of what, you know, victimisations in relation to my relationship with the board

10 When Mr Koko became Chief Executive Officer, the relationship also between ourselves, myself and him started deteriorating because he would say more on the basis of: I cannot have a Chief Legal Officer who is constantly at odds with me. And that was the beginning. Not in 2017.

You know, in June 2017, it was already beyond repair because I had already... You know, I had formed a view of what he was. So those paragraphs in there I would, you know, deny.

20 There were issues in terms of the pension matter and how the minister dealt with it but he is conflating some many issues that it is really, you know, it – I would take guidance from the Commission as to what I would need to answer in terms of that.

But from a high-level issue, it was about the breakdown in the relationship with the board, from my perspective,

started there.

It actually – at that point in June 2017, it had nothing to do with Mr Koko. It was actually the board and myself at loggerheads.

ADV SELEKA SC: Yes. But can I make this point which is what I think Mr Koko is trying to make, that you approached him to ask him to intervene in mending the relationship. When he said to you he could not do it, you became upset and as a result of that, you have gone on a bandwagon to
10 say things that are not true about him.

MS DANIELS: Well, that is a complete fabrication. There was only one occasion that I have been at his premises and it would certainly not have been in the evening.

He had called myself and Mr Kolane(?) Koma(?) who was the board's spokesperson at the time to his house to deal with negative press reports on the Impulse(?) matter.

And that is the only time I had been at his house. And I did not ask him to intervene in any relationship with the minister or the board.

20 **ADV SELEKA SC:** Now Mr Koko goes on to say that in regards to you saying you think your telephone had been bugged after the meeting at Melrose Arch. That firstly, he does not have the capabilities to bug phones and secondly, why did you not report the matter so that it can be dealt with to the authorities?

MS DANIELS: Well, Mr Chairman the first instance was that he was very specific about who I had spoken to. He mentioned people by name and it was for that reason that I suspected that he had, you know, either bugged my phone or listened in.

How he had those capabilities, I am not sure of. What I did do is that all the criminal acts that occurred, I had reported to the relevant law enforcement authorities and because it was not only the bugging.

10 I started having harassment on the road. I was later threatened. I received death threats. My daughter was threatened. I had attempted break-ins at home during this period 2015 to 2017.

In the run-up to my testimony in parliament, subsequent to that and even after my last testimony here at the Commission, I have also had anonymous threats.

Now these were all phone calls and you know those kind of things and I have been followed. So when I reported to the police, they consolidated all of these incidences.

20 So contrary to Mr Koko's assertion that I have done nothing about it. I have reported them to the relevant law enforcement authorities at the relevant times.

ADV SELEKA SC: Well, page 1059 of your supplementary affidavit in paragraph 31 you refer to acts of harassment, intimidation and threats. Various incidences which you

consolidated to the police and you give the case number.

MS DANIELS: Yes.

ADV SELEKA SC: Would that be the acts you are referring to?

MS DANIELS: Yes, that is correct.

ADV SELEKA SC: Or incidences you are referring to.

MS DANIELS: Yes, that is correct Mr Chairman.

ADV SELEKA SC: What has become of that case, do you know?

10 **MS DANIELS**: At the moment, I think it is still open Mr Chairman because of the anonymous threats and... So I am not sure as to how far the law enforcement authorities can take that. The police do check up regularly.

ADV SELEKA SC: Then Mr Koko has raised to another issue which relates to the Dentons report. Remember the Dentons report which is said to have been destroyed. On your version, you were saying that it implicated Mr Koko. And he is asking but why do you not produce that report. What is your response to him.

20 **MS DANIELS**: As I said to you, those reports, I do not have it anymore. It was taken. I had – I think I had a copy on my Eskom computer but that also was removed. And then as I testified the last Mr Chairman, the board had instructed that the copies be destroyed. So I really do not have any record of that at this point in time.

ADV SELEKA SC: Now we did receive copies of various versions of this report from Dentons which we have provided you with to compare and determine the position in regard to the allegations that are in one or the other affidavit. Can you tell the Chairperson what is your assessment of this report, these various versions after you have looked at them?

MS DANIELS: Mr Chair, I had the opportunity to look at them but they do not go into the detail that I remember from
10 seeing in that first report. So I, you know, even though in the version 1 there are more references to Mr Koko than in the later versions, it is still not the report that I testified to in my previous occasion here.

ADV SELEKA SC: Then there were two... I am moving on Chairperson. There were two aspects which arose in your testimony last time. One of them was when you told the Chairperson that according to you the board did not contemplate that the suspended executives would come back. They did not want the executives to come back.

20 And the Chairperson asked you what was your basis for saying that. You deal with that on page 1060 from paragraphs 36 to 42. Briefly, could you explain to the Chairperson your basis for that conclusion?

MS DANIELS: Mr Chair, my rational for that was that in the meeting of the 23rd of April 2015, while I referenced I did – I

looked at my original affidavit. I did reference it there in paragraph 53 but I did not go into the, you know, as you asked the question on what basis did you do that.

So the basis for me saying that was that firstly, when the board was discussing Mr Matona and his CCMA matter, they were already looking at his reassignment, a possible reassignment for him in government and that it was something that the minister needed to consider.

So this was in April 2015 and Mr Matona had already
10 gone to the CCMA and yet they were discussing his reassignment.

And it was also here that the board emphasised that while they were conducting this inquiry, it was actually independent of the outcomes for these executives. And these are in – I have also attached my notes. I did hand it in. I do apologise that I – I think I had... Oh, no it is here. Sorry, Mr Chair. It is on 1065. And on 1066 I have set it out.

They said while the inquiry does not come to an end, the outcomes relating to the executives are independent of what
20 happened in that inquiry. So for me, they were already talking about – they were contemplating and they actually mention the resignation of these executives, you know, to avoid charges.

So it was a very conversation but the contemplation was there, in my mind, at this early stage. My understanding,

because I was sitting in the meeting that this in the contemplation of the board.

CHAIRPERSON: Well, what would have been important is to see whether there is any basis for thinking that at the time of the suspension of the executives or before the suspension or soon thereafter, immediately after that – there is any basis for saying the board did not at that stage contemplate the return of the executives.

From what you – is written here in your affidavit, it looks
10 like the earliest point, the earliest date in respect of which you have something to put up in support of saying the board did not contemplate the return of the executives, is something that happened on the 23rd of April. That is more than a month after the suspensions, is it not?

MS DANIELS: Yes, but also, this was the first board meeting with the new chairman, the new interim chairman and the – this was the first formal meeting that they had, that I was privy to.

CHAIRPERSON: H'm.

20 **MS DANIELS:** So that is why in – when you asked me in – you asked me about my opinion.

CHAIRPERSON: Ja.

MS DANIELS: So this was the first time that I was exposed to that collective board.

CHAIRPERSON: Ja. No, I am not saying that something

that they may have said on the 23rd of April or subsequently, might not necessarily reflect that maybe even before the suspension they did not contemplate the return of the executives.

MS DANIELS: Yes.

CHAIRPERSON: I am also not saying that prior to the conclusion of settlement agreements with the three executives, I am not saying that any – there is nothing that they may have said at meetings between the date of
10 suspension and the date of the settlement agreements, which may indicate that, at least as at those dates, they did not contemplate that the executives would come back.

I am just saying that is something that would have happened either before the suspensions or on the day of suspensions or soon thereafter, may have been also maybe more helpful.

MS DANIELS: H'm.

CHAIRPERSON: Ja.

MS DANIELS: Okay.

20 **ADV SELEKA SC**: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Indeed so because... Ms Daniels talking of Mr Abram Masango's testimony, especially at the Parliamentary Portfolio Committee, and he will come before this Commission. He says that Mr Koko told him already on

the 10th of March that four executives will be suspended but he, Mr Koko, will return but the others will not return. So you understand what the Chairperson is saying.

MS DANIELS: Yes.

ADV SELEKA SC: Yes.

MS DANIELS: Ja.

ADV SELEKA SC: But you are saying, you only picked it up at this stage.

MS DANIELS: Well, as I testified earlier, it was suggested
10 by Mr Essa but in terms of the board... You know, you asked me why I was so emphatic in terms of the board saying that, because this was my experience that they – this was already in discussion at the 23rd of April.

And as you say, they may have been talking about it beforehand but this was the first time that I was exposed to this is what they are going to do. And it really did not look like they wanted the executives back.

ADV SELEKA SC: Chairperson, the minutes of that meeting are in the Reference Bundle, page 250. I think...

20 **CHAIRPERSON:** Do we need to go there?

ADV SELEKA SC: We could go and look at them in due course.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: And I see that Ms Daniels in your affidavit, page 1061, paragraph 40 you refer to the meeting

of the 19th of May 2015 which you relate in your main affidavit and you say it reinforces what you are saying.

Now that meeting, quickly, is a meeting where you say the delegation these three or are mandated to enter into exit negotiations. They met... Chairperson, it is important, to what comes to my mind now. The meeting of April ...[intervenes]

CHAIRPERSON: 23 April?

ADV SELEKA SC: 23 April.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: It comes after the executives have written letters to the board, at least three executives.

CHAIRPERSON: Yes.

ADV SELEKA SC: Towards... I think the 18th – the 17th/18th of March. And they say we want to come back.

CHAIRPERSON: Ja.

ADV SELEKA SC: Or they are enquiring about the terms of reference and so on and so forth.

CHAIRPERSON: H'm, h'm.

20 **ADV SELEKA SC:** On the 19th of March, the board meets and there is a note. They are looking at – they look at the letters of the executives and they say to the company secretary, please respond to these letters.

And you would see that some of the board member have said to you: Well, we did not – we were not even aware of

those letters. But we have drawn their attention to those minutes of the 19th of March.

The exit negotiations take place only in May as testified by Ms Daniels, the 4th of May, the 11th of May. This is after April. So before the exit negotiations, there is the 23rd April where the board appoints a delegation to conclude exit negotiations.

CHAIRPERSON: When does that happen?

ADV SELEKA SC: In the meeting of the 23 April.

10 **CHAIRPERSON:** Oh, okay.

ADV SELEKA SC: Before some of the executives who are exasperated by the board tell the board there is no point in me coming back, I want to go. But remember, is during those – in May – only in May that takes place. So I thought I should mention that, that aspect.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: It is significant. Because in the meeting then of the 19th comes what you were saying, Ms Daniels, in your affidavit, the delegation meets and you say
20 Ms Klein said let us clear the decks. You say it in paragraph 73 of your main affidavit.

MS DANIELS: Yes.

ADV SELEKA SC: Clear the decks, get rid of the executives. But Ms Klein was here and she denies that meeting, that the meeting took place.

MS DANIELS: Mr Chairman, I have also provided my handwritten notes of that meeting to the Commission where I took down. That meeting did take place, the people were present and this is the conversation as I recorded it.

ADV SELEKA SC: However, I should add that she did admit to the Chairperson that they mandated you to write a brief, a briefing note to the minister.

MS DANIELS: Yes but that happened on the 19 May at that meeting and you will see it in my notes as well
10 because I think I wrote as SD to write a brief DPE Min in my notes.

ADV SELEKA SC: Sorry, I cannot hear?

MS DANIELS: My apologies. I think I recorded that action but on the 19 May that I needed to prepare the brief for the minister.

ADV SELEKA SC: Lastly, Ms Daniels, another point arose in your previous testimony about a board member who stated that this was a Gupta board, I will not go down alone. You deal with that in page 1061 of your
20 supplementary affidavit from paragraph 43. If you could please briefly explain to the Chairperson the context in which this statement was made and who made the statement.

MS DANIELS: Mr Chairman, this was an in-committee meeting of the board and either or during about May 2016

it is confirmed by minutes that it actually happened on the 31 May 2016. In this meeting Dr Ngubane brought to the attention of the other board members that he had been approached by Ms Carrim, one of the non-executive directors, who had been apparently victimised by the banks due to her relationship with the Gupta associate, Mr Essa. At that time it was known that her husband was the cousin of Mr Essa, I think.

In the meeting Ms Carrim then explained to the
 10 other board members how she had been in no uncertain terms told by Nedbank that she – that they would not take her accounts because of this association. They had been in the process of transferring accounts and it had affected her business and personal affairs quite detrimentally because they were financing – I had the opportunity to listen to the recording provided by the Commission and it also talked about he was in the process of purchasing house, which I had forgotten. So it had affected her financial affairs quite dramatically. In this conversation
 20 the other board members then also explained how they had been exposed to delays, banks doing audits, etcetera.

In that meeting then Dr Ngubane called Minister Brown and she came onto the line, she listened to the complaints, for want of a better word, of the board members and she said she was not actually sure, you

know, how she would be able to deal with it but that she would take advice, she would actually speak to the President about the matter and that she would come back to the board.

At the same time I was instructed to get a legal opinion on the effects - you know, you know, how – being an Eskom board – the board felt that being an Eskom board member was what was actually causing the problem with the banks, as a board member of the SOC.

10 **ADV SELEKA SC:** May I intervene there, Ms Daniels? Chairperson, the minutes of this meeting which we have obtained, 31 May 2016, and we will incorporate them in the reference bundle, paragraph 5 of the minutes, it is headed:

“Discussion on challenges in respect of media perceptions relating to board meetings.”

And it is three paragraphs talking about:

“Members raising several concerns relating to unreasonable...”

What they say it is unreasonable and unfair behaviour
20 towards them as a result of recent media reports. The minutes do not reflect the details of what you hear in the recording. I think the recording is important and that is what Ms Daniels is talking about and that is where you hear them talk about the challenges the banks are giving them. They do not – they say they are connected with the

Guptas and Mr Essa and there is suspicion of money laundering on their part. But then, Ms Daniels, who makes the statement that you have said was made, a board member?

MS DANIELS: Okay. This was – like I say in my affidavit, this was from Ms Carrim.

ADV SELEKA SC: Is that Ms Nazia Carrim?

MS DANIELS: Nazia Carrim, yes.

ADV SELEKA SC: And what does she say?

10 **MS DANIELS:** She called me and she said if these people thought I was going down alone, they had another thing coming, we all know that this is a Gupta board.

ADV SELEKA SC: Do you – ja, the last issue you dealt with on your last appearance, I will not go into it. I think that is the last issue I have dealt with. There is another issue arising from Mr Zethembe Khoza's affidavit that you authored the pre-suspension letters of the executives but those letters were not used. He does not know how he received them, he thinks he received from Mr Tsotsi. How
20 and when he does not know but he says that when you look at the metadata the letters were authored by you and last modified by Mr Essa. Your response quickly?

MS DANIELS: Mr Chairman, I did not participate drafting of the pre-suspension letters at all. As I have said in my original affidavit, I had prepared a template and it would

have in all probability had my name as the author on there, that could have been used. Insofar as I compared what Mr Khoza was attached to his affidavit and what was attached to Mrs Klein's affidavit because they both make similar allegations, the metadata has been - is quite different.

Thirdly, I did not have any proximity to Mr Khoza or Mr Tsotsi at the time so I would not know how they would get my documentation and also from the evidence that was led here, Mr Linnell testified that he had drafted the
 10 suspension letters. So it was really my contention that, you know, I do not think these letters are authentic, I think that, as I have learnt, that you can manipulate the metadata and you can change the authors, etcetera. I really do not think that they are authentic.

ADV SELEKA SC: Ja. When you say you would have prepared the template, is it – what are you saying to the Chairperson? Is this a template that Eskom would have created in order to draw on as and when they want to issue a pre-suspension letter or is it a template that you
 20 prepared or had prepared specifically for this occasion, the suspension of the four executives?

MS DANIELS: No, there was a general template that you could create for an Eskom letterhead and as I was essentially an administrative officer in the office of the Group Executive at the time, I would have created certain

templates and that is the only way that I could that my name would be the author because when you save it as a template, you will remain the author of that template.

ADV SELEKA SC: Would Mr Koko or Mr Salim Essa have asked you to help them draft the pre-suspension letters?

MS DANIELS: Of the executives?

ADV SELEKA SC: Of the four executives, yes.

MS DANIELS: Okay. No, Mr Essa did not ask me that because I had only met him on that day. If you look at the
10 metadata of the documentation it is dated the 10 March, Mr Chairman. So, you know, I find that improbable. What is probable is that he probably could have gotten that template from Mr Koko because I was in his office and he would have had access to those documents but it would have been a template, not – you know, not related to those four executives.

ADV SELEKA SC: Chair, that concludes my questions for Ms Daniels.

CHAIRPERSON: Thank you very much, Ms Daniels, for
20 coming to complete your evidence. Should anything arise we will ask you to come back again but thank you very much.

MS DANIELS: Thank you.

CHAIRPERSON: You are now excused.

ADV SELEKA SC: May I point out, Chair, that Ms Daniels

has to come back in regard to the transactions.

CHAIRPERSON: Yes, no that is fine. That is fine. Okay, then I will adjourn and then the Denel-related evidence will resume, so we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, please administer the oath affirmation.

REGISTRAR: Please state your full names for the record?

10 **PIETER JOHANNES VAN DER MERWE:** Pieter Johannes van der Merwe.

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

MR VAN DER MERWE: No objections.

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

MR VAN DER MERWE: I do.

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

MR VAN DER MERWE: So help me God.

CHAIRPERSON: Mr van der Merwe, good evening to you, welcome. Thank you for availing yourself to give evidence before the Commission.

MR VAN DER MERWE: Thank you, Mr Chair, no problem.

CHAIRPERSON: No, I am saying it is problem that we have not experienced before.

ADV KENNEDY SC: Yes.

CHAIRPERSON: They say it is fine now. Okay.

MR VAN DER MERWE: Mr Chair, on my side it is loud and clear now, Mr Chair, with absolutely no echo.

CHAIRPERSON: The technicians seem to say it is okay now, we can continue.

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

CHAIRPERSON: Okay, alright.

ADV KENNEDY SC: Right, good evening, Mr van der Merwe, as I indicated to you informally earlier we are grateful that you have made yourself available late this evening, we had hoped to get to you earlier but we have obviously been busy with other witnesses, so thank you for assisting the Commission.

MR VAN DER MERWE: No problem, Mr Kennedy.

20 **ADV KENNEDY SC:** Is it correct that you have signed an initial affidavit at the request of the Commission which you have since updated and recently provided the Commission?

MR VAN DER MERWE: Correct, Mr Chair. I initially provided the Commission's investigators with a statement which was not Commissioned. I think that was the first statement that I provided was in November 2019. I was

subsequently requested to depose to an affidavit which I did incorporating two Rule 3.3 notices which I received. So yes, correct, Mr Kenney, but the first one was a statement, yes.

ADV KENNEDY SC: Right, thank you for the correction. Do you have a copy of your affidavit, the one that was done recently, in front of you?

MR VAN DER MERWE: I do, Chair.

ADV KENNEDY SC: And may I ask, are the pages
10 numbered similar to us? If we can look at the top of the page, there are numbers on the left hand side and the right hand side. Do you have that?

MR VAN DER MERWE: Correct. Correct, on the left hand side it is Denel 10.548 it starts and on the right hand side W7 with PJVDM01.

ADV KENNEDY SC: That corresponds with ours. We are not going to refer to the right hand side numbers, we are only going to refer to the left hand side and we are only going to refer to the last three digits in the case of the
20 page you have referred us to, to page 548. Okay?

MR VAN DER MERWE: Noted.

ADV KENNEDY SC: And just for the record, Chair, this appears as part of Denel bundle 10.

CHAIRPERSON: Yes, thank you.

ADV KENNEDY SC: Mr van der Merwe, may I ask you to

please look at page 574 to 5? In fact it is page 575.

MR VAN DER MERWE: Mr Chair, sorry, if I may and I am extremely sorry to interrupt. There are three issues that I picked up that I just maybe want to correct. It is not – it does not revolve around the merits but are merely typographical errors. May I correct them?

ADV KENNEDY SC: Yes, please do.

MR VAN DER MERWE: The 1.1 where I make reference in ...[intervenes]

10 **CHAIRPERSON:** Hang on one second, Mr van der Merwe, Mr Kennedy, are we on his affidavit that is at 548 or is it another affidavit?

MR VAN DER MERWE: Yes, page 548, Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: sorry, Mr van der Merwe, the question was directed to me by name. If you would not mind just considering very carefully how questions are put and to ensure that you are being asked a question before you answer particularly when it is done electronically via
20 virtual hearing, it is going to get a bit chaotic if we both speak at the same time. Thank you.

MR VAN DER MERWE: Noted, Chair.

ADV KENNEDY SC: Chair, the answer to the question is yes.

CHAIRPERSON: Okay.

ADV KENNEDY SC: It is at page 548.

CHAIRPERSON: Okay, thank you.

ADV KENNEDY SC: If I can take you, Mr van der Merwe, please to page 575?

MR VAN DER MERWE: Yes, Mr Chair, I am there.

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

MR VAN DER MERWE: Indeed.

ADV KENNEDY SC: And it appears from the next printed
10 section that the affidavit was signed on the 19 October 2020 and it is attested before a Commissioner of Oaths, is that right?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: So the affidavit from page 548 to 575, do you confirm that you have gone through its contents?

MR VAN DER MERWE: Indeed, Chair.

ADV KENNEDY SC: And do you confirm that the contents are as far as your knowledge goes true and correct in
20 every respect?

MR VAN DER MERWE: Indeed, Chair, there are just – Mr Chair, just two more points that I wanted to correct, if I may.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Yes.

MR VAN DER MERWE: On page 578.

ADV KENNEDY SC: 578?

MR VAN DER MERWE: Yes.

ADV KENNEDY SC: Yes? That is in one of the annexures, is it?

MR VAN DER MERWE: Apologies, paragraph – ag, page 572, apologies, Chair.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: Mr Chair, there is a lot, 14.23.
10 14.23, it is 571 where I refer to annexures F in paragraph 14.23.

ADV KENNEDY SC: Yes?

MR VAN DER MERWE: The second attachment has annexure F, indeed is indicated in the affidavit as annexure G. It is not a big issue but I just felt that it had to be correct.

ADV KENNEDY SC: Sorry, the letter in the affidavit as G, G does not appear in paragraph 14.23.

MR VAN DER MERWE: In ...[intervenies]

20 **ADV KENNEDY SC:** Are you saying that the second reference to annexure F should read annexure G?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: Okay. So you mentioned this was the second change. We interrupted you earlier when you were making the first change. Just go back, I think you

were saying – you were starting to say it was at page 548.

MR VAN DER MERWE: Mr Chair, where I make reference to paragraph D ...[intervenes]

ADV KENNEDY SC: Take us to the page number and then give us the paragraph number before you go into an explanation please?

MR VAN DER MERWE: Mr Chair, it is indeed on page 578, Mr Chair. This is an attachment.

ADV KENNEDY SC: Yes.

10 **MR VAN DER MERWE:** That was attached as P1 and in paragraph 28 of that attachment...

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: It makes reference the annexure D but if Chair has regard to the pagination of the papers it should in fact refer to annexure E. There is no annexure D. Do the reference to annexure D in paragraph 28 refers to annexure E.

ADV KENNEDY SC: E, right.

MR VAN DER MERWE: That is all, Chair.

20 **ADV KENNEDY SC:** Is that all? So there were only two changes?

MR VAN DER MERWE: Yes and in the first paragraph my reference to Cullinan(?) on in George.

ADV KENNEDY SC: In George, thank you.

MR VAN DER MERWE: Thank you, Chair.

CHAIRPERSON: Okay, a supplementary affidavit should be done if it has not been done already which should explain all the things that you have explained, Mr van der Merwe, and it can be slotted in after this affidavit so that anyone reading can come across the supplementary affidavit that will explain these things otherwise when one reads and starts looking for annexure F when they are supposed to look for annexure G it will be confusing.

ADV KENNEDY SC: Mr van der Merwe, were you able to
10 hear that request from the Chair.

MR VAN DER MERWE: Oh, ja, to just file a supplementary affidavit properly setting out these changes, if the Chair please.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Will you attend to that please and then send it to the legal team?

MR VAN DER MERWE: I will do so.

ADV KENNEDY SC: Thank you. Now, Chair, we ask formal leave from you to admit this affidavit in bundle 10
20 from page 548 including its annexures to be admitted as an exhibit of the Commission to be marked Denel EXHIBIT W7.

CHAIRPERSON: Well, I guess the Denel part should not be – we just stick to EXHIBIT W whatever.

ADV KENNEDY SC: W7 is the number, Chair.

CHAIRPERSON: Ja. So did you say 7?

ADV KENNEDY SC: 7, yes.

CHAIRPERSON: Oh, we did not have 7 before? Or was it ...[intervenes]

ADV KENNEDY SC: No, the – I am told no.

CHAIRPERSON: Oh, was it a different work stream? We do not have...?

ADV KENNEDY SC: We do not. I am sure that we do not, Chair.

10 **CHAIRPERSON:** Oh, okay. The affidavit of Mr Pieter Johannes van der Merwe starting at page 548 is admitted as EXHIBIT W7. Okay.

**AFFIDAVIT OF PIETER JOHANNES VAN DER MERWE
STARTING AT PAGE 548 HANDED IN AS EXHIBIT W7**

ADV KENNEDY SC: Thank you, Chair. Mr van der Merwe, I am going to go through some of the areas of particular interest to the Commission. The Chairperson obviously has the full affidavit and we will have an opportunity - he has had an opportunity already to read it
20 and he will have further opportunities later so you can be assured that all of your evidence is before the Commission now that it has been formally admitted as an exhibit. I am going to, with the Chairperson's leave, lead you on issues that should not be controversial and then I am going to deal by way of focus on just some of the aspects contained

in your affidavit, okay?

MR VAN DER MERWE: Thank you. Thank you, Mr Chair.

ADV KENNEDY SC: Alright, thank you. You are an attorney by profession, is that correct?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: You are now operating in George, correct?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: And you previously were the Chief
10 Executive Officer of VR Laser during a period that you referred to in your affidavit. We will come to the detail of that in a moment. Is that correct?

MR VAN DER MERWE: Indeed, correct so.

ADV KENNEDY SC: Right. You then deal on page 549 in paragraph 3 with the background to Van der Merwe and Associates and its operations. Now that I understand from your affidavit was a firm of attorneys that you and your brother Gert van der Merwe were involved in as partners, is that correct?

20 **MR VAN DER MERWE:** Not as partners, I was working for Van der Merwe and Associates, Chair.

ADV KENNEDY SC: You were working for your brother, I see.

MR VAN DER MERWE: Yes.

ADV KENNEDY SC: For the firm. And you refer in your

affidavit to suggestion by your brother around 2012 whether you would interested in working on a sole retainer basis for a group of companies called Oakbay Group, is that correct?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: Now you have referred earlier in your affidavit to the fact that the firm was involved – in fact in paragraph 3.4 prior to 2012, Gert had done a lot of work for a company West Dawn Investments and you explained
10 how that related to Oakbay and how in 2011, 3.5, around about 2011, Gert was asked by the CEO of JIC to assist because a shareholder in JIC was Oakbay Investments and they were looking for a litigation firm who could assist them, is that right?

MR VAN DER MERWE: Correct, someone who could vet contracts on a legal adviser basis, correct.

ADV KENNEDY SC: Right and two junior attorneys were allocated to the Oakbay Group but then it appears that they required additional services in the form of a more
20 experienced more senior attorney on a permanent basis.

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: And that is when Gert approached you to ask if you would be interested to fulfil that role.

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: Right and you took up the offer.

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: You took up that offer, is that correct?

MR VAN DER MERWE: Indeed, correct, Chair.

ADV KENNEDY SC: And so were you working fulltime then for the Oakbay Group?

MR VAN DER MERWE: Chair, still with Van der Merwe and Associates but I conducted work for the Oakbay Group solely, so I was not working for them, I was still and
10 attorney under Van der Merwe and Associates, Chair.

ADV KENNEDY SC: So when you refer at the foot of page 550:

“I decided to take up his offer and start assisting the Oakbay Group of companies on a permanent basis”

In other words you were assisting them as an attorney.

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: In your brother’s firm.

MR VAN DER MERWE: Correct, Chair.

20 **ADV KENNEDY SC:** Still in the firm and that was on a permanent basis. Do you mean permanent or indefinite basis?

MR VAN DER MERWE: Indefinite rather, Chair.

ADV KENNEDY SC: Right. Now you referred to a good relationship that you had, paragraph 3.10, with the

Oakbay's employees, management and the Gupta family. You deal elsewhere with your contact with the Gupta family but can you just explain to the Chair to what extent you had dealings with the Gupta family?

MR VAN DER MERWE: Mr Chair, I was sitting in Sandton and I visited meetings, I was in the office on a permanent basis as issues would arise at that stage. The group had about – well, at one stage it had about 4 000 employees, there were different companies. I interacted with the
10 shareholders, I interacted with the CEOs of these companies, so I did it quite frequently. I sat in in Exco meetings that was held with – or between the different CEOs. So on that basis I got to know the group and the family.

ADV KENNEDY SC: Now – so at that stage you were an attorney assigned to Oakbay as the client of the firm, correct?

MR VAN DER MERWE: Correct, correct, Chair.

ADV KENNEDY SC: Was your brother Gert also still doing
20 work for the Gupta family and their businesses?

MR VAN DER MERWE: Yes, he was, Chair.

ADV KENNEDY SC: Is he still acting as one of their attorneys?

MR VAN DER MERWE: I can comment, Chair, I do not know.

ADV KENNEDY SC: You do not know, okay.

MR VAN DER MERWE: I will be lying if I say, Chair.

ADV KENNEDY SC: No, I am not asking you to say anything that you do not have knowledge of, Mr van der Merwe, you can make that point immediately if you are asked, you do not something you must just say so, please.

MR VAN DER MERWE: Ja.

ADV KENNEDY SC: Then you deal in your affidavit from page 551 with your involvement around the end of 2013 in
10 advising on a sale of share agreement relating to VR Laser, correct?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: And at that stage you were still employed by the firm of attorney and you were advising on the sale of shares in VR Laser. How did that come about?

MR VAN DER MERWE: Mr Chair, I would get agreements – at that stage there were still other attorneys working with me so we would get contracts, all types of contracts, sale of shares agreements, creditor supplier agreements, debt
20 collection matters and this was one of the instructions to go through a sale of share agreement in VR Laser. At that stage I did not know and I was not involved in the negotiations. If I can remember correctly, I was provided with a draft sale of share agreement and I was requested to vet the agreement on the normal principles, go through

the agreement and advise that this clause might not be in your interest, that one might be. Like any normal other contract. So that is how it ended up on my table, Chair.

ADV KENNEDY SC: So this was a sale of shares in VR Laser. Had you been involved with or interacted with VR Laser prior to this?

MR VAN DER MERWE: No. No, Chair.

ADV KENNEDY SC: And who was going to buy the shares in VR Laser?

10 **MR VAN DER MERWE:** Mr Chair, if I can remember correctly it was a company called Elgasolve. I do not have the agreement and I – it is quite a while back but I think the first sales of shares was with Elgasolve and the seller was – I cannot remember the entity but it was bought from a Mr John van Reenen and Gary Bloxham.

ADV KENNEDY SC: Now if I could ask you to turn for a moment to page 555.

MR VAN DER MERWE: I am there, Chair.

ADV KENNEDY SC: Now you set out the shareholding at
20 the stage when you left VR Laser. The shareholding in VR Laser was 10% held by Aerohaven Trading, 25% in Craysure Investments and Elgasolve was holding at that stage 65%. Was that the shareholding at the time that they acquired it or did it change after they acquired it?

MR VAN DER MERWE: No, Chair, it changed afterwards.

I unfortunately cannot say exactly when. What I can state is I think with almost certainty that Elgasolve was the first buyer, this was Mr Salim Essa and then I remembered that another shareholder, a Mr Benny Jiyane, also had shareholding. He did not sell his shares with Mr Gary Bloxham and Mr John van Reenen. Those shares from Mr Jiyane I know was later acquired and if I can remember correctly, Craysure and/or Aerohaven might have bought those shares at a later stage, Chair.

10 **ADV KENNEDY SC:** Right. So the shareholding in fact in paragraph 5.2 you say:

“I cannot remember exactly what the shareholding of the purchase company was when the acquisition was done initially.”

But you can state that when you left VR Laser the shareholding was as follows and that is the shareholding I read out, is that correct?

MR VAN DER MERWE: Correct, Chair, that was when I left.

20 **ADV KENNEDY SC:** And then you refer in 5.3 to the shareholders in Elgasolve and the majority shareholding, 80% was held by Mr Salim Essa. Correct?

MR VAN DER MERWE: Indeed correct, Chair.

ADV KENNEDY SC: Did you know Mr Salim Essa at this time that you were advising on a purchase of the shares in

VR Laser?

MR VAN DER MERWE: Mr Chair, I knew him, not well, but I knew him.

ADV KENNEDY SC: And how did you know him? Was that because he was a business associate of the Guptas?

MR VAN DER MERWE: Yes.

ADV KENNEDY SC: And so he held 80% in Elgasolve and Elgasolve in turn, at least by the time you left VR Laser, held 65% in VR Laser, correct?

10 **MR VAN DER MERWE:** Correct.

ADV KENNEDY SC: Right. And then you set out some details of other shareholding in Craysure, etcetera. The Chairperson will be able to read that in due course. Now was the agreement for the sale of the shares from the previous shareholders to the new shareholders that you were advising, did that in fact – was that agreement concluded?

MR VAN DER MERWE: Correct, it was concluded. The agreement was drafted by a firm I think in Sandton. I think
20 it was a company called DNO attorneys and if I can remember correctly it was a Mr Smuts, he was the attorney of record for the sellers, Mr John van Reenen, Mr Gary Bloxham.

ADV KENNEDY SC: Okay.

MR VAN DER MERWE: So the sale was concluded.

ADV KENNEDY SC: Alright, now if you go back to page 551, you refer to that in 3.11, particularly the involvement of the previous owners, the sellers, Gary Bloxham and John van Reenen and you refer there, third line of paragraph 3.11, to this. You say:

“I know Messrs Salim Essa and Iqbal Sharma were involved as the purchasers.”

Now presumably you mean the ultimate beneficiaries through their companies such as Elgasolve, is that right?

10 **MR VAN DER MERWE:** Correct, Chair.

ADV KENNEDY SC: Mr Iqbal Sharma, who was he?

MR VAN DER MERWE: Mr Chair, I did not know Mr Iqbal Sharma, I had not met him before. At the first meeting in – and why I say that he was involved, at the first meeting where I met the lawyer who drafted the agreement and the sellers, Mr Iqbal Sharma was also present. So – and, like I say, I was not involved in the negotiations so I cannot give details on the negotiations but that is why I say Mr Iqbal Sharma was involved.

20 **ADV KENNEDY SC:** Right. Now on page 552 you refer in paragraph 3.16 to a situation in 2014 when you got more involved in the daily operations of the companies within the Oakbay Group. You came to know the operations of the different companies, specifically VR Laser during the latter part of 2014. Did you understand that the VR Laser Group

now had been purchased by Mr Essa and Mr Sharma, admittedly through intervening companies, really formed part of the Oakbay Group?

MR VAN DER MERWE: Sorry, how did I understand that, Chair, Mr Commissioner?

ADV KENNEDY SC: No, no, I – did you understand, was the VR Laser Group now part of the Oakbay – sorry, was VR Laser company now part of the Oakbay Group?

MR VAN DER MERWE: That is how I understood it, Chair,
10 yes.

ADV KENNEDY SC: Right. And you indicated that there were problems with staff motivation at VR Laser and that it was not profitable at the time and then you say you cannot remember how it came about, whether I had a discussion with Mr Kamal Singhala, an erstwhile director of VR Laser or whether I had a discussion with the then management of the Oakbay Group about VR Laser. How did Mr Kamal Singhala fit in? He is a member of the Gupta family, is that right?

20 **MR VAN DER MERWE:** Correct, Chair.

ADV KENNEDY SC: Is he in fact a son of one of the three Gupta brothers?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: Right. And so were you dealing with him in relation to VR Laser at all?

MR VAN DER MERWE: Chair, at the latter part of 2000 and – if I can just maybe explain how I came to know about VR Laser and the business dealings in VR Laser.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: Like I explained previously, I sat in in Exco meetings. So normally where these meetings would consist of these different CEOs and management staff of the different companies and then in these meetings every single company should do his projections, should
10 give a report to the Chairman, how is the company doing, what are the challenges, new business and VR Laser was also discussed in some of these meetings. I cannot remember exactly when in 2014 but most definitely in the latter part of 2014. So that is how I became to know or know about VR Laser and the business dealings.

Now Mr Kamal Singhala, when I was given the opportunity to move to VR Laser, Mr Kamal Singhala was also present at VR Laser at that stage.

ADV KENNEDY SC: Right. So was he on the board of VR
20 Laser when you then became involved in VR Laser's management?

MR VAN DER MERWE: Chair, yes, I cannot specifically remember when he became a director but he became involved with me.

ADV KENNEDY SC: Okay, thank you.

MR VAN DER MERWE: But he was most definitely for the most of my tenure there, he was a director until he resigned somewhere – I do not know the date, Chair.

ADV KENNEDY SC: And who were the other directors of VR Laser during your time working at VR Laser itself?

MR VAN DER MERWE: Mr Chair, it was Mr Salim Essa.

ADV KENNEDY SC: Yes?

MR VAN DER MERWE: And a lady by the name of Yugeshni Govender.

10 **ADV KENNEDY SC:** Right?

MR VAN DER MERWE: At one stage there was also a person by the name of Mr Ian McNeal, but he was only a short stint there as director, I don't know when he resigned, but mostly those Mr Geoff.

ADV KENNEDY SC: There has been a suggestion in some documents that Mr Duduzane Zuma may have also been a director of VR Laser, is that correct?

MR VAN DER MERWE: No, not according to my knowledge, never Chair.

20 **ADV KENNEDY SC:** Right. Now tell us how you became involved in VR Laser? As I understand your evidence a moment ago, and also your affidavit having been an attorney assigned to advising the Oak Bay Group, which included the VR Laser you then became involved in the actual day to day management of VR Laser, is that correct?

MR VAN DER MERWE: Correct Chair, in short.

ADV KENNEDY SC: Not as its attorney, you were now an operational person.

MR VAN DER MERWE: No, no Chair what happened was I was like I said I can't remember exactly how it came about, whether it was during an Exco meeting but it was apparent even from Exco meetings that VR Laser had difficulty and I say with respect, under Mr JP Aurora. I do not know details but VR Laser was not performing, they were running
10 at a loss and when the opportunity came to me I said well I do not know what I would do different, I do not know the company by a bar of soap, so my suggestion at that stage was that before I take up the opportunity I would first need to ensure that I would be able to turn VR Laser around, first of all and whether that was a challenge for me, whether I wanted to do that because that would mean that I would move from being a practicing attorney, remove myself from the roll as practicing attorneys and become a businessman for what it is worth, so in the later part of
20 2014, I can't remember when exactly Chair, I visited VR Laser and Mr J P Aurora was still there. I don't know whether he knew about the offer that I had, I guess it was uncomfortable for them to divulge to him that I might take his place, so I was only there as an observer, and I could see if I may continue, how it came about that I took up the

offer. It was a tremendous company, it was – the company was it was situated in Boksburg, it was about – the company had about 25 000 square metres under crane, which means inside, indoors under cranes and the things that they did there was just absolutely amazing. It attracted me from the day I stepped into the factory with what they manufactured, armoured vehicles, different steel products, and I could also gather that their biggest issue according to me was staff morale.

10 At that stage, and again I say it with the utmost of respect, Mr J P Aurora has passed away, but the staff morale was extremely low, and I saw a great opportunity and so I decided to take up, I obviously discussed it first with my wife, I said it is a big decision for me whether to leave the law and go into this business, managing a business which I do not know.

ADV KENNEDY SC: Mr van der Merwe ...[intervenes]

MR VAN DER MERWE: ...[Indistinct]

ADV KENNEDY SC: Can you hear me Mr van der Merwe?

20 **MR VAN DER MERWE:** I can hear you Chair. I can hear you sir.

ADV KENNEDY SC: May I just ask respectfully that you try and not go into too much details about things like consulting your wife and so forth, I think can you just confirm you went initially as an observer to see whether –

what was involved and whether you felt you were suited to the job and whether it would be an interesting challenge, but the end point for that process is that you actually were persuaded to take up an appointment, is that correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: That was a full time appointment as Chief Executive Officer of VR Laser?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And you say in paragraph 3.19 that
10 that took effect in January 2015, is that right?

MR VAN DER MERWE: Yes, correct Chair.

ADV KENNEDY SC: Alright, now you then moved to deal here and in greater detail later with a contract which was between either already in existence or to come into existence between VR Laser and Denel, is that right, to do with steel platform hulls?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And that related to the Hoefyster Project.

20 **MR VAN DER MERWE:** Correct Chair.

ADV KENNEDY SC: And was the contract already concluded by the time you started as the full time CEO?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Right, can I take you now to page 558, because that's where you deal with this contract in

some detail.

MR VAN DER MERWE: Mr Chair if I may just elaborate on that and I won't take up time unnecessarily.

CHAIRPERSON: Yes.

MR VAN DER MERWE: I was involved and I sat in, in the later part of 2014 I – when the Hoefyster agreement was negotiated in the final stages I sat in with Mr Aurora and Bennie Diyane and Mr Pieter Gredelinghuys with Denel, in negotiating the agreement, so I just want to make it clear
10 that it is not when I started in 2015 that I had – that I didn't know anything about the Hoefyster agreement.

CHAIRPERSON: Okay, okay.

ADV KENNEDY SC: Right thank you. Can I take you then to page 558.

MR VAN DER MERWE: I am there Chair.

ADV KENNEDY SC: And then you say in paragraph 7.1:

“I got involved in VR Laser informally during the latter part of 2014. If I remember correctly the tender was already awarded to VR Laser.”

20 If I may just stop, the evidence has indicated that it was not a full public open tender. What had actually happened was that Denel had decided to invite bids from three suppliers that it identified as being potentially suitable. Are you aware of that?

MR VAN DER MERWE: No Chair I had no details when it

was submitted, what the details I obviously became aware of the details afterwards but at that stage not at all Chair.

ADV KENNEDY SC: Yes, but are you aware of that now?

MR VAN DER MERWE: Yes Chair.

ADV KENNEDY SC: Yes. Now you then say in paragraph 72 you did not have any meetings with Denel or any official before the contract was awarded and so your involvement in relation to this contract was very limited, is that right?

MR VAN DER MERWE: Correct Chair.

10 **ADV KENNEDY SC:** Yes, and you say at the foot of the page you didn't know any person at Denel before you started as CEO at VR Laser?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Now Mr van der Merwe you refer at the top of page 559 to your inability to remember the exact figures and we fully understand that, given the passage of time, and also the fact that you are not currently working for VR Laser and you don't have access to all the documents as you have explained elsewhere, in your
20 affidavit.

Are you aware that the total value of the bid that VR Laser submitted was of the order of R260million?

MR VAN DER MERWE: I was not – from the top of my head I cannot recall the exact amount Chair I cannot recall it.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: And I don't know.

ADV KENNEDY SC: I deliberately asked you in fairly rough terms, I said around R260million, I am not going to ask you for any exact figures, so you don't have to worry about that, do you at least know what the ballpark is and do you know whether it was roughly in the order of 260million or can't you remember?

MR VAN DER MERWE: Mr Chair sorry, the first tender
10 that was submitted, the agreement that was signed or the order that was placed?

ADV KENNEDY SC: The bid that was submitted was initially R260million approximately are you aware of that?

MR VAN DER MERWE: No, I was not – I am not aware of that initial figure Chair.

ADV KENNEDY SC: And are you aware that what was eventually agreed after negotiation, which you may not have been involved in, but have you had knowledge that that was then reduced to about R195million?

20 **MR VAN DER MERWE:** Chair I know it was reduced, the exactly figure I don't know, but I know it was reduced.

ADV KENNEDY SC: Were you involved at all in that, in the negotiation process that resulted in the reduction?

MR VAN DER MERWE: Yes chair at the meeting where the agreement was negotiated there was a quibble about

the price.

ADV KENNEDY SC: There was a quibble did you say?

MR VAN DER MERWE: Yes, on the one hand Denel said but can't you give us a better price, on the other hand Mr Aurora said no they cannot, the price is what is what it is, so – for me it looked as if it was normal commercial negotiations, so there was for instance I can remember discussions around prepayments if I am not mistaken, but why I am mentioning this is I know that the price was
10 reduced.

ADV KENNEDY SC: Yes. Are you able to recall any further detail to assist the Chair to understand why there was such a reduction? You can't remember exactly what it was reduced to?

MR VAN DER MERWE: No Chair unfortunately I cannot.

ADV KENNEDY SC: It was a major reduction, are you at least aware of that?

MR VAN DER MERWE: Chair I was not aware of any tenders, I cannot say.

20 **ADV KENNEDY SC:** Right, now you refer later on page 559 to problems having arisen in relation to the implementation of the contract that was eventually concluded for the platform hulls for the Hoefyster project, you referred to letters of demand etcetera for payment from Denel, just very briefly explain that to the Chair please.

MR VAN DER MERWE: Which paragraph are you referring sir, sorry?

ADV KENNEDY SC: Well I was referring to paragraph 7.8 but I was hoping you could just right now just give a brief summary of what you recall?

MR VAN DER MERWE: Yes, Mr Chair the letters of demand that was written by myself and various emails it wasn't formal letters of demand, but it was open and honest emails and I have sent numerous emails on a
10 monthly basis, because I don't think that VR Laser was ever paid on time. The fact is that the background to these emails were that not only was VR Laser doing Hoefyster work, VR Laser was also doing other work for Denel and even other Denel related entities as well, DVS and LMT and their account was never paid and it was impossible for VR Laser to sustain the growth that we wanted to have in VR Laser if these accounts were not paid to date.

We would for instance buy the steel, which is a large component of the entire contract, of one hull, and
20 then we would not be paid in time. We would negotiate for instance with steel suppliers and various other suppliers that if we pay them on time or if we pay them early that there might be a reduction in the outstanding amount, so that, it had an enormous implication for VR Laser if Denel did not pay, and from the emails, and I do not want to go

through it email by email by Mr Chair you would note that my emotions in those emails saying that sub-contractors are cancelling their agreements because you are not paying.

ADV KENNEDY SC: And you refer at the foot of this page 559 to your becoming, you came to understand that Denel when VR Laser was in business rescue attempted to cancel the Hoefyster contract, but you did not know what the reasons were, what the progress of the litigations were, did
10 that happen after you left VR Laser?

MR VAN DER MERWE: Look, correct Chair but even at the stage when I left, if I may just for chronological purposes VR Laser's trouble started in 2017 when the banks started closing bank accounts. Suppliers were starting to cancel agreements, they were reluctant to assist and then on top of that Denel didn't pay on time, so it was extremely difficult for VR Laser to manage these contracts and we tried our level best to manage it but we just couldn't, so ja when I left there if I can remember correctly
20 and my Chief Operating Officer might be better to testify about that, but the Hoefyster project came to a halt because we actually manufactured hulls and there were no more space for Denel to store these hulls, so we executed the project and the hulls were supposed I think to be delivered to Denel Vehicle Systems, they were the next

company in line to execute, to put the wheels on and to put the engine in and the harness etcetera, and they hadn't even started, I didn't even – I was under the impression that there wasn't even an order at that stage placed on DVS, that's why there was no space for us to deliver the hulls, so when I left the project was in jeopardy, but it was not yet cancelled Chair.

ADV KENNEDY SC: Right, were you made aware of complaints by officials within the Denel Group that the
10 Hoefyster Platform hulls contract awarded to VR Laser did not comply with their own rules and regulations for procurement?

MR VAN DER MERWE: No Chair.

ADV KENNEDY SC: Right my – right thank you, do you want to add something Mr van der Merwe?

MR VAN DER MERWE: Chair yes, if I may obviously in the media it became reported on about Denel and the Guptas and the risks so there was a negative perception around VR Laser, and so I knew that when I was the CEO
20 that there was that negative perception.

ADV KENNEDY SC: Yes I am not asking ...[intervenes]

MR VAN DER MERWE: And ...[intervenes]

ADV KENNEDY SC: Sorry Mr van der Merwe I am not asking you about the negative perception, and I promise you that I will get back to a later section, in fact there's

also an earlier section in your affidavit that deals with all of that, and the effect on the VR Laser business, but I am asking specifically you to focus in your answer on whether you were aware that there were concerns raised within Denel that Denel's own procurement processes were not followed when it awarded this contract, the platforms hulls contract to VR Laser. Were you aware of that, I am not asking if you were responsible for any irregularities, I am simply asking are you aware that the – were you aware
 10 then that there were concerns raised in that regard?

MR VAN DER MERWE: Chair when I started no, I need to state, and I need to qualify that, at one stage a company called DCD, and I cannot remember the year, whether it was 2016 or 2017, there was a company called DCD.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: And I think Mr Kennedy you said they were one of the other tenderers.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: They requested information in
 20 terms of PAGA from Denel pertaining to the Hoefyster contract, so during my tenure I became aware of those allegations but at the time I did not know, but I also cannot say that when I left I was not aware of those allegations.

ADV KENNEDY SC: Right, thank you for that clarity. Now let's move to another agreement which you deal with in

your affidavit from page 560, and that's the so-called memorandum of agreement or MOA between VR Laser and Denel Land Systems that has been referred to as DLS. Now you are aware of that agreement is that right?

MR VAN DER MERWE: Very well yes sir.

ADV KENNEDY SC: And were you involved in the negotiation of that agreement?

MR VAN DER MERWE: I was Chair.

ADV KENNEDY SC: In fact you say at page 560,
10 paragraph 8.1:

“Although I cannot remember the specific dates I had meetings with Mr Stefan Burger, Mr Reenen Thebus and possibly Denise Govender in regard to the supplier agreement with VLS.”

Now before we proceed this was an MOA, a memorandum of agreement in terms of which DLS appointed VR Laser Services to provide certain things, is that right?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And this would be on a single
20 supplier basis is that right?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And what were those items, were they different from the items covered by the platform hulls contract?

MR VAN DER MERWE: Yes indeed Chair.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: It was two separate, it was two completely separate agreements.

ADV KENNEDY SC: Two completely separate agreements in fact Mr Ntshepe, the ex Group CEO stated in his testimony yesterday that he understood that they – that the one, that the second one, the MOA that we are now looking at in fact replaced the first and included what was covered by the first, but you confirm that is not correct, in fact
10 other ...[intervenes]

MR VAN DER MERWE: No the Hoef – no Chair the Hoefyster contract was signed and on very specific terms, and the memorandum of understanding made – or of the MOA made provision for work going forward, it was never intended to work retrospectively, so that is just wrong.

ADV KENNEDY SC: Yes, and in fact other witnesses have confirmed exactly what you have said in this regard Mr van der Merwe. Now did you negotiate with DLS the terms of this MOA?

20 **MR VAN DER MERWE:** I did Chair.

ADV KENNEDY SC: Right, now you didn't at DLS – I am sorry, at VR Laser you and your colleagues didn't submit a tender to DLS, is that correct, for this contract?

MR VAN DER MERWE: No.

ADV KENNEDY SC: In fact DLS decided to appoint your

company, the company you were heading then, VR Laser, to take up the single supplier contract, not so? They decided ...[intervenes]

MR VAN DER MERWE: The agreement was signed correct yes.

CHAIRPERSON: Mr van der Merwe, are you okay? Are you okay?

MR VAN DER MERWE: Yes Chair.

CHAIRPERSON: I have seen about three times, I've seen
10 you making a facial expression that suggests you might not be comfortable, you might be feeling pain or something?

MR VAN DER MERWE: No.

CHAIRPERSON: You are fine?

MR VAN DER MERWE: No I will try and limit my facial expressions Chair, it is just sometimes that I bring my ear closer to hear properly, sorry Chair.

CHAIRPERSON: Oh, okay, no, no that is fine.

MR VAN DER MERWE: But I am 100% fine.

CHAIRPERSON: I thought you might be having some pain
20 or something. Okay fine.

MR VAN DER MERWE: No, no, not at all Chair, not at all.

CHAIRPERSON: Okay, alright.

ADV KENNEDY SC: Thank you Mr van der Merwe, and I think the Commission, speaking for the legal team, are happy if you just feel as comfortable as you are, so if you

make facial expressions you have explained it now, don't focus too much on the facial expressions, rather just on the content of what we ask you to testify. Thank you.

Now you were aware, although you hadn't been involved in it, that the earlier contract, the Platform Hulls Contract, had followed a form of competitive procurement in a sense that DLS had asked for three tenders or three bids to be submitted by VR Laser, LMT, and DRD, is that correct?

10 **MR VAN DER MERWE:** I was not aware of the tender process but yes Chair, I know there was a tender process.

ADV KENNEDY SC: But well it wasn't quite an open tender in the normal sense, it was a request for offers from three bidders, but that was at least a competitive process to an extent, you were aware of that not so?

MR VAN DER MERWE: It happened before my time Chair.

ADV KENNEDY SC: Yes. What I am interested in is this, when you were negotiating the MOA for the single supplier contract between DLS and VR Laser there wasn't even a
20 request for offers from three or any other potential bidders, it was simply that DLS had decided that VR Laser should be given this contract, without any competitive process
You must have been aware of that?

MR VAN DER MERWE: Mr Chair exactly – to confirm yes there was no tender, I did not have to submit a tender.

ADV KENNEDY SC: And you weren't – sorry?

MR VAN DER MERWE: Yes, it was never that I submitted a tender, and I do not know what the internal workings of Denel was at that stage but I can submit, or I can confirm that when the agreement was negotiated it was negotiated without us submitting a tender for it.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: This was entered into through negotiations?

10 **ADV KENNEDY SC:** Right, now I appreciate that you were not involved in these negotiations, leading to the contract between DLS and VR Laser for the single supplier arrangement, you were not there representing Denel and you were not required to advise Denel, correct? You were there to represent and look after the interest of VR Laser, correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: However you were aware that Denel was not a privately owned company, it was a publically
20 owned company owned by the State, not so?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And you are an attorney, with obvious commercial experience, were you not aware that doing business as a privately owned company VR Laser was privately owned, correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Were you not aware that when a privately owned company such as VR Laser does business with a state owned entity such as Denel, or Denel LAN Systems Denel was required to comply with certain legal and constitutional requirements for a competitive procurement process. You must have been aware of that surely as an experienced attorney?

MR VAN DER MERWE: Mr Chair was not aware of the
10 specific requirements Denel had to comply to, if I can just explain the sole supply agreement, or the agreement because there was a similar agreement with DVS.

ADV KENNEDY SC: Yes we will come to that in a moment.

MR VAN DER MERWE: Yes, I viewed this agreement Chair as a confirmation of an arrangement that was already in place with VR Laser and Denel in the process that was followed.

How it normally would work, even if one thinks away
20 the memorandum of understanding or the memorandum of agreement, VR Laser would normally, the design team, would receive an RFQ, a request for quote, from Denel.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: They would then, VR Laser, let's say for argument's sake to build two Casper vehicles.

Then VR Laser would even normal drawings, cut body parts of the vehicle. Then VR Laser would reply to the request for quote with a price, and Denel would decide whether that was acceptable or not.

This agreement in itself never pre-assumed that VR Laser must get all the work. What the – in my mind the reasonable background and the commercial sense of this agreement was Mr Chair, and you will see Mr Chair if I can take you to emails later, that despite the memorandum of
10 agreement work was sent to other suppliers.

So what this agreement catered for was a thorough process in which Denel could assess whether the price that I was giving was fair and reasonable, I had to divulge my rights and in return for that I said but I am not going to divulge my rates and then to be used by other people.

If Mr Chair I – there was one email that I sent at one stage to a Mrs Karin Geldenhuys and I am just using this as an example to explain the rationale behind this agreement. A similar agreement was signed with DVS,
20 Denel Vehicle Systems.

ADV KENNEDY SC: In fact if I may just stop you for a moment, Ms Geldenhuys was working for DVS, not DLS.

MR VAN DER MERWE: Yes.

ADV KENNEDY SC: But are you saying that the rationale applied to both single supplier agreements.

MR VAN DER MERWE: Correct yes.

ADV KENNEDY SC: With DLS and DVS, right?

MR VAN DER MERWE: Correct Chair and if I am not mistaken Chair I have not seen those agreements, but I think they were almost identical.

ADV KENNEDY SC: Yes?

MR VAN DER MERWE: The DVS sole supplier agreement and the DLS sole supplier agreement, so what would normally happen Mr Chair in VR Laser, the design team
10 would receive a request for a quote on various drawings. The design team being experienced then would open the drawings. They would sometimes correct Denel's drawings because it was very specific where you have to cut; where you have to bend the steel plate; at which angle you have to bend it. Then the VR Laser design team would rectify those drawings and they would reply with a quote to say we have rectified these drawings to the standard being able to put into a system and here is our quote.

Then what would happen normally sometimes we do
20 not get the order. Then we would get exactly the same drawing Chair from another supplier – a third supplier asking us for a quote. So here was our drawing; the drawing that we corrected for Denel being asked to quote on by a different supplier and my design team came to me and say listen we have – we received drawings from company X it is

the Denel drawing it is the one we corrected. It is the one that we quoted on. What should we do?

And that left VR Laser and myself in an untenable position because well I told them quote – quote this company exactly the same what you would quote Denel. And then sometimes it would happen Chair that we get the work through the other supplier. And that led to Mr Chair I do not know whether you maybe have Carine Geldenhuys' affidavit Mr Kennedy whether I can refer to an email that I sent to Ms
10 Carine Geldenhuys attached as annexure CG11 to her email – to her affidavit. Is that perhaps possible Mr Kennedy?

ADV KENNEDY SC: Yes. If you – if I can take you to your affidavit at page 569 you specifically deal with that at paragraph 14.14.

MR VAN DER MERWE: Yes Mr Chair I – if I can refer to – I do not have the entire bundle in front of me but the email that I sent to

CHAIRPERSON: Oh is that so.

MR VAN DER MERWE: Ms – to DVS was the one that I got
20 by way of a Rule 3.3 Notice on that right top hand there is page 87 it is an email that Ms Carine Geldenhuys attached to her affidavit.

ADV KENNEDY SC: Yes I am aware of the annexure. But would you – would you deal very briefly with the point you want to make Mr Van Der Merwe please.

MR VAN DER MERWE: Yes, yes, no in my affidavit – and in that I said that we have – we are receiving I addressed it to Ms Carine Geldenhuys and the entire DVS team in 2017. Now these memorandum of agreements were signed in 2015. So I asked them, I said we receive – we are receiving more and more requests for quotes from smaller suppliers on DVS drawings. We have noted this more regularly on parts we might have – where we might be the only company with material but it does not vary.

10 **ADV KENNEDY SC:** .Yes.

MR VAN DER MERWE: Although we always attempted to assist these companies where we can it unfortunately reached a stage where we need to put certain measures in place before we will assist these companies. Those – these were now the companies that we received RFQ's for from other companies. I think it is important that you take cognisance of the following reasons. DBS drawings are shared with us in order to quote on. We do not know in return whether you have a confidentiality agreement with
20 place with these suppliers. And my concern was that I also do not know whether these suppliers were registered with the – with Armscor with the regulatory body.

So then Ms Geldenhuys replied and said well thank you very much for bringing.

ADV KENNEDY SC: I am sorry Mr Van Der Merwe I am very

sorry I do not mean to be rude by interrupting you. I just need to bring a bit of order to the sequence in which we deal with topics. As I understand it from this email it was dated in 2017, is that correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And at that stage the memorandum of agreement had already been signed between DLS and VR Laser

MR VAN DER MERWE: Correct Chair.

10 **ADV KENNEDY SC**: And in fact what appears from your affidavit when you deal with all of this in detail and we will come to it is that despite the MOA you complained that DLS was allowing other people to submit bids and that caused you problems, correct?

MR VAN DER MERWE: No Mr Chair I did not complain that work was sent to other suppliers.

ADV KENNEDY SC: So what – but sorry my questions that have produced the answer that you have been giving for about the last five or ten minutes was not directed to what
20 happened after the MOA was concluded.

I am still trying to deal if I may please Mr Van Der Merwe with how the MOA came into being not with how it was implemented later or how you sent an email raising issues about how drawings come back and other suppliers are approaching you and so forth.

So please would you indulge me and just bear in mind that nature of the question that I am putting. I fully understand that you are eager to get your version out and I can give you this firm undertaking and if I do not keep to it I have doubt the Chair will – will discipline me for that. But I can give you the firm undertaking we will get to the other issues post the conclusion of the MOA agreement.

But it is my duty as an officer of the commission as part of the legal team to be taking it step by step
10 methodically with firstly how the MOA came into existence. So may I just ask you please to bear that in mind?

MR VAN DER MERWE: I will do Chair and my apologies for elaborating on the question of was I not aware that Denel had to go through a process in order to give VR Laser the contract.

ADV KENNEDY SC: Yes. Yes. Now my point I need to take you back to which is that you have confirmed that DLS did not go out and either go out on a publicly advertised tender or even go out by asking three bidders to submit their bids.
20 Only VR Laser was approached to negotiate this contract, is that right?

MR VAN DER MERWE: Again Chair I cannot say what happened in Denel but ...

ADV KENNEDY SC: No you can say...

MR VAN DER MERWE: We did not follow a tender process

when this agreement was concluded.

ADV KENNEDY SC: Yes. I understand you were not working as part of Denel so you cannot explain things that they may or may not have done necessarily. But you at least from the VR Laser perspective were aware that you were not competing with anybody else for this contract to get this contract, not so?

MR VAN DER MERWE: Mr Chair yes I – I knew that.

ADV KENNEDY SC: Right.

10 **MR VAN DER MERWE:** But I was not competing with anybody else. I had to – it was not – the other – if I may just – and that is why there was not a concern from my side and Mr Kennedy your question on should I not have known that it would be un – or that there was a process to be followed. My view was that other suppliers were not excluded by this agreement.

I had to comply with or VR Laser had to comply with strict measures of which a 100% of these terms and conditions had to be met to be in favour of Denel and would
20 be to the advantage of Denel. This agreement obviously made commercial sense for VR Laser as well otherwise I would not have signed it.

ADV KENNEDY SC: I have no doubt that is true.

MR VAN DER MERWE: So I – I did not see – I did not see Mr Chair this as an exclusion that VR – that Denel had to

make use of VR Laser for all their steel work does not matter what like in a tender. Like the Hoefyster hull. They could not go to someone else. But even with this agreement in place they were not excluded from going somewhere else. That was my understanding Chair.

ADV KENNEDY SC: Yes but – but you negotiated this particular contract the MOA and it was – the reason – there is a reason why you refer to it as the sole source or as other witnesses have referred to this as a single supplier. Now I
10 accept Mr Van der Merwe and the agreement is before the Chairperson – evidence has been led in relation to this before. I accept that under certain circumstances if – if Denel was not happy with the quality issue from VR Laser it could ask another supplier to supply the item. Correct?

MR VAN DER MERWE: Correct.

ADV KENNEDY SC: Right. And...

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And in relation to price if Denel felt that it was not market related the price that was being quoted by
20 VR Laser it could also go out into the market, correct?

MR VAN DER MERWE: Correct Chair the agreement made provision for how it was calculated. How I calculated my price. Where Denel previously was not entitle to that information.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: So you correct Mr Kennedy.

ADV KENNEDY SC: But if your quality was good and if your price was acceptable to DLS it could not go out into the market. It had to get it from VR Laser and nobody else. That is why it was called a single supply or sole source agreement, correct?

MR VAN DER MERWE: Correct Chair if I wanted to enforce my contractual right that my price was price competitive.

ADV KENNEDY SC: Yes.

10 **MR VAN DER MERWE:** I – my quality was good and I could have produced it in a time acceptable I could have enforced my rights, correct Chair.

ADV KENNEDY SC: Indeed. Now you have indicated already and I had to stop you from going into what happened later in the implementation of the agreement and how other suppliers were being approached for quotes when you felt that you – that they should have – they should have been coming to you for the business. Leave that aside for a moment. You could have enforced your rights at any time
20 under the agreement if DLS was giving it to other people where you were okay for quality; you were okay for performance and you were okay for price, not so?

MR VAN DER MERWE: Yes Mr Chair if I may just – Mr Kennedy correct I did never – I never complained that the work went to other suppliers in contradiction to – or contrary

to this agreement. There was the email that Ms Geldenhuys referred to must be viewed in context. So – but I am sure we will get to that.

ADV KENNEDY SC: We shall indeed. Yes we shall indeed.

MR VAN DER MERWE: Yes Mr Chair.

ADV KENNEDY SC: But Mr Van der Merwe the purpose of this agreement was that before Denel went anywhere else it would have to get the products from you unless there was a concern about quality or unless they felt that your price was
10 too high. Not so?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Yes. Otherwise you would not have needed this agreement. Neither you nor Denel for that matter would have needed this agreement at all. If there was not to be some preference given to VR Laser it would have just carried on doing what it did before which is to request for quotes from you and from other people, not so?

MR VAN DER MERWE: Agree – Agree Chair it was reciprocal advantage that flowed from – which VR Laser got.

20 **ADV KENNEDY SC:** Yes. But my point is this and again obviously the commission is looking particularly in relation to possible corruption or irregularity on the part of state entities.

From the perspective of Denel what I am suggesting to you is this. Its previous process of going into the market

place for each supply of each item where they would ask different bidders to submit bids like they did for the Hoefyster platform hull they asked for three bids.

This now meant that instead of going out into the market place they would only go to you and you would get the business and you would be entitled to – a guarantee that you would get that business unless there was a problem of quality or unless there – your prices were no longer competitive. So in other words...

10 **MR VAN DER MERWE**: Or the delivery would be late yes.

ADV KENNEDY SC: Or the delivery. So there would be come sort of breach no so?

MR VAN DER MERWE: Correct yes.

ADV KENNEDY SC: It would a breach if your quality was bad? I would be a breach not so?

MR VAN DER MERWE: Correct. Correct Chair.

ADV KENNEDY SC: If the delivery was late it would be a breach not so?

MR VAN DER MERWE: Correct. Correct Chair and I am –
20 and I get the point fully that as long as – as long as VR Laser stayed within the ambit of the agreement Denel was supposed to send VR Laser the work.

ADV KENNEDY SC: That is it. Exactly the point. If I may complete the previous question? Apart from the two breaches I have already identified a further breach would be

if your prices were not market related, correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Yes. But...

MR VAN DER MERWE: And Chair I may just – I have not – I do not have the agreement in front of me but it – I can confirm that.

ADV KENNEDY SC: Yes. So unless VR Laser was somehow in breach whether it be timeous delivery or prices that were not market related or quality. Unless any of those breaches
10 occurred VR Laser would get the work. That is why it was called sold source or single supplier. Correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Now you did of course have competitors in that market place not so? Your affidavit goes to some length to say VR Laser was the most wonderful company it was by far the best. Nobody ever questioned its quality and delivery and so forth. Let us assume that you are right on that. It is not true that VR Laser was the only supplier of this type of components in South Africa, not so?
20 You had competition.

MR VAN DER MERWE: In a specific division in the company most definitely Chair. If I may just elaborate on that and I will really try to be quick Chair that one must understand how VR Laser worked. VR Laser was the only company that could supply a full turnkey solution on for instance armoured

vehicles. What that means is VR Laser did not have their own vehicle. They did not have a VR Laser vehicle.

They did work for various OEM's, Original Equipment Manufacturers for instance Denel, Paramount at one stage so they would manufacture a Mercedes and the Isuzu and they would not have their own vehicles in that company.

So that placed VR Laser in a position where work for different competitors could be done under one roof. Now the term full turnkey solution is VR Laser had a design team
10 which could support armoured defence work.

That means that if for instance to simplify it Mr Chair the – if we get a request for quote for a Casspir vehicle one vehicle would have 10 000 parts so the design team would literally draw these drawings on their program in order to optimise a steel seat how to cut the parts and how to put it into the factory. That is the design team.

So not all companies which cuts steel had a supporting design division. Then for instance if we received an order the design team would look at the drawings, they
20 would put it into the system. Then it would go into the factory.

Then what we call it the first division or the first bay was the cutting division. That is where you physically cut the parts out of the steel plate with a laser machine or a profile machine. There were a lot companies which could

have cut normal steel parts.

Then it would – then after parts were cut it would go to the bending division which was the second bay in VR Laser. After the parts were bent it would go to the fabrications department which is literally Mr Chair where the parts that were cut, bent are welded together. That is in the fabrication department.

And you would see in the emails and the reference it has sometimes happened that DVS and LMT would give us
10 the work to cut the parts but they would do their own fabrication. And then after the vehicle was for the hull can see the steel shell was fabricated that would move to VR Laser's integration department.

That is Chair where the vehicle would physically be put together, the wheels, the glass, the engine, the transfer case, everything will be put on the hull in order to make it a complete vehicle. So if we say that there were many competitors I agree Mr Chair that their competitors when it comes to cutting steel plate and parts and there were
20 competitors when it comes to bending.

We had a huge competitor next to us who cut a lot of parts and who bend a lot of part but none of – according to me your child is always the most beautiful but according to me no other company had a full turnkey solution and that is made VR Laser so valuable and Mr Chair if – but maybe we

will get there Mr Chair but I just wanted to say for instance LMT and DVS. DVS could integrate vehicles.

They could fabricate vehicles but they could not do the other parts and it is sometimes happen that VR Laser would get requests for quotes and our design team would work on these drawings. And then send it back to Denel and we did not charge for rectifying the drawings for instance that came from Denel or DVS.

Then we would send it back with a quote how to cut
10 on the cutting and the bending of the parts. And then we would get quotes from other suppliers on our drawings for cutting and bending the parts.

ADV KENNEDY SC: Yes. I think...

MR VAN DER MERWE: And my objection to that was that if you want to – and again sorry Mr Kennedy it is on the implementation afterwards but if I can just deal with that here.

My concern was that VR Laser was getting more and more of these things where we gave inputs without any value
20 whatsoever. And then other suppliers would get the work. So what I told Ms Geldenhuys was decide what you want to do? If you want to work according to the memorandum of agreement then tell me so then we comply with that. If you do not work – want to work according to the memorandum of agreement and work on a normal RFQ basis then tell me

that.

ADV KENNEDY SC: Yes

MR VAN DER MERWE: If you want to go out on tender then go out on tender but then tell me that. Do not work under the auspice of one agreement and then you are not complying with that. And that was my concern Chair.

ADV KENNEDY SC: I am afraid I must appeal to you Mr Van Merwe to please just heed your own warning given just a two minutes ago which is that you are straying into the other
10 area that I am not asking you about. You in fact giving the same evidence you gave fifteen minutes ago that I asked you not to go into which is ...

MR VAN DER MERWE: Apologies Chair.

ADV KENNEDY SC: Whether Ms Geldenhuys or DVS was honouring the agreement. That is not my line of questioning currently. So please.

MR VAN DER MERWE: Apologies. My apologies.

ADV KENNEDY SC: So please may I just with the greatest respect to you Mr Van Merwe to try to stick to the point that I
20 am raising. So whether they breached the agreement is not – is not our point of concern at this stage. In fact it is a matter of real concern to the commission I believe obviously it is for the Chairperson to make up his own mind. But it appears to me to be of real concern as to whether this contract was properly awarded by Denel to DLS and DVS.

And I want to go back to the main point. The central point of my = of the line of questioning that I am trying rather desperately to try to keep you to. And that is was it – well let me put it this way to you.

It seems quite clear from the fact that prior to this agreement DLS and DVS were putting out items of work for quotations by different entities. They did not have to come to VR Laser because VR Laser was not in a monopoly position within the South African economy, not so?

10 **MR VAN DER MERWE:** Correct Chair.

ADV KENNEDY SC: You may well be right that VR Laser was offering a wider range possibly even as you referred to as a turnkey operation but Denel did not want to go simply to – previously to a turnkey operation it wanted to ask different people to give different quotes, not so?

MR VAN DER MERWE: I do not know what Denel wanted Chair but I get your point Chair.

ADV KENNEDY SC: But the point is whether they wanted it or not what they were actually doing before the MOA giving
20 you single supply status was actually to go to the market place and ask for different bids. That is why you had to submit a bid and others also submitted a bid. Their own bids not so?

MR VAN DER MERWE: Mr Chair ...

ADV KENNEDY SC: Is that not what was done before the

MOA.

MR VAN DER MERWE: Sorry is the question that is what they should have done?

ADV KENNEDY SC: No that is what they did Mr Van Merwe. That is what they did. Before the MOA was concluded giving you single supplier status which we have already discussed what the effect of that was. Before that they would not always come to VR Laser and VR Laser alone. They would be asking for bidders.

10 **MR VAN DER MERWE**: No, no. Apologies I missed on.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: I misunderstood your question.

ADV KENNEDY SC: Right.

MR VAN DER MERWE: I am sorry.

ADV KENNEDY SC: Okay no that is fine it is late in the day we are all – some of us have been on our feet the entire day.

MR VAN DER MERWE: No, no not an excuse.

ADV KENNEDY SC: I fully empathise for you.

MR VAN DER MERWE: Sorry, sorry Sir.

20 **ADV KENNEDY SC**: With you Mr Van Merwe. But please just listen to the question carefully and just confine your answer to the actual question. If in the past VR Laser always got the business and was always asked for its quote but nobody else was there would have been no reason for the MOA. Correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Yes. So the MOA was there to avoid the previous practice of asking various bidders to put in their bids. It would now be a situation where VR Laser would always be asked to provide the item every time without others being asked to bid unless you were in breach. Correct?

MR VAN DER MERWE: I understand correct Chair.

ADV KENNEDY SC: And – so VR – from a VR Laser's
10 perspective it surely made a lot of sense commercially. You no longer had to compete with the rest of the market. You no longer had to submit a bid in competition with others. You would automatically get the business unless you were in breach, correct?

MR VAN DER MERWE: Yes and I would be remunerated for service where I would not have been remunerated before.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: So it was – but the question is there was a benefit for VR Laser.

20 **ADV KENNEDY SC:** Yes.

MR VAN DER MERWE: Commercial benefit in signing the agreement.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: I completely agree.

ADV KENNEDY SC: So I want you to focus now on one

simple point but it is a fundamental point Mr Van Merwe. Would you agree with me that the effect of this was to stifle competition? No longer would they be asking the various competitors to submit bids in answer to the request for quotations. There would not be quotations from anybody else except from VR Laser. The effect was to stifle competition. Not so?

MR VAN DER MERWE: Chair the word stifle exclude other bids – other quotations. Correct.

10 **ADV KENNEDY SC:** Yes. That is correct. It precluded DLS from getting - asking anybody to – anybody else to give quotations because you and you alone were entitled to that business unless you were in breach. I fully accept that if you were in breach then they would go elsewhere. But unless you were in breach they could not go elsewhere, not so?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Yes. Now were you not aware – trust me Mr Van Der Merwe the commission will be looking very
20 critically and clinically at anybody else's involvement and responsibility. And it will no doubt appreciate that you were there looking after the interests of VR Laser rather than Denel. But I am just putting it to you that you as an attorney would surely have known that Denel could not do this. It must have been subject to some laws – procurement laws

that required competitive processes in procurement.

CHAIRPERSON: I think – I think he answered that question Mr Kennedy before.

ADV KENNEDY SC: As you please Chair.

CHAIRPERSON: Ja he said what was in his own mind.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Why he did not think the – he did not think there was anything wrong. I think he expressed what he - was in his mind. And of course he also said well he did not
10 know the internal workings of DLS or Denel. Mr Van Der Merwe have I understood you correctly?

MR VAN DER MERWE: You hundred percent correct Sir – Chair.

CHAIRPERSON: Yes.

MR VAN DER MERWE: And if I may just add that I was under the impression that if it was and again I cannot remember when it was raised during the meetings and the discussions but I had it that if it was a specialised service that like VR Laser could offer it was not necessary to go out
20 on tender and that was in my mind that it made commercial sense for Denel to award this to VR Laser and the details I do not know on exactly what they had to do and so in my mind it made commercial sense for Denel and I was under the impression that they were entitled to sign that under those circumstances Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Right thank you. And thank you for the guidance Chair I will – which I will obviously follow. The DVS memorandum of agreement was a similar agreement as you have indicated with the same sort of objective from Denel's point of view as well VR Laser's point of view, correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And it had the same effect as the DLS
10 agreement that you and I have reached agreement on a few minutes ago. Correct?

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: Now if I can just take you please to 561 – page 561.

MR VAN DER MERWE: There Chair.

ADV KENNEDY SC: You refer to yourself having personally had meetings with Mr Johan Steyn. He was at the time the CEO of DVS, is that right?

MR VAN DER MERWE: Correct Chair.

20 **ADV KENNEDY SC:** And it is the legal representative of Denel, DVS Systems. A lady whose name I cannot remember now. Is she the person you deal with later in your affidavit when you supplemented it? Ms Geldenhuys.

MR VAN DER MERWE: I think that was Ms Geldenhuys. She was the legal compliance officer if I can remember

correctly. I am almost 99% certain it was Careen Geldenhuys Chair.

ADV KENNEDY SC: Right. Thank you. But she has given evidence as to her correct job title but it included exactly the function you have referred to. And she confirmed also that she was involved in these negotiations.

Can you recall whether Mr Steyn and Ms Geldenhuys or whoever else it was, the lady that you are not a hundred percent sure of, can you recall if they indicated whether they
10 were happy with the agreement?

Because they have given evidence that in fact they... Oh, sorry. The Commission has heard evidence that they were not happy with the whole idea of the single supplier agreement being awarded to VR Laser without a competitive process. Were you aware of that?

MR VAN DER MERWE: No. Mr Chair, I was not aware of the unhappiness about signing any agreement.

ADV KENNEDY SC: Right. Now may we then turn and that I propose to be brief Mr Van der Merwe because I think you
20 have covered a lot of this already. I want you to turn to the section where you deal with Ms Geldenhuys' statements. And if I can you take please to page 565?

MR VAN DER MERWE: I am there Chair.

ADV KENNEDY SC: Yes. And then you refer at paragraph
13 to how it came about that you updated your previous

statement. You have indicated that. And then at 566, you deal specifically with Ms Geldenhuys from DVS and various emails that passed between you and Ms Geldenhuys.

Is it correct that there was email correspondence where you were raising concerns that you have already summarised for the Chair in your earlier evidence when I interrupted you, to the effect that in the implementation of the memorandum of agreement with DVS, that they were the single source supplier, that in practice you were getting all sorts of
10 problems because other suppliers were coming to you with drawings and asking you to do the work which you had already quoted on for DVS. Is that right?

MR VAN DER MERWE: Correct, Chair. And under circumstances where I quoted them and they got the work which meant inevitable that Denel was paying more.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: But I was... I... It is correct Chair.

ADV KENNEDY SC: Right. Thank you. And then you say in paragraph 14.5:

20 “VR Laser was, with respect, not a corner café. The skills in the company was simply unmatched anywhere. VR Laser from a commercial perspective would never survive if proper projection targets were not set.”

So it suited you, as you explain this part of your

affidavit, that it suited you from a VR Laser point of view to be able to project by way of targets... Sorry.

To project what business you would be getting in order to see whether you could meet your targets, et cetera. It obviously made commercial sense from VR Laser's point of view, correct?

MR VAN DER MERWE: Yes And also, I regards to projection targets. It also meant delivery targets. If Denel or DVS would approach VR Laser and say we have to build
10 12 vehicles for Namibia, that the – and this is when we have to deliver these vehicles. I would need to order the steel from Switzerland. So put projection targets and making sure that all the targets were met. So it was important from that perspective as well Mr Chair.

ADV KENNEDY SC: Yes. And then at the foot of the page 567, you say:

“When the Sole Supplier agreements were negotiated... (so this is before they were being implemented) ...when they negotiated, discussed
20 and signed, I indicated to both DVS and DLS that there is absolutely no use for me signing a Memorandum Of Understanding (you underline that) which is not the worth the paper it is written on.”

And then you go to explain why you were unhappy with the so-called MOU, the Memorandum of Understanding. And

that you needed a binding agreement, not simply an understanding. And effectively, may I summarise in broad terms, my understanding of your point which makes sense, if I may say, with respect.

A Memorandum of Understanding was simply a sort of indication of goodwill. We are going to in future probably give you business but we are not bound to do that, correct?

MR VAN DER MERWE: Correct. Mr Chair, I had to report to Exco and to the board and to give preference to Denel or
10 DVS work on what might happen, I informed them that I cannot advice, you know, to sign an agreement for the benefit of VR Laser if it is an understanding. What is then the purpose of the document?

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: So you are correct Mr Kennedy. I insisted on an agreement, a binding agreement.

ADV KENNEDY SC: Yes. And you insisted on that so that it would be binding, unlike an MOU. And binding in the sense that if DLS or DVS did not comply with that agreement, there
20 would be consequences potentially. You could hold them to it.

MR VAN DER MERWE: Correct.

ADV KENNEDY SC: Because they were now be bound, correct?

MR VAN DER MERWE: [Transmission poor – speaker

unclear]

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: If necessary, even by going to court to get an order to compel compliance with the agreement, not so?

MR VAN DER MERWE: If necessary, like any agreement that I can enforce my rights. Correct.

ADV KENNEDY SC: If indeed or to ask the court to give
10 you damages if there was a breach of the contract, not so?

MR VAN DER MERWE: [No audible reply]

ADV KENNEDY SC: You are nodding. Can you just confirm?

MR VAN DER MERWE: I agree, Chair.

ADV KENNEDY SC: Right.

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: So I fully understand. Now
Ms Geldenhuys has actually given evidence that from her
point of view, she was comfortable with the idea of a
20 Memorandum of Understanding precisely because it did not
bind DVS but she as uncomfortable with a Memorandum of
Agreement precisely because of what you needed, which was
you needed to hold them bound by an agreement. Did she
express that to you at the time?

MR VAN DER MERWE: I cannot recall that Mr Chair.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: I cannot recall that.

ADV KENNEDY SC: Okay. Now and then at the foot of page 568, you go back to the point about not knowing what the internal processes in Denel were. I am not going to go further into that. Now if we can look at page 569. You refer to that email that is attached to Ms Geldenhuys' statement. and then you set out the context in which you expressed yourself in the way that you did, in 14.14.3. Do you see
10 that?

MR VAN DER MERWE: 14.14.3?

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: Yes, Mr Chair I am there
...[intervenes]

ADV KENNEDY SC: The... Yes, if I might just have a moment?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: Yes, 14.14.3.

20 "The only purpose of the Sole Supplier Agreement, thereafter, would be to set out their transparent process in terms of which VR Laser would at least be able to provide its specialised services to Denel one a sort of right of first refusal basis."

Does that sum up your understanding of the Sole Supplier Agreement, that if – essentially, it would not

guarantee that you would always get the work because if you breached, you would not get it but, otherwise, you had the right of first refusal. Correct?

MR VAN DER MERWE: Correct, Chair. The ...[intervenes]

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: Correct. Correct, Mr Kennedy.

ADV KENNEDY SC: Yes. And then you deal with the discussion, for example in 14.14.4 that the points you have made earlier about you were receiving drawings from both
10 DVS and DLS, you would correct them at no charge. And then you found later your competitors were now making enquiries or submitting bids on the basis of your work. Correct?

MR VAN DER MERWE: Correct.

ADV KENNEDY SC: Right.

MR VAN DER MERWE: And based on correction that I – we either made or...

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: Yes, Chair.

20 **ADV KENNEDY SC**: Right. Thank you. If I might have a moment, Chair just to...

CHAIRPERSON: Okay.

ADV KENNEDY SC: Now if I can take you to page 572, paragraph 14.26 ...[intervenes]

MR VAN DER MERWE: Yes.

ADV KENNEDY SC: 572. Paragraph 14.26. You say:

“It is indeed so that these sole supplier agreements were signed in a business environment. Agreements like these get signed every single day in order to move business forward.”

Are you stating that applies throughout the economy? I can understand you may be saying that in the private sector that is a common situation. But are you suggestion that, in fact, these things get signed every day even in government?

10 **MR VAN DER MERWE:** No, Mr Chair I will not suggest that it gets signed every day in government and that would not be my suggestion.

ADV KENNEDY SC: Right.

MR VAN DER MERWE: But what I was... Apologies. My – and it was against the background of Mr Wessels and Ms Geldenhuys complaining... Well, not complaining. Saying I was – they were quite happy with the Memorandum of Understanding. And my reply to that is, I was not because it was not a binding agreement.

20 **ADV KENNEDY SC:** Yes.

MR VAN DER MERWE: And that is why, in that context, agreements like this, gets signed every day. So I did not want to infer that in government. I do not have enough knowledge about what gets signed in government Mr Chair.

ADV KENNEDY SC: Right. Thank you. And then in 14.29

at the foot of page 572, you say – if you may make a submission on the purpose, in the affidavit.

“...a private individual responsible for the well-being of a company and 350 employees in a very competitive and limited South African Defence Sector.

10 The problem with state-owned enterprises, that every single CEO and Management Team appointed by a new political dispensation, blames the previous management for all the wrongs of the entity.

A state-owned enterprises have, unfortunately, deteriorated in competency and a clear understanding of pure business principles to such an extent that they may have upon themselves. State-owned enterprises have become so involved in political faction fighting, that they have completely lost their sense of doing business for profit.”

20 Now are you directing that general comment about, in your perception, why there may be difficulties in state entities? Did you apply that to Denel specifically?

MR VAN DER MERWE: Mr Chair, I... At the time of deposing to this affidavit, I did. And I did that for the reason and it might not have been necessary to go so wide, but it must also be viewed in the prior – in the paragraph 14.28, an email that I sent to Mr Sadik, the CEO of Denel. I do not

know whether he is still the CEO.

In which I voiced my concerns about allegations that was made against VR Laser. And that VR Laser was responsible for the demise of Denel. So I here was to say that it was most definitely not VR Laser.

A company with 300 employees, hard-working people, a company that works six days out of the week, 24-hours. It was most definitely not VR Laser that led to the demise of Denel like it was stated, I think previously in the Commission
10 by some of the people giving evidence.

And what I wanted to state here was, that from the inception of – when I got to VR Laser, I played open cards with everyone. And my emails, my letters of demand – please pay me.

I specifically addressed negative issues attached to VR Laser, the Gupta family, what has been written about VR Laser in the newspapers.

And not one single person came back to me, at that stage, and said that: You know what, we are not going to
20 comply with this agreement because there was no compliance in Denel. You know what, we are going to cancel this agreement for this order because it was obtained unlawfully or irregularly.

And my concern here Mr Chair was that for – you know, it might be outside the scope. But why I raised it here was,

my personal view was that people should, employees and state-owned enterprises and employees is state-owned enterprises should stand up.

I do not know – I did not know in VR Laser what was the procurement policies of Denel. If there was any problem or if there was a split in the Exco decision in Denel or if someone did not agree, they should have told me.

Or they should have said to VR Laser: Listen, we do not agree with this order. Or: We are not going to comply
10 with the Sole Supplier Agreement. So that was my frustration. If that gives an explanation.

ADV KENNEDY SC: Right. Thank you, Mr Van der Merwe. I want to pick up just some final issues now. And I would like to take you, as I promised I would, back to page 554. These are about the banks and so forth and how you came ultimately to resign.

Now you have indicated at page 553 at the bottom to the top of page 554, that you diversified the business of VR Laser and into other areas of endeavours such as mining. Is
20 that right?

MR VAN DER MERWE: Correct, Chair.

ADV KENNEDY SC: And you have indicated that, in fact, you managed to turn around the fortunes of VR Laser from a loss-making company to one making a profit of a few million rand. Now ...[intervenes]

MR VAN DER MERWE: [Transmission poor – speaker unclear]. But I honestly also need to add that that fortune only was bestowed upon me in the first year. And the second year, I did not have that fortune.

ADV KENNEDY SC: Yes. And the Commission has heard evidence about the amounts that were involved in payments by the Denel companies to VR Laser. Presumably, payments that you did receive later, you had problems in getting payment but at least you got payments which in fact
10 contributed to VR Laser's fortunes. Correct?

MR VAN DER MERWE: Correct. We got paid for work that we did. Correct, Chair.

ADV KENNEDY SC: Yes. Then you have talked about some impressive growth in a number of employees. And then you deal with in paragraph 3.23 ...[intervenes]

MR VAN DER MERWE: That... Chair, if I may? I am terrible sorry to interrupt Mr Kennedy. If I can just explain there the growth in employees and for background. Our mining division grew extremely fast. So most of the growth
20 of VR Laser was based in the expansion of our mining division. Most definitely not the defence division.

ADV KENNEDY SC: And you were responsible as CEO also for the mining division, is that right?

MR VAN DER MERWE: Correct.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: Correct, Chair. We... Ultimately, the mining division did not have a separate CEO. We... However, when the mining work got bigger, I decided to allocate one of the management staff who had the experience in mining, to allocate him to that division that was still supervised by me Chair.

ADV KENNEDY SC: Yes. So you would have been aware of its operations. Did the mining division get involved in any transactions with state entities?

10 **MR VAN DER MERWE:** No.

ADV KENNEDY SC: Not?

MR VAN DER MERWE: No.

ADV KENNEDY SC: Alright. then you deal in paragraph 3.23 with reputational issues particularly the shareholders being Gupta linked and that diminished, you say, all the good work that the employees of VR Laser did to grow the company.

And then you mention, and I just want you to explain very briefly, if you would Mr Van der Merwe, the problems
20 that you picked up in relation to the banks.

MR VAN DER MERWE: Mr Chair, we had a... VR Laser had a bank account. They used the same bank when the new shareholders took over and – but I remember, my financial manager who came into my office just one day and said she got the call from the bank. They wanted to come and see us.

And at that stage, the bank accounts of other Gupta or Oak Bay companies were already starting to be closed. And she said that, you know, she expected the account might be closed.

So on that day, I think there were three representatives of the bank. They came in. They explained that due to reputational risk, they have to close the bank account. They were not willing to engage with VR Laser anymore.

I can remember vividly that I asked them and I said: Is
10 there anything that VR Laser did? And they said no it is a related risk, related issue with the shareholder.

ADV KENNEDY SC: Right. Thank you. Now just to pick up a... Yes?

MR VAN DER MERWE: My apologies. You asked in regards to things what I did. So when the bank account was closed, I contacted... Mr Chair, we got about – there were about, at that stage, 30 banks in South Africa. I was left with my hands in my head and I phoned with my financial manager more than 30 banks.

20 Every single bank that we could find and asked them and I said: This is the background. I did not want to waste their time.

I played open cards. I said that, you know, these are my shareholders. Exactly these are the issues. My books, I will keep my – open my books for you. Will you be willing to give

us an account? And all of them said no.

ADV KENNEDY SC: But may I just pick up a few additional points? Just one point in relation to the MOA with DLS and similarly with DVS. You indicated in your evidence that was entered into through negotiation. Who introduced this concept of a Single Supplier Contract? Was that a VR Laser suggestion or was that an initiative or a suggestion that came from Denel?

MR VAN DER MERWE: Mr Chair, I cannot remember.

10 **ADV KENNEDY SC:** Okay.

MR VAN DER MERWE: I really cannot remember who initiated it. I need to state that, VR Laser and Denel had a relationship where, for instance, there was every week management meetings in regards to the process on work that was being held on the VR Laser premises, where hulls were signed off. Vehicles were inspected. So it was ...[intervenes]

ADV KENNEDY SC: Right.

MR VAN DER MERWE: It was so many communications. I
20 cannot answer. Sorry, Mr Chair.

ADV KENNEDY SC: If you cannot remember, that is fine. You must just indicate that. And can you recall, do not tell us if you cannot, but can you recall who the person was that you first had discussions with from the Denel side in this regard?

MR VAN DER MERWE: Mr Chairman, no it – normally – I might have had those discussions with Mr Stephan Burger if I can remember correctly and Mr Reenen Teubes.

ADV KENNEDY SC: Right. Mr Van der Merwe, in relation to Denel Asia, did you have any role in relation to the VR Laser Asia entity?

MR VAN DER MERWE: Yes, I – my involvement there Chair was – again, it emanated from – I had to advice on a possible – I was advised that there was a possible joint
10 venture to be formed. I was not involved in the initial discussions and I cannot say whether it was the shareholder, Mr Essa who initiated it or one of the directors. I do not know but I was informed that I – there was a possibility of such a joint venture.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: And that – then they seek my advice on the drafting and the signing of an agreement, a shareholders agreement and... So it was more from my legal side.

20 **ADV KENNEDY SC:** Right.

MR VAN DER MERWE: With my assistance. And then I got involved. And so I was involved from there on in the Denel/Asia saga.

ADV KENNEDY SC: Right. Thank you. Now the Commission has already heard evidence that the plan was

that although Denel would put up no cash for marketing purposes, a hundred million was to be provided by VR Laser as its contribution to the joint venture for marketing purposes. Were you aware of that?

MR VAN DER MERWE: Indeed. VR Asia. It was to be provided by VR Asia.

ADV KENNEDY SC: VR Asia. Are you aware of that hundred million rand, if anything was actually paid?

MR VAN DER MERWE: No, nothing was paid. The – it was
10 – and I do not have the agreement and I think I last saw the agreement three years back but I can remember the – one of the liabilities were, it was twenty million rand per year for a period of five years.

And that is how they got to the hundred million rand eventually. But it – soon after the establishment of Denel Asia, an instruction came through. I think it was from the Minister of Finance to hold any and all actions in regard to Denel Asia and so nothing happened then ...[indistinct]
[speaker unclear]

20 **ADV KENNEDY SC:** Right. I would like, finally, to deal with your departure from VR Laser. You indicate in your affidavit that you decided in January 2018 to resign. You say that that was after you had tried your level best to manage the banking crisis. That is the banking crisis that you referred to already. So after ...[intervenes]

MR VAN DER MERWE: Correct, Chair. And you know, I had the view that the new broom might sweep cleaner.

ADV KENNEDY SC: Yes.

MR VAN DER MERWE: I was there for three years I did my level best. The company was in a state which if Denel did not pay that, you know, it – they could not survive. And I therefore resigned in January 2018.

ADV KENNEDY SC: And you have also referred to a further personal consideration which was that you were concerned
10 that if you were out of legal practise for too long, it may be – it may put you at an disadvantage if, in the meantime, your peer group had moved on with many more years of experience. Correct?

MR VAN DER MERWE: Indeed so. That was the trade that I knew.

ADV KENNEDY SC: Ja.

MR VAN DER MERWE: I gained valuable experience whilst being at VR Laser and to tell you, only if one is out of the law, it is when you miss it. And I love the law and I decided
20 to go back into the legal fraternity.

ADV KENNEDY SC: Right. And you, in fact, have, as your affidavit says reapplied for admission. Are you, in fact, back on the roll of practice?

MR VAN DER MERWE: Yes. So you just remove yourself. I removed myself from the roll from practicing attorneys. You

do not have to reapply to be admitted. You just write a letter to the Law Society and say that you will now be practising again with this firm and this is your trust details. So I then was readmitted as a practicing attorney. Well, not readmitted. I just informed the Law Society that I am practising again.

ADV KENNEDY SC: Right.

MR VAN DER MERWE: And they then indicated on their records that I am practising again.

10 **ADV KENNEDY SC:** So your affidavit indicates on the following page 554 that you have always had and you still have a good relationship, not only with the Gupta family but also the Oak Bay Management. Is that right?

MR VAN DER MERWE: Correct. What is left of them Chair.

ADV KENNEDY SC: And you do still work for Oak Bay. You have said that in 3.27.

MR VAN DER MERWE: Correct Chair.

ADV KENNEDY SC: And in this Commission, you have acted for Mr Duduzane Zuma. Is that correct?

20 **MR VAN DER MERWE:** Correct, Chair.

ADV KENNEDY SC: In your capacity ...[intervenes]

MR VAN DER MERWE: On one specific matter Chair.

ADV KENNEDY SC: And in your capacity as an attorney. Is that right.

MR VAN DER MERWE: Correct. Correct Chair.

ADV KENNEDY SC: May I just have a moment, Chair?

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: Thank you very much, Chair. And thank you Mr Van der Merwe, particularly, given the late hour. We appreciate your assistance. Thank you. Thank you, Chair.

MR VAN DER MERWE: No problem. Thank you, Chair. Thank you, Mr Kennedy.

CHAIRPERSON: Okay. Thank you very much Mr Van der
10 Merwe for making yourself available to give evidence even as late as this. Thank you very much

MR VAN DER MERWE: Thank you, Chair.

CHAIRPERSON: Thank you to you, Mr Kennedy. And your colleagues, your team. Thank you to everybody for sitting until late. We will now adjourn and then tomorrow, you have two witnesses Mr Kennedy?

ADV KENNEDY SC: Three witnesses.

CHAIRPERSON: Three witnesses.

ADV KENNEDY SC: Yes.

20 **CHAIRPERSON:** Okay. I think – did you say we would start at nine?

ADV KENNEDY SC: If that suits you Chair.

MECHANICAL INTERRUPTION:

CHAIRPERSON: ...half-past nine

ADV KENNEDY SC: 09:30. Thank you, Chair.

CHAIRPERSON: Seeing that are finishing so late this evening. Okay so tomorrow we will start at half-past nine.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Okay. Thank you. We adjourn.

INQUIRY ADJOURNS TO 12 NOVEMBER 2020: