

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

10 NOVEMBER 2020

DAY 303



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 10 NOVEMBER 2020

CHAIRPERSON: Good morning Mr Kennedy, good morning everybody.

ADV KENNEDY SC: Good morning Chair.

CHAIRPERSON: Are we ready?

ADV KENNEDY SC: Yes we are thank you Chair.

CHAIRPERSON: Yes thank you. Good morning Mr Mhlontle.

MR MHLONTLE: Good morning Chair.

10 **CHAIRPERSON:** The oath you took yesterday continues to apply today. Alright. You may proceed Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. With your leave we dealt with in some detail with the circumstances of Mr Mhlontle's resignation after a process. Perhaps logically it would make sense for us to – to deal with that although it comes in the latter half of his second affidavit.

CHAIRPERSON: Yes.

ADV KENNEDY SC: We can deal with all of that; complete the picture and fill in a few details.

20 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: And then thereafter we will get back to the first affidavit and deal with some of the transactions.

CHAIRPERSON: Okay. No that is fine.

ADV KENNEDY SC: Mr Mhlontle I would like you please in the bundle and just for the record it is Bundle Denel7

Exhibit W20. Mr Mhlontle will you please look at page 587.

MR MHLONTLE: I am at 587.

ADV KENNEDY SC: You deal under the heading the suspension and later your resignation with the events that led up to what you told the Chair about yesterday which was the negotiations which took place parallel to the disciplinary process that never ultimately happened. The preparations for the disciplinary hearing and how you ultimately were persuaded to take a – a package by way of
10 a settlement. Now I would like to go back a few steps to deal with the – with the suspension. You refer to your broad agreement with Mr Saloojee’s evidence already given in this commission concerning the circumstances of the suspension. Is that correct?

MR MHLONTLE: It is indeed correct.

ADV KENNEDY SC: And then you refer to the fact that at a certain stage Denel started dealing with you individually with Mr Saloojee and Ms Africa and you were no longer dealt with as a – as three person group.

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

ADV KENNEDY SC: Now you have already corrected on the record paragraph 5.3 which deals with an orientation and you have corrected the date 24 July 2015.

MR MHLONTLE: Yes.

ADV KENNEDY SC: Now you have referred there to the

orientation and a special session relating to the LSSA transaction and then at the foot of the page the first meeting of the new board of directors. But what I would like to take you now to is page 588 paragraph 5.7 where you deal with a meeting that took place on the 22 September 2015 where you met together with Saloojee and Africa – Ms Africa with the Audit and Risk Committee. Now I would like you to explain what happened at that committee meeting. What did you understand when you
10 called to attend this meeting that it would dealing with?

MR MHLONTLE: During the course of the day on Tuesday we were advised that we would need to meet with the Audit Committee later that afternoon. And there was no agenda per se what they will deal with – that would be I had a distinct sense that Mr Saloojee had a sense of what was going to be engaged on as to why that was the case I had no knowledge.

And then the meeting took place; we were called one by one. We were presented with a letter that seemed
20 to have been written based on the presentation we had given around the transaction of LSSA and making various allegations. And we were then given 24 hours to which we would have to furnish reasons as to why we should not be suspended.

And I guess what was expected was that against

each point we would provide reasons as to why the alleged issues happened the way they had been tabulated and we – we sought legal counsel in between before the 24 hours was up.

And we went with a broad response to the Audit and Risk Committee that saying given a – a more time we are happy to go through each point and clarify. But I think what is important Chair is the fact that even on a one on one or on a meeting with Audit and Risk Committee I had
10 put forward to them to say that as far as I am concerned issues of governance are not handled that way.

We cannot have a board that is six weeks in office – it has had one presentation and the next day is making all host of allegations. Even if those issues could be valid one would – would put the questions to the board; the board would – I mean to the management and management would respond and it is only upon the Audit and Risk Committee or board not being satisfied with the responses that it could – it could even be putting out a word along the
20 line of suspension.

CHAIRPERSON: So this is now at the meeting of the 22 September 2015 and the meeting is that of the Audit and Risk Committee not of the whole board.

MR MHLONTLE: Indeed Chair.

CHAIRPERSON: And the first meeting of the board had

been on the 10 September 2015, is that right?

MR MHLONTLE: Correct.

CHAIRPERSON: So the meeting of the 20 – so the meeting of the 10 September was the first board meeting.

MR MHLONTLE: Correct.

CHAIRPERSON: So before the 10th – between the 10th and the 22nd September no further board meeting had taken place or had – had it taken place?

MR MHLONTLE: Correct except that Ms Saloojee had
10 gone overseas.

CHAIRPERSON: Ja.

MR MHLONTLE: At UK with the Chair of the board.

CHAIRPERSON: Ja.

MR MHLONTLE: And had been no – no board meetings.

CHAIRPERSON: Yes there had been no board meetings. So – so the Audit and Risk Committee was this its first meeting on the 22nd do you know?

MR MHLONTLE: It – it would – the meeting – there was a meeting before that which was specifically.

20 **CHAIRPERSON:** Yes.

MR MHLONTLE: Backdated on the LSSA transaction where we made a presentation of give or take 20 slides.

CHAIRPERSON: Ja.

MR MHLONTLE: Or that says here the company – here is a background of the company. These are the

circumstances under which it was bought. Here is a PFMA approval and all the processes we had followed.

CHAIRPERSON: Yes.

MR MHLONTLE: And the presentation was obviously high level ensuring that the board – the Audit and Risk Committee was fully appraised of what had taken place in terms of decision and there was one element that needed to be fulfilled by the new board which was that of bringing an equity partner on that transaction. So it was quite
10 important that we have a presentation. So there had been one – one Audit and Risk Committee specifically to talk on the transaction. This was almost like a second one.

CHAIRPERSON: And can you remember the date when that first Audit and Risk Committee meeting was?

MR MHLONTLE: It is sometime in September. I think maybe the 9th?

CHAIRPERSON: After the 10th or even before the 10th?

MR MHLONTLE: I think before the 10th.

CHAIRPERSON: Oh okay. Okay. And did you say you or
20 the executives made presentations to – or a presentation to that meeting?

MR MHLONTLE: Correct Chair.

ADV KENNEDY SC: Okay. Is that presentation different from what I thought was – okay ja I can see the – that is the presentation you talk about in paragraph 5.3. Is that

right? Of your – at page 587.

MR MHLONTLE: Yes.

CHAIRPERSON: During the orientation of 24 July 2015 the CEO mentioned that a big transaction concluded in April 2015 under the previous board was LSSA. I think somewhere in those lines you talk about doing a presentation.

MR MHLONTLE: Quite right Chair.

CHAIRPERSON: Ja. So – so was there a presentation to
10 the Audit and Risk Committee and a presentation to the board or only to the Audit and Risk Committee?

MR MHLONTLE: The presentation was to Audit and Risk Committee.

CHAIRPERSON: Committee. Oh did you say on the 9th?

MR MHLONTLE: I suspect it would have been but it was before the – before... suspect it would have been but it was before the – before...

CHAIRPERSON: Before the 10th?

MR MHLONTLE: Before the board of the 10th.

20 **CHAIRPERSON:** Oh okay alright. Well – so well it is another feature that seems to be similar to the Eskom one because in Eskom too a new board – I think there were only two if not one who had come from a previous board. A new board that would not be expected to very familiar even with the business of Eskom and with the personalities

[00:10:27] in executive positions in their first full meeting other than the induction on the 11th made a decision to suspend executives – four executives.

So here from what you have said there had only been one board meeting on the 10th and there had been an Audit and Risk Committee before the 10th. Second Audit and Risk Committee meeting on the 22nd they are talking about asking you to explain is it not? They are already talking about whether you should not be suspended, is that
10 correct?

MR MHLONTLE: That is correct Chair.

CHAIRPERSON: Yes. Okay. Mr Kennedy.

ADV KENNEDY SC: Thank you. Mr Mhlontle in paragraph 5.6 you deal with the board meeting of the 10th September you did not notice any material concern on the side of the board. There was some questions noted and responded to in writing on the 14th September 2015 in a memorandum. So were you alerted during the meeting – the board meeting of the 10th September that there were any
20 concerns on the part of the board members or the members of the Audit and Risk Committee who formed part of the board that there were any irregularities on your part concerning the LSSA deal that you were reporting back on?

MR MHLONTLE: Not at all; not at all.

ADV KENNEDY SC: Now then you have taken the Chair to

the Audit and Risk Committee that happened on the 22nd September and you refer to a letter. Can I ask you in the bundle please to look at page 657? The letter as we see from the last page at page 661 was addressed to you by Mpho Kgomongwe the Chairperson of the Audit and Risk Committee, is that correct?

MR MHLONTLE: That is correct.

ADV KENNEDY SC: And it says in the text of the letter at the top on page 657

10 “You are requested to provide reasons why
the Audit and Risk Committee should not
recommend to the board for your urgent
suspension and disciplinary action to be
taken against yourself. The Audit and Risk
Committee held meetings as mandated by
the board to consider what transpired
during the board meeting of the 10th
September 2015 where information surfaced
amongst other things that the Chief
20 Executive Officer and the Chief Financial
Officer misled the new board, the Minister
of Public Enterprise and the Minister of
Finance and further the PFMA and Denel
MOI was contravened.”

Had any of that been said to you in the meeting on the 10th

September 2015?

MR MHLONTLE: None of this was said on the 10th September board meeting. None at all.

ADV KENNEDY SC: Then it says in paragraph 2.

“It appeared that the reason given by yourself motivating for the board approval to allow you to conduct – sorry to conclude a sale of 49% or 50% of the DVS with an equity partner was false and fraudulent.”

10 Was that raised in the meeting of the 10th September?

MR MHLONTLE: Despite the fact that that statement in itself is incorrect it was never raised at any point. The approval PMFA approval by the Minister requires that there be an equity partner to that extent.

ADV KENNEDY SC: Then paragraph 3.

20 “In the opinion of the Audit and Risk Committee your conduct, actions, omissions in respect of the transaction between LSSA and Denel SOC Limited contravened the following legal requirements – sorry instruments.”

And then it sets out various requirements of the PFMA.

And then paragraph 4 it says:

“The Audit and Risk Committee after assessing what you have told”

CHAIRPERSON: I am sorry – I am sorry Mr Kennedy. Just on a light note. 3.1 says:

“Section 50 of the PFMA requires the accounting authorities of a public entity to
a.Exercise the duty of almost care.”

I think they meant utmost care.

ADV KENNEDY SC: Yes Indeed.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Fortunately are not here to defend the
10 Chairperson of the Audit and Risk Committee so use of English or the typing.

CHAIRPERSON: Well I – I guess maybe when you do things in too much of a rush these things happen.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: Ja.

ADV KENNEDY SC: And then paragraph 4 Mr Mhlontle.

20 “The Audit and Risk Committee after assessing what you have told the new board documents submitted to the Minister of Finance and the Minister of Public Enterprise it is clear that you did not act with fidelity, honesty, integrity and in the best interest of the public entity in managing the financial affairs of the public entity.”

Now – and then there are various other allegations made against you. For example in paragraph 8

“You have contravened Section 54.2C of the PFMA by failure, refusal, omitted to disclose the fuller material financial aspects of the acquisition of LSSA by Denel to the Minister of Finance and the Minister of Public Enterprise.

9. You have amongst other things failed to
10 comply with conditions of approval from the Minister of Finance etcetera”

Now Mr Mhlontle this does not appear to have been said these are the allegations and we would like your comment on them. If we go back to paragraph 1 it appears to be a judgment that is made by the Audit and Risk Committee that you misled the new board. And that you made false and fraudulent claims. Paragraph 2. And then paragraph 3 it refers to an opinion that the Audit and Risk Committee had come to that your conduct, actions,
20 omissions contravened various legal instruments and the like. What did you understand the real purpose of this letter to be?

MR MHLONTLE: Well I have articulated in – I think in earlier before we got to this reference that the initial point I made to the Audit and Risk Committee was there would

be instances where the – where the Audit and Risk Committee or any sub-committee of the board may not fully understand the rationale or the reasoning behind a particular decision.

But it expected that either at the board meeting or Audit and Risk Committee meeting to raise the issue with executives or raise the issue in between meetings and the executives would then respond to issues at hand.

I registered my – my – not disappointment but being
10 taken aback by the fact that there is even this letter the board had gone or the Audit and Risk Committee had gone to an extent of being able to produce this kind of letter almost couple of weeks after it had started or come into office.

And I was saying, look if you have got questions we can still answer. I – I even stated at the end of this as I have written in this letter that I have huge difficulties to acknowledge receipt of this because I felt it has not been thought through. Are you either then the information that
20 the legal counsel sort of after reading this kind of came to of saying, look somebody is trying to create a prima facie case for you to be suspended. I had not really – I was not reading too much to it.

I mean I looked at it. I even laughed with the audit – with the members of the Audit and Risk Committee I

says, look you have written quite serious allegations but which I believe are baseless and we should be able to answer them provided we are given an opportunity but I am concerned about this letter.

ADV KENNEDY SC: Then on page 660 near the end of the letter after various allegations that you had misled the Ministers and National Treasury and Nedbank etcetera. Then says paragraph 18 at the foot of page 60.

10 “Audit and Risk Committee intend to recommend to the board that you be suspended with immediate effect pending further investigation into the above and your disciplinary hearing which will commence as soon as the investigation is completed Audit and Risk Committee will further recommend that you be suspended with pay and further that your period of your suspension should not exceed three months.”

20 Now you already dealt yesterday with the fact that your suspension in fact took longer than – than a year during which period the disciplinary inquiry had yet to commence on the merits, correct?

MR MHLONTLE: My suspension took eleven months obviously far beyond three months that is covered in the

letter indeed.

ADV KENNEDY SC: Then paragraph 19 says:

“You were further notified that you should provide the Audit and Risk Committee with reasons why the Audit and Risk Committee should not recommend to the board for your suspension. Your reasons should be emailed etcetera.”

Now just stop there. It appears that from the earlier
10 paragraphs of the letter that the Audit and Risk Committee had already decided that you had misled the board and the Ministers and Nedbank and all the others about whom reference is made in the body of the letter. Do you have any comment as to the offer that was now being made to you to give the Audit and Risk Committee reasons why they should not recommend to the board your suspension?

MR MHLONTLE: The response we had to with the Audit and Risk Committee was we – was that we think if they have issues they should be able to raise those issues in
20 the normal course of business.

Beginning to refer to suspension and beginning to impact the employer employee relationship to early in the process was – was something that we were not expecting and we were expecting to build a relationship with the board like we had a relationship with the previous board.

Having a relationship is a business is a relationship – constructive relationship as intended to protect the business forward.

So if we come to the point where they were intending to recommend to the board for our suspension pending an investigation but also at the same time making a whole host of allegations obviously something was amiss in that.

10 Either you got issues which is going to be – you are going to have a confirmatory investigation which would not take that long or you do not have issues. But we were in this difficult process.

ADV KENNEDY SC: Now in your affidavit you refer to concerns you raised with the Audit and Risk Committee about the process that was being followed compared with your normal – the normal practice of discussions between different formal meetings. What does that relate to?

MR MHLONTLE: The concern I raised with the Audit Committee was the fact that...

20 **ADV KENNEDY SC:** Sorry just hold on a moment.

MR MHLONTLE: The concern that I had with the Audit and Risk Committee was the direction the whole issue was about to take and I could sense – and I was cautioning the Audit and Risk Committee to say where there are issues they are not normally handled in this way.

They would have to – you come in here; you are board – we are board members over and above being Audit and Risk Committee if you got issues you should be able to channel your questions via the CEO, the executives have to respond to those questions.

You would normally have special – even special Audit and Risk Committee or special board meetings to deal with issues that the board it does not fully appreciate. And I – my concern was where this was going which
10 eventually went the same – the very direction that I was concerned about.

ADV KENNEDY SC: Did you then or have you since understand or have you since understood what exactly was – you were being accused in having misled the board or having misled the Ministers of Finance and Public Enterprises, Nedbank and other stakeholders?

MR MHLONTLE: Chair there were eleven months in which Denel had to demonstrate to me and my colleagues as to how they might have misled any party in the process. And
20 as I indicated yesterday there were three interactions where it was person to person with myself included was a mediation in February; was a preliminary discussion in April; there was another preliminary discussion in July which is ten months down the line and lastly obviously was the interaction relating to [00:25:44]. And I – and we

constantly stated that any aspect relating to this transaction we can answer.

ADV KENNEDY SC: Now – now if you look again at page 661 which bears the name and apparently signature of Mpho Kgomongwe someone has written below that

10 “He did not sign the acknowledgement of the receipt of the letter and he indicated that he needs to skip over it – sleep over it I beg your pardon – sleep over it and he will respond tomorrow at the meeting at 1700 hours.”

Now you have mentioned earlier that you were told you had 24 hours to respond. If you can look at paragraph 19 it specifically says that you invited to attend a board meeting or scheduled for 1700 hours that next day the 23rd September wherein you are invited to present your reasons why the Audit and Risk Committee should not ask the board to suspend you. So you had – you had about 24 hours to respond to the Audit and Risk Committee and also
20 to make representations to the board itself why you should not be suspended. Is that correct?

MR MHLONTLE: That is correct.

ADV KENNEDY SC: Now is that your handwriting at the bottom where it says:

“He did not sign an acknowledgement of

receipt of the letter”

Or was that somebody else?

MR MHLONTLE: I suspect it was Mpho’s handwriting
Chair.

ADV KENNEDY SC: And is it correct that you would not
sign to acknowledge receipt of the letter?

MR MHLONTLE: I was take – so taken aback by the – this
letter that I had to reflect and think what does it mean if I
acknowledge receipt of this. I thought I would not use the
10 word irregular but it was out of the ordinary. I had
employer – employee/employer relationship and without
any prior interaction to that would have indicated any
misgivings to all of a sudden be given a letter like this. I
apologise I declined to sign it.

ADV KENNEDY SC: Did you respond during the Audit and
Risk Committee meeting on the 22nd as to whether you felt
that there was actually anything wrong with the LSSA
transaction?

MR MHLONTLE: At that meeting engagements were verbal
20 certainly not minuted but I stated to the Audit and Risk
Committee that there is nothing wrong with the transaction.

ADV KENNEDY SC: And after the meeting – after you
were given a copy of this letter that you would not sign for
did you then respond to the letter?

MR MHLONTLE: As – I think I would have covered

somewhere in my affidavit.

ADV KENNEDY SC: Yes.

MR MHLONTLE: The point that we wrote a joint letter with Mr Saloojee, Ms Africa and myself that we broadly pointed out that there was no need for suspension. Suspension often arises under certain circumstances. We felt that the issues at hand could be addressed. We asked that we be given more time as much as the board it might have taken six weeks to figure out this kind of letter we would need
10 more time – more than at least more than the 24 hours to frame ...[indistinct] and also, it was quite clear that we would have to consult legally for some backing because the direction in terms of where this was going, was quite clear.

ADV KENNEDY SC: Now what happened on the 23rd? Your affidavit refers to a meeting that you attended again with the Audit and Risk Committee before the board started. Is that correct?

MR MHLONTLO: Yes, on the 23rd meeting, there was a meeting at 17:00 with the Audit and Risk Committee, which
20 we had already an hour or so before that, we had sent our broad response and the Audit and Risk Committee was pointing out that it is a pity that they gave us an opportunity to respond to these allegations.

And because we have not responded, it would proceed to engage to the board to make the recommendation that we

be suspended. On that day, later on, the members of the board, some of the members of the board, joined the meeting. We were called into the meeting on by one.

We were told that the Audit and Risk Committee... we were given an opportunity by Audit and Risk Committee which we have not responded and therefore we would be suspended.

But interestingly, that there is a document that got served in that session that had already or was already
10 appointing who would act in my position.

Gave me a little background of the individual and already framing who would be acting in the position of the CEO highlighting how many years he had been with the company, et cetera, et cetera.

And last point is, the fact that the individual who would be acting as the CEO was in the building even... I mean, this went on into the night. We were effectively suspended around ten.

The individual was in the building and when he joined us
20 at some stage because we were sitting outside the board meeting, he stated that... we asked why he was hanging around.

He said: No, he is hanging around because the chair had told him that there would be a big announcement.

ADV KENNEDY SC: Who are you referring to there?

MR MHLONTLO: The... Zwelakhe.

ADV KENNEDY SC: Zwelakhe?

MR MHLONTLO: Zwelakhe... Mr Zwelakhe Ntshepe.

ADV KENNEDY SC: Ntshepe?

MR MHLONTLO: Yes.

ADV KENNEDY SC: And was he then in fact appointed as Acting Group Chief Executive Officer when Mr Saloojee was then suspended?

MR MHLONTLO: Yes.

10 **ADV KENNEDY SC:** And who were you replaced by in an acting capacity as Group Chief Financial Officer?

MR MHLONTLO: Mr Odwa Mhlwana.

ADV KENNEDY SC: Now I just want to take you back. You said that the Audit and Risk Committee said it was a pity that you have not responded with reasons why you should not be suspended. Have you given reasons why you should not be suspended and if not, why not?

MR MHLONTLO: Well, we were seeking to extend the, I suppose, the grace period we had been provided, which we
20 were given 24-hours. We said: Look, you certainly... Look, six week in which to frame and put forward all of these issues.

We are asking you to afford us five days in which we will think through a response. Certainly, where we sit to the extent that the responses are all...

Can be a verbal engagement with the board, we are quite happy to do so but if we are going to comprehensively respond to all the points that you are making, we need a bit of time.

And we went out to point out that there is not a need for our suspension. We felt it was prematurely.

ADV KENNEDY SC: So on the 23rd you had this meeting with the Audit and Risk Committee. You referred to that being followed by the full board meeting. Correct?

10 **MR MHLONTLO:** By... I am not certain that all the members of the board joined but certainly the majority of the members of the board joined.

ADV KENNEDY SC: But it was a meeting of the board as from the Audit and Risk Committee that already met separately.

MR MHLONTLO: I would sum it to that way.

ADV KENNEDY SC: And were you suspended at the end of that meeting?

MR MHLONTLO: Yes.

20 **ADV KENNEDY SC:** Now I would like to take you please in the bundle to page 677. This is the letter from the attorneys, Zorina(?) Olele(?) at page 677. And it appears that Ms Olele was acting at your attorney as well as that of Mr Saloojee and Ms Africa.

MR MHLONTLO: Correct.

ADV KENNEDY SC: Is that correct?

MR MHLONTLO: [No audible reply]

ADV KENNEDY SC: What was the purpose of this letter? It was sent on the 25th of September, is that right?

MR MHLONTLO: It is.

ADV KENNEDY SC: And what was the purpose of this letter?

MR MHLONTLO: The way I read the letter is that by enlarge he is asking for a fair and reasonable opportunity...

10 **ADV KENNEDY SC:** Yes, can I take you to paragraph 3 then? Is that what ...[intervenes]

MR MHLONTLO: Ja, I am actually looking at paragraph 3. Yes.

ADV KENNEDY SC: Yes. So they have requested, that is yourselves.

MR MHLONTLO: H'm.

ADV KENNEDY SC: A fair and reasonable opportunity to do this, to make representations including a brief extension until the 30th of September 2015. Also taking into account the
20 24th of September was a public holiday.

And that they are entitled to seek legal advice and be represented for the MOI. And then it refers to the attitude of the Audit and Risk Committee.

And then there is a complaint in paragraph 5 about... You are having a fundamental problem with the logic and

fairness of the attack on their credibility and procedural rights.

MR MHLONTLO: Yes.

ADV KENNEDY SC: Then it sets out reasons. And then it refers to paragraph 68... Page 680, paragraph 8.

10 “Regrettable and all the circumstances, our clients are compelled to come to a conclusion that neither the A&R Committee, nor the board members present at their suspension have any interest in observing procedural fairness or learning the objective facts and accepting the principle of innocent until proven guilty.”

Did that reflect your opinion at the time?

MR MHLONTLO: Precisely. Thank you. Ja, it is.

ADV KENNEDY SC: Have you changed your opinion as you sit now or is that still your opinion?

MR MHLONTLO: Many years since this happened. I have moved on. It is just a pity I have had to go through this process. And it is behind me.

20 **ADV KENNEDY SC**: Then in paragraph 9, your attorney says on your behalf:

“Going forward in the motivation for suspension, the A&R Committee indicates that legal counsel will be further engaged to complete the investigation.”

9.1:

“Given that the committee and the board clearly seeks our client’s dismissal and clearly have already drawn their own conclusions and quite apart from the untested merits of the matter, concluded there is already a breakdown of trust, which our clients deny.

They, too, intend to be legally represented at the disciplinary inquiry and welcome the expeditious finalisation of the matter.”

10 I just want you to dwell for a moment on the assertion by your attorney that it appear that the Audit and Risk Committee and the board had already made up their minds that you were guilty and should go or that the relationship of trust had already been broken and this was before any disciplinary inquiry being started, is that right.

MR MHLONTLO: It was.

ADV KENNEDY SC: And it is correct that you did, in fact, then get legal representation not only through your attorney, Ms Olele but has she briefed on your behalf senior counsel,
20 Mr Graig White Pringle. Is that correct?

MR MHLONTLO: Correct.

ADV KENNEDY SC: Right. And then she refers in paragraph 10 to a letter dated the 23rd September in which already proposed – it referred elsewhere in your affidavit Mr Mhlontlo – were you already proposed final and binding

arbitration in terms of Section 188(a) of the LRA since they are confident that there are no merits to the allegations.

Now just to indicate for the benefit of lay people who may not know. Section 188(a) of the LRA is a process in terms of which the CCMA can appoint an independent arbitrator to conduct a disciplinary inquiry rather than an employer conducting its own internal inquiry. Is this what you were requesting?

MR MHLONTLO: Yes, correct.

10 **ADV KENNEDY SC**: And why have you proposed that this process should be conducted through an independent arbitrator?

MR MHLONTLO: This arose because of the way everything had unfolded and... kind of gave the impression that there is a foregone conclusion somewhere to get rid of us, if one takes into account that we were given sort of 24-hours to respond, given that our opinion for what we deemed as a reasonable time to respond was not accepted.

20 Given that we were then suspended but just before we were suspended, we were given an option to take three months package. It was quite clear that the process, it may not as fair.

ADV KENNEDY SC: Then your attorney continues still in paragraph 10:

“Such a process will also test the bone fides of the

charges and the board's willingness to expedite the matter.

It is not appropriate to take a further 90-days to investigate.

We request that you consent to the following.”

And then your attorney makes a request for example that a final charge sheet be send to you by no later than the 2nd of October. And then there is a request for appropriate presentation time.

10 I think four requests that independent senior counsel be – who is an expert in employment matters be appointed a chair. And then there is reference to Section 188(a) again. Was the investigation by Denel, was it in fact completed within the 90-days?

[Speaker is not clear]

MR MHLONTLO: I am not certain. All we are aware of what happened was, the charge – the updated charge sheet was sent to us on the 18th of December. Whether that was informed by investigation or not, I am uncertain.

20 But also as I alluded to yesterday. The meeting of the 22nd of April 2016, sort of in the bundle included a letter that suggested that by the 17th, at least, the investigation was not concluded and that investigation had been undertaken by Dentons law firm.

ADV KENNEDY SC: And you were, in fact, contacted by

Dentons, you say in your affidavit, during the course of their investigation. Is that correct?

ADV KENNEDY SC: That is correct.

MR MHLONTLO: Right. Now if I can ask you to turn to page 686? This is a further letter from your attorney, Ms Olele dated the 1st of October.

CHAIRPERSON: Did you say 686?

ADV KENNEDY SC: Yes, Chair.

CHAIRPERSON: Okay alright.

10 **ADV KENNEDY SC:** And I am not going to through all of the contents. It can be read with its own contents. It indicates inter alia that you challenge the lawfulness and fairness and the necessity of a suspension. Is that correct?

MR MHLONTLO: That is correct.

ADV KENNEDY SC: And it also indicated that your procedural rights have been violated. Is that correct?

MR MHLONTLO: That is correct.

ADV KENNEDY SC: And it also asks for a response to the earlier letter of the 25th of September that we have just
20 looked at earlier in some detail of which there had not yet been a response. Did you cooperate with the Dentons' investigative team?

MR MHLONTLO: We cooperated fully.

ADV KENNEDY SC: Now I would like you please to take – I think you go to page 663 earlier in the bundle. That appears

to be a letter received on the 18th of December 2015 and apparently signed by Mr Mantsha who, at that stage, was the chairperson of Denel. If you see on page 668, his name is typed in and what appears to be a signature, appears. Have you received this letter?

MR MHLONTLO: Yes. Yes, we did.

ADV KENNEDY SC: And is this effectively a charge sheet?

MR MHLONTLO: It is effectively a charge sheet, yes.

ADV KENNEDY SC: Yes.

10 **CHAIRPERSON**: I think I did not hear the page correctly Mr Kennedy.

ADV KENNEDY SC: It starts at page 663.

CHAIRPERSON: 663?

ADV KENNEDY SC: Yes, Chair.

CHAIRPERSON: Okay thank you.

ADV KENNEDY SC: And the signature appears on page 668.

CHAIRPERSON: Okay.

20 **ADV KENNEDY SC**: Were you... Were there any explanation given to you that despite your attorney's request that the charges be finalised within a brief period or the investigation be finalised within a brief period, why only three months later, approximately, two-and-a-half months later on the 18th of December were you given this charge sheet?

MR MHLONTLO: There was no explanation. In fact, it was almost close to three months, given that we were suspended on the 23rd, almost like three days before or four days before the – it is three months, ja.

ADV KENNEDY SC: Now you have referred in your affidavit and you have given evidence yesterday also about requests for documents from Denel. What documents were you or your legal team requesting from Denel for purposes of preparing for the disciplinary inquiry?

10 **MR MHLONTLO:** The normal process would be a bundle of evidence comprising of this letter cross-referenced to various documents that the employer is relying on to make their case and which is a standard in the sort of employer/employee sort of disputes or disciplinary processes.

ADV KENNEDY SC: If you look at page 667, paragraph 4. It indicates that:

20 “Denel views the allegations very seriously and because they are so serious, if you are to be found guilty at the disciplinary inquiry, Denel will request that a strong action be taken against you which may include dismissal.”

So you were aware, were you Mr Mhlontlo, that this was of a serious nature and could lead to your dismissal?

MR MHLONTLO: Yes, I was.

ADV KENNEDY SC: May I just ask? Apart from your dismissal, if you were found guilty of the charges that you had mislead the board and you had mislead two ministers of the National Cabinet and you had mislead National Treasury and other entities, if you had been found guilty of those offences, apart from justifying your dismissal from Denel, would that have had any consequences for your future?

MR MHLONTLO: As I stated yesterday. I am a CA who for the longest of time, I was in practise as an accountant. I am
10 assuming the legal processes, maybe, do not really end up anywhere, at the very least, I would lose my CA sort of membership and it would impact my career.

So it was important and we insisted along all the way that Denel must prove its case. It was critical and important for us to go through the process.

ADV KENNEDY SC: Now you mentioned yesterday also that what then happened was that instead of the disciplinary process starting at an early stage, there was a mediation process. Correct?

20 **MR MHLONTLO:** That is correct. There was a mediation process on the 8th of February.

ADV KENNEDY SC: Can I take you to page 691, please?

MR MHLONTLO: [No audible reply]

ADV KENNEDY SC: This is a document headed: Points to be raised by executives during the mediation of

8 February 2016. Who is – is this a document that you and your colleagues, Mr Saloojee and Ms Africa prepared?

MR MHLONTLO: Yes, correct Chair.

ADV KENNEDY SC: And what was the purpose of this document?

MR MHLONTLO: It was sort of a document that was guiding us in terms of what points we wanted to put across to the mediator which we understood the mediator would be engaging us and the representatives of the board So these
10 were the points that we went through.

ADV KENNEDY SC: Now... But did you actually table this at the mediation?

MR MHLONTLO: We did not table it but we read this at the mediation..

ADV KENNEDY SC: Sorry, just speak up a bit please.

MR MHLONTLO: We read.

ADV KENNEDY SC: Oh, you read it out?

MR MHLONTLO: Ja, we read it out ja.

ADV KENNEDY SC: And the mediation was chaired by
20 outside senior counsel, is that right?

MR MHLONTLO: Yes, correct.

ADV KENNEDY SC: Right. Now I would like to... I am not going to go through the detail but on page 694, you set out a conclusion and your paragraph 20 reads:

“From our perspective, the issues before us are,

therefore, not about what we extensively had or had not done but rather what the intention and actions of this new board have been.”

What do you mean by that? Denel have raised what appears to be serious allegations of misconduct including effectively misrepresenting things to the board and to the ministers and National Treasury and the like. These were serious allegations.

Why were you saying this? This does not really seem to
10 actually have to deal with what we extensively have or have not done but rather the intention and action of the new board. What did you mean by that?

MR MHLONTLO: The concern that we had was, the new board, that it come in. The new board that in being in office roughly six weeks or so has summarised what we had presented to them as management in the normal course into what would term it maybe more *prima facie* case.

And it was very clear and communicated to us all the way that the intent is that we just exist(?) the business. On
20 day one of the meeting which was more of a coordinating because that intend was made very clear.

At the meeting of, around the 19th of January, where A&R met with the attorney of the employer and met with Advocate Kassim who was to chair our disciplinary and purgatory process, a representative of the employer made it

very clear that the outcome they are wishing to achieve is that we must exist.

So it was quite clear. So we – that point talks to how the process had happened and what we were reading to the intend of the board.

ADV KENNEDY SC: Now the clear intent on the part of the board that you should be exit, that was stated before the disciplinary inquiry had been started, let alone finish. Is that right?

10 **MR MHLONTLO:** Before there was even suspension itself, the fact that we had an option to accept – resign after(?) three months, was made clear in the interactions between our attorneys and the attorneys of the employer, that point was made clear. So hence we made this particular point.

ADV KENNEDY SC: Do you believe... Was your impression and believe from how you were treated, that the board was genuinely concerned that you had committed misconduct by misleading the board or are you suggesting that there were some other hidden motive?

20 **MR MHLONTLO:** In our view, is that charges were written. It did not really matter whether there was substance behind those charges or not, to achieve a specific outcome.

ADV KENNEDY SC: Was there substance to the charges Mr Mhlontlo?

MR MHLONTLO: We will deal with them in the – in my

affidavit and we continue to maintain there is no basis for the charges. There was no basis that then to continue ...[indistinct]

[Speaker not clear]

ADV KENNEDY SC: Is then in your statement for purposes of the mediation at page 694. You deal in paragraph 21 with your desire that the new shareholder... Sorry, that:

10 “The shareholder, the new Minister of Public Enterprises, be transparent and accountable for what has happened in Denel after her appointment of the new board”.

Which minister was that?

MR MHLONTLO: It Minister Lynne Brown.

ADV KENNEDY SC: And why were you making this point?

MR MHLONTLO: There had been a press coverage before that, first time, where the minister had gone to press and said she had not been briefed as to our suspension. So hence were making this particular point.

ADV KENNEDY SC: Then you say in paragraphs 22 and 23:

20 “We have a clear and unequivocal view that we were unfairly suspended.

We want in no uncertain terms to be reinstated and for a public apology to be made that acknowledges our innocence, our integrity and our commitment to Denel.

We are ready and prepared to pursue the process to its logical conclusion.

We want to reiterate that we are committed employees of Denel.

We have always conducted ourselves with integrity and in the best interest of Denel, its employees, SANDF and our country.”

When you said here Mr Mhlontlo that we are ready and prepared to pursue the process to its logical conclusion.

10 What were you meaning there? Is that the disciplinary process?

MR MHLONTLO: In the employer/employee disputes or issues. The starting point is a disciplinary process. So in our view, is that we were going to go through a disciplinary process. The mediation was one aspect of it. In the event that mediation is not successful, obviously, we must go into a disciplinary.

But we went into mediation with one clear outcome we would to achieve – wanted to achieve. It was to mediate so
20 that we can go back to work. If it is not mediated and it is not successful, then we would go to disciplinary where we were happy to subject ourselves to the process.

ADV KENNEDY SC: Now your affidavit then deals – I am not going to go into detail Chair – but your affidavit deals with the process that followed. That mediation session – the

mediation did not produce any outcome in the sense of any agreement or any resolutions. Is that right?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And what followed then was a series of correspondence that is referred to in your affidavit dealing with repeated requests for documents and the convening of the disciplinary hearing.

10 “Ultimately, I understand that the disciplinary hearing was to be chaired by *Mr Terraria Rector Mafukitze(?)*.”

Is that right?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And then, if I can take you to page 711. That is ruling from the chair, correct?

MR MHLONTLO: [speaker not clear – away from microphone]

20 **ADV KENNEDY SC**: In fact, his ruling indicates that it is dated the 12th of July. Sorry, it is dated the 13th of July but relates to a hearing on the 12th of July. But it also indicates in paragraph 1 at page 711 that:

 “There was initial hearing on the 22nd of April which dealt with a preliminary issue which was argued by both sides counsel.”

Is that right?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And it related to the production of documents requested by you from the employer. Correct?

MR MHLONTLO: Correct.

ADV KENNEDY SC: So as at April 2016, you or your attorneys were still asking for documents from Denel.

MR MHLONTLO: Correct.

ADV KENNEDY SC: Am I correct in understanding that you were now facing a disciplinary hearing separate from that from Mr Saloojee and Ms Africa?

10 **MR MHLONTLO:** Correct.

ADV KENNEDY SC: Right. And then the chairperson says in paragraph 1 to 3. He says that he made the following ruling after the hearing of the 22nd of April at the foot of the page:

“Within seven business days of this ruling the employer shall produce copies of the following documents.”

And then he sets out the various documents that have to be provided which included reference to the Dentons report.

20 In relation to that in paragraph 14, he made the following ruling.

“Insofar as the Dentons report is concerned, Mr Bana...”

Is that senior counsel for Denel who was involved in the disciplinary hearing?

MR MHLONTLO: Yes.

ADV KENNEDY SC: Yes.

“...he stated on record that the report was not the basis of the charges and therefore was irrelevant.”

He further stated that:

“The report was not yet ready. The employee was [noise interference] by Dentons and gave whatever information he had to give.

10 I do not think that the report’s relevance has been proven. It is speculative that it would service evidence of the employee’s innocence.

The employer can only be ordered to make available such documents as are in its possession.”

So he ruled that the employer should provide some documents that you have requested but the Dentons’ report he was not satisfied that it needed to be provided, is that correct?

MR MHLONTLO: It is correct.

20 **CHAIRPERSON:** At this stage of this ruling, Mr Mhlontlo, you had not come into possession of the letter from the Chairperson of the board to the company secretary instructing her to get Dentons to substantiate the charges, that had not happened yet?

MR MHLONTLO: That had not happened as yet.

CHAIRPERSON: Okay. Yes, Mr Kennedy?

ADV KENNEDY SC: Now these documents that were ordered to be produced by the employer, did they get supplied to you?

MR MHLONTLO: The reason why the session on the 18 July could not really got far because those documents were not in place, there were reams and reams of some documents but they were not coherent, I mean they did not make sense, they were not part of pulling the file together to substantiate the charges. So on the 22nd, given that
10 those documents had been requested way back were not in place on the 22nd - were not in place by the 18 July.

ADV KENNEDY SC: Now if I can take you to page 715, discussion in paragraph 23 about whether the hearing could proceed and you reliance on an alleged right to be consulted before the dates are set. You refer to the fact that your counsel was available on particular dates but the attorney was unavailable on some dates, etcetera. So was there in fact an argument about whether the hearing should proceed on the merits of the disciplinary charges?

20 **MR MHLONTLO:** There was no – I mean, on our side, we always wanted the disciplinary to take place timeously. We always insisted that before the process itself got to be a bundle of documents so that we can prepare ourselves and certainly the first date that was set was that of 25 January 2016.

The session could not sit because there were no documents provided, there was no file and because there were no documents there were no files. In the discussion between the attorneys was that maybe – it just maybe find a mediation which could be an easier process and went through a mediation. That did not yield anything. They now changed their strategy and wanted to question me on the validity of my contract sometime in March and being pointed out that that is not their competency, then moved
10 into the 22 July.

So this point about agreeing dates, it is important because this thing was just not coming to an end and the professionals that were assisting me, they had their own diaries to manage.

ADV KENNEDY SC: Chair, I have noticed that the copies that the witness has attached to his affidavit of this ruling document only – if you looked at the typed page numbers at the foot of the page, it comes from 1 to 3, 3 to 5, etcetera, it appears that the evenly numbered pages have
20 been missed in the photocopying process. Maybe after ...[intervenes]

CHAIRPERSON: Yes, I see there is no page turn.

ADV KENNEDY SC: Yes, in fact it looks like all of the even numbered pages are missing.

CHAIRPERSON: Yes.

ADV KENNEDY SC: If we can undertake with the assistance of the witness or from Denel or their attorneys to obtain a complete copy and then have a supplementary affidavit signed by Mr Mhlontlo just to correct that. If that can be done?

CHAIRPERSON: Yes. No, that is fine. That should be done.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: I think your team must just check
10 whether there are any other documents which suffer from the same defects.

ADV KENNEDY SC: Yes.

CHAIRPERSON: So that they can be identified and corrected as well.

ADV KENNEDY SC: That will be done, Chair. Thank you. Mr Mhlontlo, the end of the ruling at page 719 sets out the decision of Makoeketsi(?) the Chairperson. His ruling on the Denton report remained unchanged, the hearing was set down then for – that was set down for the original
20 dates in July was postponed. He refers to the parties being expected to try and agree fresh hearing dates for the disciplinary hearing and if there could not be agreement the employer could then set down the date in consultation with the Chair to ensure his availability and then it refers to you providing the bundle of your documents as well.

Now ultimately the disciplinary hearing, as you told the Chair yesterday, still did not take place ever, is that right?

MR MHLONTLO: The disciplinary as a proper disciplinary never took place. On the 18th we still argued about documents, we still argued about bundle of documents.

ADV KENNEDY SC: Yes.

MR MHLONTLO: The argument about the point that there is nowhere where the employer has proven guilt and the
10 meeting was then postponed to the 3 August 2016 which was the date of the local government elections and it never – I suppose I would struggled to vote if I had a disciplinary on that day but never got there.

ADV KENNEDY SC: Now your affidavit refers to your having received some documents at the hearing in April 2015 when Denel had given a lever arch file with some documents which included a particular document that you referred to and then attached to your affidavit at page 721. Now this is a letter – you have 721?

20 **MR MHLONTLO:** Yes.

ADV KENNEDY SC: this is a letter it appears from Mr Mantsha, the Chairperson of the board, on the 17 December 2015 addressed to Ms Legoabe, the acting company secretary.

MR MHLONTLO: Yes.

ADV KENNEDY SC: And the Chairperson requests her – was she the person who replaced in an acting capacity Ms Afrika?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And he requests her in paragraph 1 to:

10 “Furnish us with a draft charge sheet so that we can settle as we need to have the charges served up the suspended employees before close of business tomorrow the 18 December.”

We have already seen the charge sheet that was in fact served on you on the 18 December, correct?

MR MHLONTLO: Correct.

ADV KENNEDY SC: Right. Then he says in paragraph 2:

20 And further request you to instruct our lawyers to draft a settlement proposal of three months payment in full and final to the three suspended employees. The letter for settlement must be delivered tomorrow with the charge sheet and further, with a letter informing them that their suspension is extended until the finalisation of the hearing.”

Now you have mentioned in your affidavit that when you picked up this letter that appeared in documents provided by management’s representatives in April you found it

significant that there was mention not only of the charge sheet but also the settlement proposal. What significance do you attach to that fact, Mr Mhlontlo?

MR MHLONTLO: It is always a little bit of a mystery that you write charges that are so big and have serious ramifications and at the same time you put a caveat that says, you know, we are quite keen to settle. That is one point. But this letter, rightly or wrongly, the paragraph 4 of this letter will read – maybe more – fairly obvious maybe a
10 hidden meaning because that particular paragraph, in our reading, it means that there was an element of eagerness to have the process and that report reading in a certain way.

ADV KENNEDY SC: If we can read into the record paragraph 4 says to the company secretary:

“You are further requested to inform Dentons that their report is not accepted and request them to provide us with a report within 30 days and kindly direct them to provide information to support the
20 charges. Lastly, may you recall the circulated Dentons’ report and make sure it is not circulated.”

Did you ever see the Dentons’ report that he has referred to?

MR MHLONTLO: We never saw it. We were told it is never ready until the very end of a long process.

ADV KENNEDY SC: And what did you see ultimately? Was that the original Dentons' report that appears to have been retracted and had to be rewritten?

MR MHLONTLO: Our reading of the letter is that there was a version of a Dentons' report that was not to the satisfaction or was not in line with what the board had anticipated it would be and they were asking for it to be retracted, where also the line that says:

10 "Kindly direct them to provide information to support the charges."

It sounds a little bit suggesting that it was a little bit of massaging in terms of what direction they should take in terms of preparing the report and then again, it referred to the speculation that we were being sort of elbowed out.

ADV KENNEDY SC: Mr Mhlontlo, I want to just read out a sentence from your affidavit. You do not need to go to it but for the Chair's purposes, if you need it, Chair, it is at page 592, paragraph 5.28. And you then comment on the settlement proposal that the Chairperson has asked the
20 company secretary to prepare, page 592.

CHAIRPERSON: You said 592?

ADV KENNEDY SC: Yes, Chair.

MR MHLONTLO: Right.

ADV KENNEDY SC: Page 592 paragraph 5.28. You say:

"The Chairperson goes on to require the Acting

Company Secretary to instruct our lawyers to draft a settlement proposal of three months payment in full and final settlement to the three suspended employees.”

Of course we know from your evidence yesterday that ultimately they offered and you accepted 24 months’ salary plus an incentive bonus in addition to the fact that you had been on suspension for about a year. What I am interested in is your next statement, Mr Mhlontlo:

10 “What is quite remarkable about this is that the charges against us were stated in serious terms including reference to dishonesty and gross negligence, then why Denel would in those circumstances seek to settle the matter is beyond comprehension.”

Now the Chairperson has already asked you to an extent about this aspect. I would just like you to comment particularly about why you were driven to say this in your affidavit?

20 **MR MHLONTLO:** As I really have pointed out is that we will sit with this particular history, sit with quite – charges that were alleged that we had done and then every time the charges our laid out there was always one caveat that says we are quite happy to give you some rands and cents so that you disappear. So if these charges were ever real,

why was that the case?

ADV KENNEDY SC: Now ...[intervenes]

CHAIRPERSON: Would this be a convenient time?

ADV KENNEDY SC: Would this be a convenient time, Chair?

CHAIRPERSON: Yes, I think so.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Let us take the tea adjournment. We will resume at half past eleven. We adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV KENNEDY SC: Thank you Chairperson. Mr Mhlontlo we can wrap up this section of your evidence if you can turn to page 593, your affidavit then refers to the disciplinary hearing that was held on the 18th of July but there again it dealt with preliminary issues concerning documents etcetera, is that right?

MR MHLONTLO: That is correct Chair.

20 **ADV KENNEDY SC:** And then you say in 532 that Denel was still not ready to prosecute you on the charges and so then the matter was postponed again to the 3rd of August.

MR MHLONTLO: Correct.

ADV KENNEDY SC: And then you refer in 534 to what you mentioned yesterday in evidence before the chair, that you

were contacted by the acting CFO, the Groups CFO, the person who was acting in your position, Odwa Mhlwana who said he had a mandate and you, ultimately, in the lunchtime meeting, discussed the settlement that he proposed and you ultimately, settled. May I ask, did he come with the 24 months plus the incentive bonus as his mandate or did you have negotiation back and forth where he started, for example, at six months and you pushed him up to 24 months?

- 10 **MR MHLONTLO:** The first meeting at the Baron in Woodmead, he indicated that he had a mandate, he ascertained the period which was left or wanted to clarify the period that was left within my contract and he asked to what extent I'd be amenable if he's seeking some secondment within the context of the number of months that were still left, roughly, at that time was about 30 months whereas, I think at some stage, what was left in my contact, obviously was far longer than that and because of the period I had been at home the period, obviously had
- 20 reduced and I indicated my amenability to engage and to find a solution but whatever Denel had presented to me, up until that point, was not acceptable. Whether we're talking about three months, in some sessions – three months features a lot in these documents that there were indications that the months could be eight at some point, it

became clear it could be 13 which I had stated to Denel that, that was not acceptable. So, he then went away, a week later or so, he called me, we met at Midrand and at that stage that's where we had an...[indistinct 3.30] that the 24 months would be okay, I would forego, roughly, six months or so and he said he would then engage on that with the principals and a few days – maybe a day or so later he gave me a call to say, okay we can proceed on the basis in which we had discussed that got reduced into the
10 settlement agreement.

ADV KENNEDY SC: Chair, if I may now turn to deal with other issues and specifically those raised in the initial affidavit, in fact it's a statement that you find from page 568. Chair there are a number of sections where the witness has indicated, in his affidavit, that he had little, if any involvement in anything, so that obviously rises from questions raised by the investigators. Just for the sake of completeness I'll touch on the ones that may be of some interest but very, very briefly if I may?

20 **CHAIRPERSON:** Ja, that's fine.

ADV KENNEDY SC: Just before we get into the meat of the specific transactions, Mr Mhlontlo, you set out your professional background from page 569 which you touched on yesterday but I just want to fill in a couple of gaps. You have a BComm in Accounting Degree and then an Honours

in Accounting, is that right?

MR MHLONTLO: That's correct.

ADV KENNEDY SC: And then you joined the firm EY, it used to be known as Ernest & Young and you became – you got accredited as a Chartered Accountant in 2001 and, is it correct, you were a partner, you say in 2006, in one of the big four accounting firms, is that EY, did you obtain partnership status in that firm?

MR MHLONTLO: Correct.

10 **ADV KENNEDY SC:** And you then joined Denel in October 2008 as Group Financial Director and you became a member of the Denel main Board of Directors.

MR MHLONTLO: Correct.

ADV KENNEDY SC: Until the time of your resignation. Now, you then deal, in paragraph three with the process followed by DLS, that's the Denel entity, when awarding the ...[indistinct 5.44] contract to LMT. Now, you've corrected, in paragraph 3.4 already yesterday, the date from April 2009 to April 2010. As I understand it you had
20 no real involvement in the award of this contract by DLS to LMT, is that correct?

MR MHLONTLO: That is indeed correct.

ADV KENNEDY SC: Thank you. Now, you were then asked about – to comment on the procedures that Denel followed in relation to the advance payment and in

particular R12.7million that was advanced to LMT. You've mentioned in your affidavit that it's normal practice to make advance payments in some circumstances in the defence industry, to suppliers. As I understand it, you were not involved in the actual process of approving any advance payments to LMT, is that correct?

MR MHLONTLO: There is one element that we'll deal with that talks to that email of April 2010 but in terms of advance payments of any kind, certainly, I was not involved
10 in.

ADV KENNEDY SC: Yes, you mention in paragraph 4.4 that you attended a meeting where the advance to LMT was mentioned but there were discussions that this fell within DLS Management ambit.

MR MHLONTLO: Correct.

ADV KENNEDY SC: Now, what I'm interested in, is your paragraph 4.5, the foot of page 572. I understood the advance payment of R12.7million by DLS Management, supported by the Board was to start production, which is a
20 normal practice in the Defence industry. The forensic investigators have, however, presented evidence that contradicts this understanding presented to me an email correspondence between DLS Officials and Managers of LMT suggesting that the advanced payment was made by DLS, mainly to assist LMT alleviate financial problems that

were faced by the company at the time. Then DLS Management will need to account for the contradiction. The Chair has already heard evidence in relation to this advance payment to the extent that the evidence indicates that, in fact, this was not a normal course advance payment to a supplier, in the normal course but in fact, was to assist LMT in its financial difficulties. From your perspective, as the, at one stage, the Group CFO, can you comment on whether that was acceptable from a Group
10 financing point of view?

MR MHLONTLO: If we go back to 4.4 it makes reference to a meeting that took place in April 2010, it further points out that there was a discussion which I then followed that by email. Yesterday as Mr Piet Knoetze was addressing you, Chair, this email was covered in detail where I expressed the concern that, if you are to order this turret hull from LMT but in the same vain you are stating that LMT is in financial difficulties it prevents a risk to the Group, tread carefully, considering that this is a public
20 institution and if you really feel, within yourself that you really have to do it, make sure that guarantees are in place so that, in the event that LMT has any financial difficulties as is unable to operate, they are able to extract the value or the assets or recover the money. I never pre-empted that we would have this hearing today but the level of

seriousness that I took, that advance payment, it shows that, that there was a, sort of, care on my side over the resources that we were given an opportunity to be a custodian of at the time and that position – and Mr Knoetze goes on to say, a month later, I might have changed my mind without providing any evidence that substantiates that position. Even if we have to go to the minutes of that meeting, certainly the questions I had posed was, to what extent they have started to implement my email and there
 10 were certain responses but there is nowhere, where I communicate that I was miraculously satisfied that they had done all the things they needed to. Given the quantum involved, which is R12.7million, it was their responsibility, they have to answer from here, whether they put into place all the things that I thought that were bare minimum that we required.

ADV KENNEDY SC: Now, you then proceed, from page 573 to deal with your response to questions about the procedures followed when Denel was acquiring LMT and
 20 how Mamotsi ended up being a BEE partner. Were you involved in the transactions that led to the acquisition of LMT?

MR MHLONTLO: Before, Chair, I respond to this question there's another aspect that's linked to that R12.7million. The R12.7million, as per my email was an advance

payment towards a product that was to be – that was bought from LMT. The evidence yesterday, indicates that, even though it started that way, it then changed form into something else. I was not party, I cannot recollect, I can't remember being party to something that I was so concerned with and to the extent that I documented it in that fashion when it changed form to be, that of financial assistance. If it's proven at some point that I was party to it, I would have erred, I would have made a mistake
10 because Denel is not a bank to advance monies in order for some other companies to escape...[indistinct 13.04].

ADV KENNEDY SC: Now, at page 574, paragraph 5.6 you refer, again, to the advance payment of LMT which reflected as an asset in the Denel group amounting to R12.7million and was converted to equity, sometime in 2013 alongside Mamotsi's loan to the LMT Business. Conversion had a neutral financial impact to the business as advance payment asset was merely converted to an investment asset in the books of Denel. Are you saying
20 there, that you feel, from what you've been able to pick up from information, that the R12.7million was probably accounted for as the so-called advance payment to LMT?

MR MHLONTLO: From an accounting view point when that money left the Group as an advance payment is reflected as an asset it's not expense. It's reflected –

here's a value of something that we hold. A couple of – maybe two years or two and a half later the proposal that, that amount must now be converted to equity it simply changes the form. Instead of being described as stock or work in progress, now it's described as an investment in LMT. There is no loss in the company there is no loss in the fiscus. We had the issue that is presented to me by investigators is, there are underlying agreements or reasons other than what was presented to me and that in
10 itself is a problem.

ADV KENNEDY SC: Is there anything you want to add in relation to the process followed in terms of which Denel purchased the majority shareholding of LMT? Any comment as to whether it was regular or irregular in your view?

MR MHLONTLO: There was a genuine – at least based on the facts that were presented and would be the essential message within the PFMA application that there was a capability that resulted – resided within LMT that was
20 required by Denel. If you go back to Mr Mkhwanazi's testimony yesterday, he also stated that even way back in 2002 there was a view that there's capability sitting in Denel, LMT and I think there was another third company, there was a presentation by DLS, that here's a company that has a capability that complements our capability and if

it were to – if a position that has been, sort of, put out there that Denel could take this company at zero cost and it would enhance its ability to mitigate any risk that are likely to be there on ...[indistinct 16.31]. So, that acquisition, as a process, my concern as a CFO at the time, was that, if you bring onboard a company with financial difficulties, sometimes there are other issues and reputationally, there could be other liabilities that are not as clear, perhaps what we should be doing ,we should be
10 doing, sort of, an asset...[indistinct 17.01] of sorts and you could look at taking the employees and buying the plant that you require for the purpose. Of course that was not the view that won the day and as a part of that EXCO I align with what prevailed at the end.

ADV KENNEDY SC: Now of course, you ultimately, resigned some years ago from Denel in circumstances you've described to the Chair. By the time that you left as Group Chief Financial Officer, did you have a view and an understanding of whether the LMT acquisition was good or
20 bad for the Denel Group, particularly from a financial perspective?

MR MHLONTLO: At the time it wasn't so clear, they had secured a huge order from overseas and they had received an advance payment, it seemed as if the future of the business would go in the direction that had been presented

out of appraising and motivating for it. It had some challenges in the short-term though.

ADV KENNEDY SC: And the process in which the investigators have put certain things to you and asked to comment on processes and so forth, do you have any different view now as to whether LMT was a good thing or a bad thing from a Denel point of view, financially?

MR MHLONTLO: It probably wasn't a good decision, there were certain assumptions that were made and one of the
10 assumptions was that, Denel's order book, at the time, was growing. LMT's order book had a history of growing but had started declining, they had the capability they were not a big business. Even our growth, as a company, they would then compliment what we were doing, they would become sub-contractors to a number of our programmes. If you now, look at it, where Denel is at currently where the order book is dwindling and it certainly hasn't worked out as the way it was envisaged.

ADV KENNEDY SC: Right, thank you, I'd like to move
20 away from the LMT acquisition and the advance payment, Chair, if I may refer the witness to his second statement which is, in fact, an affidavit on page 576, you will turn to that please, Mr Mhlontlo.

CHAIRPERSON: Yes, no that's fine. Before you do so, I just want to ask this question because I don't want to

forget it. At the time of your suspension, are you able to tell me what Denel's financial situation looked like?

MR MHLONTLO: Yes, Chair, I'll answer just now.

CHAIRPERSON: I'll be happy if you can tell me that because we hear what Denel's situation is now and I heard evidence from Ms Van Rensburg who was the Chairperson of the Board that was before the Board that came in, in 2015 before the Board that was Chaired by Mr Mantsha, my recollection is that she said, at that time when her Board,
10 it's term ended, when it's term ended, they had a plan to take Denel to higher heights and everything was looking very good and so on and so on but you might be able to give me your own understanding of what Denel's situation was when – at the time you were suspended.

MR MHLONTLO: Chair, Denel, in the financial year ended March 2014 posted revenue at R4.5billion with a operating profit of R282million, that is 2014.

CHAIRPERSON: That's the 2013/2014 financial year?

MR MHLONTLO: Ja.

20 **CHAIRPERSON:** Yes.

MR MHLONTLO: If we look at year 2015/2014 they posted a R399million.

CHAIRPERSON: That was going higher.

MR MHLONTLO: Yes, then in 2016 they posted the number of R605million. This was a company that had a

history of significantly underperforming. Came 1992 - ...[indistinct 22.27] in 1992 had a captive market which was the South African Government and with its own projects and programmes and the industry survived at the back of that. After 1992, cold war, no-one is fighting with no-one then the business really struggles a lot and it – and a number of CEO's were appointed, a number of general strategies were put together and those strategies evolved from being a decentralised business into centralised
10 business, evolved from introducing a ...[indistinct 23.16] to be 100% owned businesses in different fields, it's...[indistinct 23.21] it had businesses even in the – that was producing soya beans and breakfast cereals and did some plastic moulding, it was in IT, it was in everything. They went through the process of getting rid of those businesses streamlining themselves in certain strategic businesses bring onboard equity partners and it – there were, retrenchments, obviously part of the game to ensure a profitable enterprise. We're beginning to see those
20 results coming through, the cash at the bank was becoming slightly bigger, we're enjoying a sound and a very strong relationship with financial institutions. Every year we'd go and meet no less than 20 financial institutions that were supporting this company, but if I then, look at the numbers beyond that, if I look at 2017 it's more like a break-even, if

I look at the year 2018 there's a loss of about a billion, if I look at...[intervenes].

CHAIRPERSON: 2018, a loss of about?

MR MHLONTLO: 2018 a loss of about a billion and then if I look at 2019 the loss of close to R2billion.

CHAIRPERSON: So, from 2017/2018 financial year it started going down, okay, thank you, Mr Kennedy?

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: But it looks like once – it looks like when
10 it started going down it went down quite sharply.

MR MHLONTLO: Indeed.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: Thank you Chair. May I then ask the witness to now refer to page 577, this is in your second statement or affidavit, Mr Mhlontlo. Now, this deals with the award of the contract to VR Laser for platform hulls. Now you've set out in some detail what was initially proposed to you which was that there should be an award to VR Laser and it appears that, initially, you had doubts
20 about that, could you tell the Chairperson how this came about, how you became aware that this was the intention and what your attitude was?

MR MHLONTLO: In, around June, Maybe July the CEO of DLS, Denel Lan System brought a memorandum ...[intervenes].

ADV KENNEDY SC: Is that Mr Burger?

MR MHLONTLO: Mr Burger, brought a memorandum in which he – the memorandum summarises a process that they had followed to put out the hull tender and it spelt out that three companies had tendered for that which is LMT, DCD and lastly VR Laser. The memo criticises, extensively, the quality and capability of LMT, appraises the quality of VR Laser and the numbers were tabulated in there that VR Laser is offering two hundred and sixty, or
10 there about million, the lowest tender, I think, was about one sixty one or there about from LMT and in between was the DCD and the recommendation was, that they wished to place the order with VR Laser. I rejected that strongly, there's no – no matter to what extent, technically, and the quality being good, it cannot be acceptable, in my view, where the price difference between the second, at least, was like something between R80million and R100million, almost and I opposed that, I rejected that. It further – that position was seconded or supported by the Group COO, Mr
20 Jan Wessels who also was on the same page as me on that, because, at that point we became privy to that process and LMT being an internal Group company, we specifically requested that there be a meeting between ourselves, which is Mr Jan Wessels, myself, Mr Burger and Mr Nel, even though we had no intention of saying, you

know, this is not about to be awarded to you or not because they had raised a number of technical concerns we wanted to understand, you know, what are – are there, in reality, technical issues and also if there are, to what extent those can be mitigated. Whether it would mean that DLS – how DLS can support the process so that the technical issues could fail ...[indistinct 29.25]. My concern from a finance standpoint is that if you award the business internally, you are depriving the Group – the money
10 because it could involve the money within. The debate in their – there was a very strong emphasis by DLS that technical issues are so material that they would – it would risk the entire Hoefyster project if eventually it would be placed within LMT. They went on to show a letter from UM about the work that LMT had done and earlier had issues. So it became a big issue. There were a number of options that were put in there. What about if you award the work to LMT but LMT sub-contracts some aspects to VR Laser of which LMT was not amenable on that option and I recall
20 writing an email to Mr – Dr Nel to the effect that any money whether it is a small money because his argument was that that model would not really ensure a good profitability for his business.

And I then pointed out that any money should be welcome – any profit whether it is half a million or whether it

is 10 million you should be able to move on from there. And that as an option. At the very end – or during the process somehow the – the memorandum got back into – into us in October 2014 the price had reduced.

There was aspect that says there would be some other work that will be given to LMT and given the last point that was raised very strongly was look you – you head office you can really tell us up to a point in terms of who we should work with but if you are going to hold us accountable for
10 performance – project performance you cannot really fully dictate the – in terms of who at the overall we should go with.

From where I am sitting with the price having reduced with a possibility that a portion of some of the work in the bigger Hoefyster platform would go to LMT I ended up supporting the memorandum which was not for my memorandum was for the CEO to sign.

Okay because commercially it should have been addressed – it seemed as if LMT would get some bit of work
20 and I signed. On the day I signed the Supply Chain executive was not at work – was on leave and my understanding for where I am sitting his issues were fairly common to my issues.

The issue was overall the price which was out of line and when got into it a certain level and I was quite satisfied

to sign it off.

ADV KENNEDY SC: Now what was the outcome of the discussions where you had voiced your objections to the business going other than to LMT? Was that resolved?

MR MHLONTLE: The misgivings were not so much about LMT versus VR I barely in those days knew who was behind VR Laser and when I only learnt more when I was suspended. It was more about the – the understanding I had about the capability of LMT. My understanding some design
10 work of the very same product had been done by LMT. I was...

CHAIRPERSON: And was it also about a principle namely on your understanding if a company that is part of the group can give us a certain product or certain services we should not go outside of the group unless there is really proper justification?

MR MHLONTLE: Precisely Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Now your affidavit has referred to the
20 issue of price and the commission has already heard evidence that in relation to the tender to which LMT and VR Laser and another tenderer had responded that initially there was approximately a R100 million difference. LMT was tendering approximately for R160 million whereas VR Laser was approximately R260 million. Now did that have any

bearing on your view that there were concerns that LMT should not be awarded the tender?

MR MHLONTLE: My – my challenge with those initial numbers was big a gap in pricing and I was of the strongest view that you would rather be – even if it meant that there were – there was a lot of support we needed to give the LMT assuming that support was worth R10 million for argument sake. We will rather be giving support to LMT and V and then award the work to LMT. So the price was my serious
10 issue and the second part was the group consideration. If there is a subsidiary or a division within the group that can produce the product why would you take the product outside?

ADV KENNEDY SC: Now did you eventually get persuaded to approve the award to VR Laser?

MR MHLONTLE: The – it is not necessarily approving because approving set elsewhere. I needed to maybe not to be saying I am opposing it.

CHAIRPERSON: You – you decided at some stage not to
20 persist in opposing or in objecting?

MR MHLONTLE: The opposing as a process went on for three months from roughly around June to October and in that process we met the key people within the LMT and DLS we went on to meet with Kgomo who is an investor within LMT and what was at the centre of the conversation was a

very clear message that we would want the work to go to LMT. If DLS has issues can they specify what those issues – can LMT rectify the issues?

At the end of the – and also that was LMT consideration was a price consideration. At the very end the price is now reduced. LMT at least in the understanding was that LMT would get doors and frames which the nether part of the work as the actual package and therefore at that point with a third element of a very strong point that was being
10 made that says, we desire to go with VR Laser as a division. If you are now stopping us you know from going with our supplier having met your price requirement then we cannot be held technically responsible for any shortcomings if the work is not done to the standard that we want which we do not believe that LMT would do.

And on that basis – when those arguments were on the table and I had to back off. But what is interesting just the last point that the very same program that obviously VR Laser was advanced as the solution today is eight year late.
20 So the – I mean I would have been drawn into the part now if I had insisted on my position.

CHAIRPERSON: Well the argument that you allude to which seems to have ultimately either persuaded you not to insist on opposing or objecting at a certain level one can understand it.

But namely if they – if the management at DLS were going to be accountable for the performance one can understand at a certain level if they say well you know do not hold us accountable if you insist that we use an entity that we have concerns about. Allow us to use an entity that we have got confidence and in that event if anything goes wrong you can hold us accountable confidently.

But at the same time one says why did they want your views? Because if the position is that a decision lay
10 with them and – and it anyway you were expressing your views and you were not saying that you are going to take away whatever power they had to make a decision. So I have those two reactions to their argument.

It is – at a certain level it is like it was to say shut up. Shut up because we are the ones who will be held accountable in the end? But then if you do not want our views because they do not agree with your views why did you want to hear from us? That is the two reactions I have – I have to the argument. I do not know if you want to say
20 anything about the two reactions.

MR MHLONTLE: I think Chair they would say we have listened to you particularly in this case because you queried the price. Now the price has reduced. You have queried why are we taking the work outside. We have scratched around we have found the other work that we will give to the entity

within the group. This is a hefty critical issue we believe we should – by that particular company because he has the competency. They are going to say we met you halfway.

CHAIRPERSON: Ja. Well certainly they can say they do – they did something. But I would have thought that when they do that the parts of argument that says look we will be held accountable do not insist on your views when we are going to be held accountable.

I would have thought that they will simply say look we
10 have gone a long way to try and accommodate your concerns in the light of all of this you know. Do you still have a problem? You know. And if the concerns have – if you think that the concerns have been adequately addressed you might say no look that is fine. But it is just that they say look we are the ones ultimately accountable. But it might be much of a muchness. Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Now Mr Mhlontlo you have referred in your affidavit to the views of Mr Mlambo. He was the Group Executive for Supply Chain is that right?

20 **MR MHLONTLE:** Correct Chair.

ADV KENNEDY SC: Was he in the hierarchy of Denel was he junior to you?

MR MHLONTLE: In the structure he was reporting to me.

ADV KENNEDY SC: He reported to you?

MR MHLONTLE: Hm.

ADV KENNEDY SC: May I take you in another bundle not the one in front of you. Just put that one in front of you to the side please. Chair may I refer him to a bundle that was presented – was admitted by you previously when Mr Mlambo gave evidence and Ms Malahlela it is – should be headed Denel Bundle 1. If you could open that please Mr Mhlontle. May I take you please to page 791. So for the record it is Denel-01-791. Mr Mhlontle may I ask were you able to hear the evidence of Mr Mhlontlo two weeks ago?

10 **MR MHLONTLE:** I only heard the first part where he was going into details around this part. I could not listen to him.

ADV KENNEDY SC: Okay. Now he referred in his evidence at page 791 to this email that came from him. It was addressed to Mr Saloojee as well as to yourself and Jan Wessels COO. It is dated the 9th September 2014 and I am going to summarise the contents before I ask you to comment on it.

He says:

20 “I have managed to review DLS’s submissions pertaining to the abovementioned subject.”

And you will see in the headline the subject is the awarding of the manu – of hull manufacturing contract to VR Laser Services. And then he raised certain issues. He says:

“The following issues paint an unacceptable

picture from a process, fairness and objective point of view.”

The first paragraph refers to the tender documents not sent – being sent to all the bidders simultaneously. The second is that there were separate engagements for clarifying sessions with individual bidders rather than all at the same time.

The third relates to the BBBEE status where LMT’s BBBEE status was disregarded because it was not verified
10 whereas the VR Laser certificate was accepted and rated a few days after the closing date.

In other words that they were not treated equally. Then the fourth point he says this if I may read it into the record. It says:

“In the submission”

And his evidence was that this was the submission that came before him and others in senior management requesting approval for this award to VR Laser. He says:

20 “In the submission it is claimed that LMT’s quote is too low and unrealistic. The difference between LMT’s quote and the VR Laser quote is almost R100million. After questioning Stephan Nel on the accuracy of his quote that is of course is the – was the then head of LMT – on the accuracy of his

quote he offered to come and present the facts to demonstrate that it is based on realistic quotes. Furthermore he claimed that LMT had made the hull before under Patria's contract."

And then 5.

10 "In my meeting with Stephan Burger yesterday he of course was DLS's CEO at the time he indicated that VR Laser had offered to reduce the quote from around R262.4 million to R195.0 million with an exclamation mark. Does that not tell a disturbing story about the initial offer on the basis of these findings and other facts it is my considered opinion that the submission from DLS be rejected since LMT has the capability to make the hull this issue should have been discussed further before going out on tender."

20 Now do you recall Mr Mhlontlo receiving this email that was addressed to you and Mr Saloojee and Mr Wessels?

MR MHLONTLE: Yes I do.

ADV KENNEDY SC: And did you read its contents and did you take them seriously?

MR MHLONTLE: The contents were – were read. One

aspect that it talks to is a price – there is LMT – there is our process issues which all of these issues were taken into account before that final memorandum was signed off.

But more importantly in the meeting this is the very email was asked to what extent these issues have been cleared and there was a position that I do not fully recall either it said the matter was either cleared or was in the process of being clear with Dennis it is a pity that on the day he was not at work when I signed it. But when I signed that
10 memorandum it never at all meant that these issues needed not to be closed out.

Materially from where I am sitting the price was significant. The fact that it had reduced it was important. There are issues in my affidavit that I am covering that are saying how it go to reduce is also another matter altogether to which I was not privy to in terms of how practically it reduced. But the price had reduced, LMT seemed as if it was going to get another package and those were material and there was a broad point that says, Dennis has issues to
20 what extent are you either addressing or can you address these issues? My understanding was that these issues would be addressed.

ADV KENNEDY SC: Do you know whether they were addressed satisfactorily?

MR MHLONTLE: I - I mean of what happened obviously

after awarding that work give or take October 2014 I do not – never got a feedback really that we sat down with Dennis and myself and say you know there has these issues been fully addressed?

ADV KENNEDY SC: Do you...

MR MHLONTLE: But lastly Chair the memorandum of October 2014 that we initialled it had the Supply Chain at least divisional executives signing that off which went a long way in ensuring that if we were given assurance that these
10 issues would be addressed we had faith that it would – they would be addressed.

ADV KENNEDY SC: I am going to come back to Mr Mlambo's role and responsibility and the concerns and whether they were resolved. I would like to just focus before we move onto that just for a moment on the reduction of price.

Now Mr Mlambo made a comment obviously felt it important enough to raise it in a letter and used exclamation marks etcetera to emphasise his feeling of real concern that
20 there was initially approximately R100 million difference and it is significant. We are not – we are not talking about this being R100 million compared to a R100 billion contract. This was R100 million between approximately R160 million tendered by LMT and about R260 million tendered by VR Laser and Mr Mlambo seems to find it very disturbing that

VR Laser could be so way above LMT in the first place yet LMT is not going to get the business.

But secondly he is disturbed seriously disturbed by the fact that when there were discussions – sorry that there were discussions between Denel and VR Laser and that resulted in it bringing its price down from R260 million to R195 million.

Now what he suggested in his email and as he explained to the Chair two weeks in his evidence, oral
10 evidence is that he was especially disturbed about that. That is – how can you get a tenderer who is serious dealing with a public institution such Denel presumably giving a competitive price if it is actually a genuine fair competition competitive process not engineered and not manoeuvred to favour one.

How can it come in with R260 odd million and then be persuaded just a few weeks later oh well yes we will change it by about R70 million to bring it down to R195 million? Those are the concerns that Mr Mlambo expressed in his
20 email briefly and of course he has elaborated that on his oral – in his oral evidence. Was that a matter of considerable or any concern to you as Mr Mlambo's boss?

MR MHLONTLE: It was a huge concern. I – when the memorandum was brought to me and brought to the COO this is the issue that led to that few months of back and forth.

Price for me was to say no matter how good the quality could be that better quality cannot be R100 million more expensive.

And then there were engagements, there were workshops, there were clarifications. Lots of emails were exchanged between my office and DLS and even LMT for that matter where these issues were have been voiced out. My stance has been leaning on the side of ensuring that you will save the money for the fiscus.

10 So – so but at the end of the day with a huge pressure from the division that had a responsibility to execute this project with the price having reduced and with the LMT being – becoming very clear that would be catered for it was only on that basis that I signed the memorandum. But also in the meeting was to say but by the way there are process issues, there are certain issues that Dennis has raised we will extend a view – raise those issues or address those issues.

20 And there was an assurance that they would be attended – or they either were being attended to or had been attended to. But the central to his email and his issues were aligned to what were my issues.

ADV KENNEDY SC: Now apart from the fact that VR Laser was about R100 million more in its tender compared with LMT the fact that it was given an opportunity to negotiate a

reduction, a major reduction from about R260 down to R195million was that in your view acceptable from a legal and particularly procurement point of view to actually engage in negotiations?

MR MHLONTLE: Even in a tender process you would have your criteria, your criteria would talk to whatever maybe quality, would talk to a timelines or talk to all the factors that you – that you deem critical. And you would also have a price would be and everything else. The – even that you
10 looked at all of those issues and you tick, tick, tick for me it remains the issue around the price was now reduced and the LMT was now being considered. But I am getting to your point if at some point you would go in what you call best and final offers and that process you go to all those who have tendered.

Now let us say in terms of quality because of concerns LMT was no longer a feature because they fell short on quality you would then go to VR Laser and go to the next supplier go into a best and final offer and then they –
20 then you then have it for me.

ADV KENNEDY SC: Now that was not done here Mr Mlambo has testified. Do you know whether that was done? Whether both VR Laser and LMT were invited to give a revised best and final offer?

MR MHLONTLE: What I – what the investigators have

shown me are the emails that have been exchanged between the DLS management and VR Laser. It – which suggest that that process was in all likelihood I think more internal emails between management within DLS which suggests that they may only have gone to VR Laser which renders the process unfair.

ADV KENNEDY SC: Yes I mean presumably let us assume for a moment and I am not sure of necessarily it would comply with Treasury regulations but let us assume for a
10 moment that it is permissible once tenders have been submitted and open that it is permissible for an entity like Denel to go back to the tenderers and say, would you like to revise your tenders?

The evidence that has been presented before the Chair has been that only VR Laser was approached. Mr Mlambo has also explained that it is permissible if for example a tender has been awarded so the decision has been made to award a tender to a particular entity then it may be permissible once the decision has already been
20 made for the entity to go back to the tenderer and say, would you be prepared to bring down your price maybe we can push up quantities or whatever to make it worth your while. So there is a latitude and I believe the Treasury regulations bear him out on that.

But what appears to have happened and that Mr

Mlambo has commented about it here is that VR Laser was approached when its price was so much higher than LMT's despite that where their – the scores that they received from the evaluation committee were less than 1% difference where LMT was going to save Denel R100 million or so that VR Laser is then approached on its own and said would you like to bring down your price and they say yes we will bring it down by R60 million or so.

Now it seems that that offer – that opportunity was
10 not given to LMT. Who knows maybe it would have been prepared to reduce its ended price by R60 or so million to bring it still R100 million below VR Laser's revised price. But did you believe that this issue of offering VR Laser on its own the opportunity to revise its price were you aware at the time that that was irregular as seemed to be hinted at by Mr Mlambo?

MR MHLONTLE: It is also hinted by myself in my own affidavit to say if you are to offer best and final you got to have to give it to the tender – tenderer that you maybe 1 or 2
20 or 3 that you have shortlisted in order to just a step before you make your final decision. And if that process was afforded only to VR Laser not to number 2 in terms of the ratings, LMT was number 3 instead of not giving it to your number 2 as well. And also, if you look at the issue of quality, that I deal a lot within my affidavit that there was a

concern from a technical point of view, they would not be able to produce the product.

So let us take for the purposes of this session that LMT had fallen out already but you would needed to have given the opportunity to both tender number 1 and tender number 2.

And I had no knowledge that they only had go onto one supplier. And it – I have liked as I sit at home as I got presented the evidence, is obviously, they were the only
10 ones that were given the opportunity, rendering the process, once again, irregular.

ADV KENNEDY SC: So were you not aware at the time ...[intervenes]

MR MHLONTLO: No.

ADV KENNEDY SC: ...that in fact LMT was not given a similar opportunity?

MR MHLONTLO: Chair, I want to make this point. In my affidavit I deal at length that DLS had rated LMT negatively on technical aspects, went on to produce evidence that came
20 from the UN(?) for some of the work that they have done for the UN.

And then given that – and the issue of the fact that they would be accountable for the product, it narrows the suppliers really to one VR Laser to supplier number two.

And if I was the one running the process, I would have

then go on and do best, a final offer, to the two suppliers. It served no purpose for LMT to register(?) their price because they were low anyway.

ADV KENNEDY SC: So if they were prepared to go even lower, that surely should have served your purposes as a state entity trying to avoid asking for yet another bailout from government, surely?

MR MHLONTLO: Well, precisely. I am pointing out that I was not aware of that communication, how it unfolded.
10 Some of the emails going so as to far as to say I will get VR Laser prices reduced. I will use other means to get to them. Now to me, it sounds as if VR Laser was too close to DLS and those aspects were not as visible at the time of signing that memo.

ADV KENNEDY SC: Yes. Now, Mr Mlambo then raises all of these issues in the email. Ultimately, you came to be persuaded to sign the revised memo at a stage when you believed that these issues had been addressed. Is that right?

20 **MR MHLONTLO:** Correct.

ADV KENNEDY SC: Yes. Did you ever have a discussion with Mr Mlambo either by email or in person and he, of course, reported to you, to ask him: These questions that you have raised that are serious that I, Mr Mhlontlo, actually shares some concerns about. Dennis – Mr Mlambo, are you

– have your concerns been addressed, have they been resolved? Have you ever discussed that with him?

MR MHLONTLO: I would think that in our normal engagements, we would have – I would have brought him to speed around what we had done but I do not recall specifically a session where I took this email, went on a point(?) my point. You see. To say all issues are resolved.

But I guess, we were both executives. Maybe it is where we missed doing that. Either I should have gone to him or
10 he should have come to me and then we can look and solve these issues.

ADV KENNEDY SC: Would you agree that Mr Mlambo, although he was genuine to you, he still occupied a relatively senior position within Denel?

MR MHLONTLO: In terms of the Executive for Supply Chain was a relatively new position. Executives for Supply Chain, if it did not come into existence late in 2012, it would have come late in 2015.

So the position – and maybe by the time he left Denel
20 had really matured into a well-understood role given its own powers. But perhaps in him facing(?) and there was also a bit of finding fit.

ADV KENNEDY SC: But would you not agree that where he has been appointed, he was already then the Group Executive for Supply Chain? If he reporting to you has

raised with you and the Group CEO and others concerns in the email, would you agree that they needed to be taken seriously?

MR MHLONTLO: I had fundamental issues that I made the point that they were taken seriously. And these issues – these issues and my issues are not materially adverse. And that does ...[indistinct] [Speaker not clear]

ADV KENNEDY SC: Yes, I accept that you shared many of the concerns that he raised. Can I ask you please, in the
10 same bundle, that is still Bundle 1. Chair, the one that you have just been handed up. Page 612. In fact, the document starts at page 604. Let us start there.

And the Chair has already heard the evidence of Ms Malahlela who was the then Head of Supply Chain in the entity DLS and she indicated that she was instructed to prepare this revised memorandum despite her own concerns and misgivings about the procurement process.

But she, on the instructions of the DLS Executive, prepared this and this motivated for the approval of the
20 award of the platform Hull Contract of VR Laser Services. And if I can take you to page 612, that appears to be your signature at the foot of the page. Is that right?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And that was dated the 16th of October 2014. And so you signed. You did not give

final approval to it yourself because that needed to be approved by Mr Saloojee as we see on the top of the next page. You were part of the slightly lower ranks within the organisation who were expected it to either recommend or not recommend approval. Is that correct?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And you recommended approval by Mr Saloojee. And the analysis is set out of the tender process and the evaluation and why it was submitted or
10 recommended that VR Laser rather than LMT should be awarded the contract.

Now it is interesting to see the dates on which you signed that. That is the 16th of October 2014. That was about five or six weeks after Mr Mlambo's email that I took you to earlier at page 791 and that is the 9th of September 2013.

So am I correct in understanding your evidence a bit earlier to the Chair, that after Mr Mlambo raised his concerns in his email, many of which you shared, you were engaged in
20 a process where you understood those concerns were ultimately remedied, at least sufficiently, to be persuaded to recommend this?

MR MHLONTLO: The specific meeting that signed this memo, it was one of the items that got discussed whereas the price is now reduced whereas there is an indication of

another package that will get LMT, the question was, has all Dennis' issues been addressed? Because my fundamental issue was the price. My fundamental issue was the work that were going to LMT.

ADV KENNEDY SC: Yes. Now mention was made by Mr Mlambo of the fact that in terms of the Delegation of Authority, any contract to be awarded with more than two hundred million had to be approved by the full head office board, the Denel SOC Limited Board. Is that correct?

10 **MR MHLONTLO:** I now need to be refreshed ...[intervenes]

ADV KENNEDY SC: Okay.

MR MHLONTLO: ...to the Delegation of Authority. But as far as I am aware, the Delegation of Authority worked in cascading order where zero to a certain amount. It will be the division from a certain amount to a certain amount, it will be Dennis Mlambo. Above a certain amount it will be myself. Above a certain amount it would be the CEO. And I do not recall in those years they acquisitioned any specific acquisition that needed to go to the board.

20 **ADV KENNEDY SC:** Okay. But he has given evidence in relation to that specifically. If I could ask you, in the same bundle, to turn to page 757?

MR MHLONTLO: [No audible reply]

ADV KENNEDY SC: This is part of the Delegation of Authority which starts at page 752, the table. And then at

757, 5.1. Do you have that?

MR MHLONTLO: Ja, I have that.

ADV KENNEDY SC: So that gives, as you put it a cascade of levels. So anything below or equal to fifty million would have to be approved to a certain level. Between fifty million and two hundred million, at another level. That would be approval, the A in a column headed GCE. The A according to the PS approval.

So that means, that anything between fifty million and
10 two hundred million would have to be approved by the DCE.
That was Mr Saloojee at that stage, correct?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And in the right-hand column, it says Group Supply Chain Manager prior consultation on procurement above twenty million.

MR MHLONTLO: Ja.

ADV KENNEDY SC: Group Supply Chain Manager, in fact, was meant to read Group Supply Chain Executive. Mr Mlambo gave evidence. Do you have a different view on
20 that?

MR MHLONTLO: In fact, if I look at this, it actually suggests that it escaped.

ADV KENNEDY SC: I am sorry. Just say that again?

MR MHLONTLO: I am saying that if I look at this ...[intervenes]

ADV KENNEDY SC: Yes.

MR MHLONTLO: ...it means that it fell exactly in the DCO approval because it was one ninety-five in the end.

ADV KENNEDY SC: Yes. Well, I am not asking you that. Sorry, Mr Mhlontlo. Perhaps you could just indulge me to answer the questions that I am putting to you. I am getting to the point in the moment about where the one ninety-five fell. If you could just indulge me. The last category is over two hundred million. The approval no longer was rested in
10 the DCE but now had to be approved by the board, correct?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And it says in the right-hand column, a report outlining the process followed to invite a shortlisted as suppliers and evaluation and scores of the shortlisted suppliers of recommendations of the Tender Committee to be tabled at the board for approval.

Now let us go to your point about the hundred and ninety-five. Do you have any comment on the fact that it just seems rather interesting, perhaps coincidental, that VR
20 Laser initially tendered at two hundred and sixty odd million who was now persuaded in a process that you have acknowledged was not fair because LMT was not given the same opportunity, to revise its price.

It does so quite dramatically and then just happens to bring it down just below the requirement for the entire board

approval. Do you have any comment on that or am I reading too much into it?

MR MHLONTLO: I mean, there could be two interpretations. It could be your very view. It could be the view that is applicable. Or it could be coincidental. It is difficult to say.

ADV KENNEDY SC: Yes.

MR MHLONTLO: But ja.

ADV KENNEDY SC: Yes. Now Mr Mhlontlo, let us go back
10 to the issue that we were debating earlier about the information that you got because Mr Mlambo had raised concerns.

You had your own concerns which coincided with the substance of Mr Mlambo's concerns. And then when you signed the recommendation, as we seen, if you go back to page 612. That was five or six weeks after Mr Mlambo's email and you were given assurances.

Now I just want to take you back to your evidence earlier. Are you saying that Mr Mlambo did not take part in a
20 meeting that took place in October when you were ultimately persuaded to join in the recommendation of VR Laser?

MR MHLONTLO: Mr Mlambo on that day, on that week, I think was on leave.

ADV KENNEDY SC: Yes. I do not know if you heard Mr Mlambo's evidence two weeks ago but certainly the Chair

did. But Mr Mlambo said. He understood that his advice given in his email that the award to VR Laser would not go ahead – should not go ahead because of the concerns that he raised, many of which were shared by you.

He understood that management would acting on that and consistent with that and he found to his surprise that at this meeting in October just five weeks later, this was in fact approved. Recommended and approved despite his concerns which were not resolved.

10 Did you... I do not know if you heard that evidence. But the clear effect of his evidence seems to be. He is employed to do the job. He is employed to advice senior executives, including yourself and Mr Saloojee that there is a serious problem in different aspects as is set out in his email and that it should not be awarded to VR Laser.

Now I accept, of course, that Mr Mlambo did not have the final say. It was subject to approval either by the board if it was over two hundred million or by the Group Chief Executive.

20 But he clearly had a feeling that – of being offended and undermined that behind his back, as it were, a decision is taken to approve the very thing that he had strongly recommended should not be approved because there were serious irregularities.

Now he was not consulted, he said, before the decision

was taken. He was not asked or it was not – nobody came back to him and said: Mr Mlambo, on your point in paragraph 2 you are completely wrong. You have misunderstood the facts.

Or on point number 3, we have actually resolved it. We have actually invited LMT to revise its offer, for example. None of that was done. Were you aware that that was not done with Mr Mlambo?

MR MHLONTLO: I am going to, Chair, go back to the
10 process. That around June/July of 2014, a memo came to my office. A memo I rejected on the core grounds which, as I understand it, Mr Mlambo raised.

A series of workshops and conversation took place. A lot of emails which endeavoured to ensure that LMT ended up with this work on the basis that it is within the group.

And also, at the very end, the quality issues were raised by DLS and when we met on this day three months down the line, the pressure was huge and the point was made to say that if we delay this aspect any further, it would begin to
20 impact the Hoefyster Project.

And a number of the issues that I had raised had been mitigated and there was a specific question posed to say: Yes, Dennis had a Supply Chain process related issues to what extent those have been raised, had been addressed. And then there was assurance that either the – I cannot

quite recall whether either had been addressed or in the process of being addressed.

Dennis – Mr Mlambo was an executive within the Group of Executives. His inputs would be considered but his input is not the final input. And I think that is important.

CHAIRPERSON: I think the point that Mr Kennedy seeks to canvas with you is not that Mr Mlambo's view or input was final. I believe it is simply that approval was given without his issues being addressed. I think that is the point.

10 To say, if the final authority to approve rests with somebody else, that is fine. But if I have raised issues and they you to make issues by virtue of the position that I hold or the job that I am doing.

At least, somebody needs to engage me on these issues. If there is engagement and we do not agree. Maybe that is fine. But what are the answers to my questions that should be addressed. That is my understanding. Mr Kennedy might indicate...

20 That is my understanding of the level at which he is raising it because that is also what I would expect. If you are counted among the people who must be consulted and you take a different view from everybody, at least there must be an engagement or somebody must address your concerns. It does not mean that they have to agree with you but you must have that engagement at least.

Otherwise, you might feel like, so whatever input I make does not matter or whereas you might think some people are just going through emotions because maybe they have got some predetermined outcome that they are pursuing.

Because if somebody says here are the problems to following this route and others follow it. At least they must be able to say these are our arguments against his arguments. Are you able to say anything on that?

MR MHLONTLO: Chair, if I look at my concern and look at
10 his concern. Look at the issue of one aspect of it around quality that I could not talk to – being in finance I would not talk to whether the quality is ...[intervenes]

CHAIRPERSON: Ja.

MR MHLONTLO: ...is appropriate or not.

CHAIRPERSON: Ja.

MR MHLONTLO: To the extent I am provided with evidence around quality that almost excludes LMT. There is not a hell of a lot I would be able to do there. The price, which was a concern to me, had reduced.

20 There was an indication that even though quality is an issue and therefore they cannot be trust with this package, that there is another package that would go to LMT. It was on that basis that I had fined.

My understanding was of material aspects or what Dennis was concerned with had been addressed. But I also

put the question to the divisional leader of DLS to say: By the way, as you are now converging us in this room to sign. Have you – are you – have you addressed or are you going to ensure that Dennis' issues are addressed?

And I am saying, if we then did not necessarily at some point raised an eye, sit down on an email on a point by point, it is our fault, both of us as neither the two of us had done that.

CHAIRPERSON: Because as I understand it, and you have
10 made the point two times or more, to say there was serious overlap between your issues and his issues or they may have been substantially the same.

And it seems to me from what you are saying that you got persuaded, partly because you were told either that his issues had been addressed or they were being addressed plus the issue of the price and then the quality. Those... Otherwise, substantially, you and him were on the same side.

MR MHLONTLO: Yes.

20 **CHAIRPERSON:** Ja. Okay. And one does not know whether it so happened that the meeting happened when he was away or whether it was engineered [laughing] to be like that because it is... Well, maybe it should not say it is strange.

Here is somebody that is quite seriously opposed to this

thing and this crucial meeting happens when he is not there. But it maybe that it was coincidence. It is just, also it is strange that if – even when he comes back, he finds that his issues have not been addressed, you know.

It might have been different if – when he came back he found that when he looks at the minutes it is clear that somebody said: Well, this is our response to this and that and that.

But ja. Okay. Thank you. Mr Kennedy.

10 **ADV KENNEDY SC:** Thank you, Chair. If I can just for completeness refer to you page 785?

MR MHLONTLO: [No audible reply]

ADV KENNEDY SC: Page 785 appears to be another email from Mr Mlambo which in fact was sent before the one that we have looked at. I am not going to go Chair through the detail of it but this, again, is a letter from Mr Mlambo.

In this case, addressed primarily to Mr Stephan Burger, CEO of DOS but he copied in Ms Malahlela and yourself, as well as Mr Wessels, Teubes and Saloojee.

20 And this raises similar sort of issues. Can I just go back for a moment Mr Mhlontlo to the issue about LMT and its quality and reliability. You have mentioned that there were concerns raised that, for example, LMT had caused the embarrassment because it had produced vehicles for the United Nations, which turned out to have typical safety

problems. And other witnesses have given evidence in relation to that.

But are you aware that in the evaluation of the tenders, LMT was not rejected? It was actually scored on the basis of its technical capability. It did not score as highly as VR Laser but it was not found to be so bad that it could not be used by Denel. Are you aware of that?

MR MHLONTLO: No, I was not aware of that. But what, obviously, in amplifying the problem in trying to make the
10 problem appear maybe big. That was evidence that was produced to us by the division and a lot more in this regard. Chair, the division concern must answer for itself.

ADV KENNEDY SC: Yes, but it seems that some in the division, not everybody, but some in the division of DLS seem to be saying: Well, we have got to give it to VR Laser because they are only people who can do the job properly, technically because LMT is really not reliable.

But that was not a view shared by others. And in fact, there was the further issue about LMT being acquired by
20 Denel. So it was now going to be in-house. It could now be controlled by management and it was being assisted in terms of an advance payment for another contract that it was still working on.

So it seems that Mr Mlambo may have had some substance when he said: But why are we not giving it to

LMT especially when it is going to cost so much less and where technical issues can be managed?

Was that something you went into or was that something on which you felt you were guided by other people to a point that you were satisfied?

MR MHLONTLO: If we consider my affidavit. I am very strong on this very point that I wanted this work to go to LMT. At the end of the day, Denel in those days operated in decentralised sector. Divisions had to account for their own
10 revenue and had to account in terms of the project execution and completion.

And even though I was so strong on that, I do say in my affidavit, that with all the pleas and begging, I was not successful. And at some point, I had to let the process go.

CHAIRPERSON: Is the position that if you had the power rested in you to make a decision, you would have made a different decision? In other words, you would have given it to LMT but you kind of deferred to the people in the particular division. Or what is the position?

20 **MR MHLONTLO**: Chair, if I was both the CFO of the group and I happen to be the MD of that division, I would have given it to LMT without a doubt. Reasoned(?) with specific mitigations, I would have had to put in place.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: Chair, may I just ask a few more

questions just to complete this line?

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: If it will be acceptable. I see it is one o'clock but ...[intervenes]

CHAIRPERSON: Ja-no, that is fine.

ADV KENNEDY SC: I promise just to ask a few.

CHAIRPERSON: Okay.

ADV KENNEDY SC: And then we should be able to move on from this. What I find important, Mr Mhlontlo, is that this
10 was not a decision that was vested in the division. We have already looked at the delegation of authority. If it was vested in the division it would have left to Mr Stephan Burger and it is quite clear from the documents that Mr Stephan believed only VR Laser should be given this contract despite the arguments against – that were raised by various people including yourself but surely the reason for delegating the authority of – for an amount of so much to the Group CEO based on the recommendations of *inter alia* yourself as Group CFO was that this was a matter of
20 such importance because so much money of the Group's money, which is of course public money, was being spent. It was not left to Mr Burger. So do we not have a situation where you effectively seem to be saying to the Chair, unless I am misunderstanding your evidence, you seem to be saying I, as Group CFO, when I was asked to make a

recommendation, I would have liked to have recommended LMT but I was persuaded to rather recommend VR Laser despite all my serious concerns and the reason why I was persuaded to recommend was simply that the head of the division wants VR Laser. Whereas the head of the division did not have the power vested in you, surely you were there together – I am not suggesting you alone, Mr Saloojee and others, surely you were there as a safeguard for Denel's interests to ensure that it was not just a
10 divisional head steamrolling you and getting their way to prefer an entity such as VR Laser but you had to be satisfied that there were good reasons and if there were not good reasons, if there were concerns like you to your credit had that they needed to be properly answered before the decision could go the way that Mr Burger wanted.

MR MHLONTLO: Chair, the recommendation from myself as to the process to proceed to go the overall approval is informed by a number of considerations on my side. One, the price had reduced to a number.

20 Secondly, it was a package that would go to LMT. Thirdly, there were various technical issues that were pointed to be the issues and I had – there was no way of in particular of going against those technical issues that were appointed, at least based on the information that was before myself at the time.

So if I then have a letter that say as this company would do this work, there is this letter from a client that states the following things, then as a division, we evaluated at a point in time, this letter has come and is such that we are going to entrust this to LMT. Even that correspondence in terms of letter, price having come down, the fact that there would be other work going to LMT, persuaded me sufficiently to be able to say – to give it sign-off.

10 And if we look at the other aspects that I have now become aware of, now obviously if I was aware of those facts at that point, there was no way I would have signed it off. I feel, Chair, that really I have put my position around the matter.

CHAIRPERSON: Well, I – it seems to based on your answer you are conceding the point that Mr Kennedy makes but you seek to defend your decision on its own merits, leaving out the issue of deferring to the division, is that correct?

20 **MR MHLONTLO:** It is correct.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Well, one final question if I may? Mr Mlambo's emails effectively were saying this process has not been fair. You seem to have confirmed that the process was not fair in at least the respect that VR Laser

was given the only chance to amend its price. Effectively, of course, if a tender process is not fair, it is contrary to the Constitution, Section 217 which says that any state entity, such as Denel, has to follow a process which is fair, equitable, competitive, etcetera. Cost-effective too.

Now was Mlambo, who reported to you, was he not ringing a bell, an alarm bell, saying this process cannot be awarded to VR Laser because it is unfair and you would have known surely, Mr Mhlontlo, as a chartered accountant and a senior executive of a state entity that if there was an unfair process in a tender award, which you were being asked to recommend, it would firstly be unlawful and secondly, it would be subject to legal challenge in a High Court. Were you not recommending something that you had already been warned by Mr Mlambo and which you shared his feelings should not be awarded precisely because of that?

MR MHLONTLO: Chair, I recommended this for overall approval on the basis of three points that I have articulated with the full understanding that the matters that had been raised had either been fully addressed or in the process of being addressed. There is absolutely no other information that was available to me other than those points. I then indicate that as I was at some point during this course of this year or the last year investigated pointing out internal

communication that had taken place within DLS that indicate that this business was too close to DLS and the process could actually have been irregular. It is up to DLS divisional manager who must take a stand at some point and account for this.

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

CHAIRPERSON: Yes, let us take the lunch adjournment, we will resume at ten past two.

10 **ADV KENNEDY SC:** Ten past two. Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV KENNEDY SC: Thank you, Chair. If I may just complete these questions on this topic. We are still dealing with the hull contract that was awarded to VR Laser. Are you aware that apart from Mr Mlambo, who was the Group Executive in charge of supply chain at head
20 office, Ms Malahlela within the division DLS had also raised concerns about the compliance with procurement and also whether it was appropriate to go outside LMT?

MR MHLONTLO: Chair, I was not aware of that.

ADV KENNEDY SC: You mentioned a meeting which culminated in the document that we see at page 612

bearing your signature.

MR MHLONTLO: Ja.

ADV KENNEDY SC: That is the 16 October and if you look on – this is the motivation that you signed off as approving the recommendation or endorsing the recommendation of the award of the contract of VR Laser. Do you see at the foot of the page 611 Ms Malahlela's name and signature appear? 611. Can you see that? Was she present in a meeting as far as you can recall?

10 **MR MHLONTLO:** She was not.

ADV KENNEDY SC: She was not?

MR MHLONTLO: The memo was brought by Mr Burger already bearing the signatures.

ADV KENNEDY SC: So who was it at that meeting who gave you the assurance that the procurement and other concerns that Mr Mlambo had raised and that you largely agreed with. Who was it at that meeting who persuaded you that all of these concerns had been sorted out? Was that Mr Burger?

20 **MR MHLONTLO:** Mr Burger presented the memo bearing the signatures, giving assurance that the divisional supply chain was comfortable and when a specific question was posed about Mr Mlambo's queries, my sense – my recollection, not hundred percent, many years ago now, was that those are either being addressed or have already

been addressed.

ADV KENNEDY SC: You see, a concern might arise where Ms Malahlela who occupied a senior position with DLS as the head of supply chain, he is obviously paid a salary appropriate with those responsibilities, where she has raised concerns within divisional level that were not brought to your attention, she was effectively pushed into a situation where she had to, she was instructed by the DLS board, to prepare this revised recommendation to – this
10 proposal to motivate for the award of the contract to VR Laser. That was against her own advice and recommendations and then at head office level, which is supposed to supervise and ensure that the divisions do not act outside the law and outside government policy and outside Denel policy and so forth, when Mr Mlambo, the head of supply chain management at head office, likewise raised these concerns. I can understand you were not aware of Ms Malahlela's concerns. Does it cause you concern now to hear that Ms Malahlela had serious
20 objections to the award of this contract to VR Laser that you were not made aware of?

MR MHLONTLO: I am actually concerned that Ms Malahlela had concerns, we had quite a reasonable relationship, that she never brought those to my attention. Now it sounds like serious concerns and I am concerned

not only for Ms Malahlela but also the emails that were shown to me by the investigators and my overall conclusion on this, once again, there was too much closeness between this division and the supplier and the division concerned must answer as to why this happened.

ADV KENNEDY SC: Indeed you are right that it must answer and Mr Burger will be called to testify in the next few days and we will certainly be asking him some of these questions. What I am concerned about, though, is this. At
10 this meeting, was there anybody from supply chain either at divisional or head office level?

MR MHLONTLO: The meeting that was called at short notice when Mr Burger, you know, came with this memo, comprised of Mr Burger, Mr Wessels, myself and Mr Saloojee and is not out of the ordinary.

ADV KENNEDY SC: Sorry and it was not? Just speak up please?

MR MHLONTLO: I am saying that the meeting that took place, it was with Mr Burger ...[intervenes]

20 **ADV KENNEDY SC:** Yes, no I heard that bit, just...

MR MHLONTLO: Mr Jan Wessels, myself and Mr Saloojee to consider this memo and is not out of the ordinary, we would meet on various issues.

ADV KENNEDY SC: Yes, my question was, was anybody from supply chain management there?

MR MHLONTLO: There was nobody from supply chain but the signatures that are in the memo were sufficient.

ADV KENNEDY SC: Yes. And did you raise with Mr Burger or anybody else, was it you who raised the issues that Mr Mlambo had raised to try and get reassurance that they had been addressed?

MR MHLONTLO: I am not certain who raised the issue but all I know is that the issue was discussed.

ADV KENNEDY SC: Yes. And were you satisfied from Mr
10 Burger – was it Mr Burger who satisfied you that the questions or concerns raised by Mr Mlambo had been properly addressed?

MR MHLONTLO: Yes.

ADV KENNEDY SC: You see, what concerns me, just at the level of governance and ensuring that things are done properly is that you have a memo submitted to you that starts off with a recommendation from Ms Malahlela who has given evidence that she was basically forced to do this by her bosses who included Mr Burger. Mr Burger does not
20 seem to have conveyed that to you and then, on top of it, Mr Mlambo had raised to your knowledge a number of concerns that you shared. Mr Mlambo was not there to speak for himself. Ms Malahlela was not there to speak for herself. So you, rightly, Mr Mhlontlo, to your credit, were concerned at least about the concerns raised by Mr

Mhlontlo (sic) and raised by yourself but what troubles me is that Mr Burger just simply said do not worry, all of this has been sorted out when clearly it is not the case. Mr Mlambo gave evidence that they were not sorted out. Ms Malahlela gave evidence that they were not sorted out. Neither of them was invited to the meeting, it may be that Mr Mlambo was away at that time.

Can you just explain to me about the urgency of the matter?

10 We have already heard evidence from some witnesses that in defence contracts it frequently happens that these things are matters that take many years. We know in fact in respect of the Hoefyster project that it is already many years behind schedule. This is not an industry that has to, just for example, dealing with Covid patients that need ventilators tonight, these things take ages. Can you just explain to the Chair why it was – why this meeting was convened? I am not saying you are responsible for that but do you understand why this

20 meeting was convened as a matter of such urgency and, as it happens, Mr Mlambo is not present and Ms Malahlela is not present?

MR MHLONTLO: Mr Mlambo or Ms Malahlela being not present would not be a big issue because there will be many other issues that get debated at executive level

without Mr Mlambo or Ms Malahlela being there. But let me get back to the specific question that you are posing. This memo was presented to myself around the end of June or beginning of July which I had [indistinct] 09.14 that, having rejected, that a number of various workshops and conversations took place where we were seeking to see if LMT cannot become part of this process and be awarded to LMT and in that process it did create tensions, quite frankly, because we were putting our foot down with regards to issues of price, with regards to issues of LMT not being considered and three months down the line the division comes back after various interactions and gives certain assurances and based on those assurances this memo is signed off.

What we know today, we did not know it in 2014 when this was being done. Bear in mind that Hoefyster had just been – I think it had been awarded at that stage, probably was less than a year that this programme had been awarded and there was a speed at which the – at which Hoefyster would be produced. At least that is how we understood it back then, that necessitated this particular finalisation of the memo. At least that is how we understood.

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

CHAIRPERSON: I am sorry.

ADV KENNEDY SC: Sorry, Chair.

CHAIRPERSON: This meeting, those who attended it, do they fall into a certain category that could have justified leaving out persons who had been allowed to contribute to the debate such as Ms Malahlela. Was it said maybe it was a meeting of the executives or was there a basis known to you that may have been responsible for Ms Malahlela to be left out?

MR MHLONTLO: The meeting took place literally - Mr
10 Burger walked in with the memo, went to my office and asked if we could converge. We met at Mr Jan Wessels' office, the CEO, Mr Saloojee, in attempt to – was invited into the meeting, even business development executive was invited to the meeting, Mr Zwelakhe Mpepi. Those were the executives that met over this and there were ...[intervenes]

CHAIRPERSON: From how you described it it seems like it was a rush-rush meeting.

MR MHLONTLO: It was a meeting that was ...[intervenes]

20 **CHAIRPERSON:** I happened without much notice and it was like let us meet and discuss this quickly or something.

MR MHLONTLO: Chair, it happened along those lines.

CHAIRPERSON: Along those lines, yes. Okay. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. Looking back, Mr

Mhlontlo, if you had known what you know now from what evidence has come out, such as through what the investigators have shown you, would you have signed at this meeting to recommend the award of the contract to VR Laser?

MR MHLONTLO: Certainly not, Chair.

ADV KENNEDY SC: And do you feel that you were misled by anybody to an extent that that induced you, persuaded you wrongly to sign approval?

10 **MR MHLONTLO:** The process is compromised. If you begin to read something that says I will contact that specific supplier, I will use other channels to get to them, suggesting that there is a relationship that is beyond the normal business relationship. And once again, as I indicated earlier, if you go to best and final offer, you would have followed a process of short listing, you will be looking at those short listed suppliers to see what would be the final price that you will go with. And it happens – I mean, I continue to be in business today, it happens every
20 day, but there is a process.

ADV KENNEDY SC: Specifically ...[intervenes]

CHAIRPERSON: Yes, but Mr Kennedy's question is whether you feel that anybody in that meeting misled you in any way, as you sit there?

MR MHLONTLO: The aspect that has disclosed to me

today, that there were meetings outside the process then lands to one thing, that ...[intervenes]

CHAIRPERSON: That you were not told about.

MR MHLONTLO: Ja.

CHAIRPERSON: Okay.

ADV KENNEDY SC: And specifically in relation to the procurement issues, do you feel you were misled by Mr Burger or anybody else into a belief, a wrong belief that these concerns had been properly resolved?

10 **MR MHLONTLO:** At the end of that meeting I had the understanding that either the issues were in process of being resolved adequately or were already resolved and that statement certainly based on Mr Mlambo's evidence in this committee, was not true.

ADV KENNEDY SC: Did you raise with Mr Burger the specific questions point by point that Mr Mlambo had raised in his emails to you? For example, that the tenders had not been sent out to the people at the same time and the fact that there had been separate individual question
20 and answer sessions with tenderers rather than the standard practice required by the supply chain management policy that everybody should be treated the same meeting. Did you raise any of those questions with Mr Burger?

MR MHLONTLO: No, my signing of the recommendation to

the CEO for overall approval is based on three different issues, as I articulated a little earlier on, the issue that the price had now reduced. Even if Mr Mlambo did not have any concern I would still have had the concern. I had a responsibility to ensure that the finances of the company are used economically and I would have had an issue around the level of the price, at least preliminary, it was if we are going to pay that, I would have had the issue around LMT and also to look to see if there was no way
10 that LMT would be part of this, whether we put certain mitigations in place and so my issues and that of [indistinct] 16.59 are complementing each other, to a large degree are the same, but I had my own fundamental concerns on the process.

ADV KENNEDY SC: Looking back, with the benefit hindsight which we all know is fifty/fifty, but looking back with the benefit of hindsight, do you now feel that perhaps you, quite apart from others, do you think that perhaps you should have been more detailed and more enquiring to be
20 satisfied that all of the various issues raised by Mr Mlambo, not just the ones that you focused on, but all of them were complied with or resolved, rather?

MR MHLONTLO: I suppose when you work as a team, would expect all of us, the executives, who are contributing towards or working towards the same goal. So when you

split(?) and looking at the division, look at the leadership, I expected to play their part, I play my part. Now with hindsight, yes, you rightly say and many other factors that we now know that we did not know back then, I mean, one would have been more circumspect on [indistinct – dropping voice]

ADV KENNEDY SC: Is that not exactly the reason why you should be more circumspect? That is exactly why, for example, the delegation vests the authority to approve this sort of contract of almost 200 million at head office level, not the divisional level? You see, I understand your point that you – we were all working as a team and we are entitled to expect that we are all working for the same goal, are you in fact able to say that everybody with the benefit of hindsight, that everybody in that meeting was actually working for the same goal? In retrospect do you not feel perhaps there is a possibility that some at that meeting may have been trying to manipulate you and the process to ensure that VR Laser was given at all costs?

MR MHLONTLO: Chair, with what you know, that is not in dispute, there are many facts that are suggesting that this particular division was too close to that company and I say that clearly in my affidavit, that this could have been staged, to say the least. But there were certain aspects

that I looked into and those aspects were ones that enabled me to put my signature. Bearing in mind, I was not the overall approver, but I will in a sense say, one or two issues that are critical to me, I think had been addressed.

ADV KENNEDY SC: But not all of the issues raised by Mr Mlambo, not so?

MR MHLONTLO: There was a specific understanding around Mr Mlambo's issues.

10 **CHAIRPERSON:** Let me tell you what I understood your immediate past answer to mean to Mr Kennedy's question. I understood you to be saying there can be no doubt or there is no doubt in your mind that either there was or there may have been some manipulation of processes when you look at the transaction with the knowledge that you have now. Am I right?

MR MHLONTLO: That is correct.

CHAIRPERSON: That is what you are saying. Okay.

20 **ADV KENNEDY SC:** Thank you, Chair. I just want to complete the questioning in relation to your earlier point that you were all part of team working for the same objective. Presumably you are talking about the objective being the best service that you can provide for Denel in its interests through a proper procurement process that from a technical, financial business point of view is going to get

the best solution, is that correct?

MR MHLONTLO: That is indeed.

ADV KENNEDY SC: And would you agree that Mr Mlambo was motivated by that objective?

MR MHLONTLO: I will say yes, indeed.

ADV KENNEDY SC: Yes. What I want to suggest to you is Mr Mlambo was effectively to an extent sidelined, that if Mr Mlambo had been taken more seriously in the concerns that he raised and that you had perhaps been more careful
10 in scrutinising what Mr Burger gave you as an assurance that all of those concerns had been resolved, that perhaps you could have stopped the award of the whole contract of VR Laser by Denel's Land Systems entity. Is that fair to say?

MR MHLONTLO: No?

ADV KENNEDY SC: Is that no?

MR MHLONTLO: No. I got presented with a memo, we have got people with certain skill sets with over 20 years experience of assembling vehicles, designing, engaging
20 with clients, they have done and carried out, you know, big – executed big projects in the past and those individuals with that background with a history of excellent work for the country, produce a memo, they bring it to me, I query the aspects that I feel that are out line. They go away, come back, those were – that are out line have been

addressed and represented to me to say Mr Mlambo raised certain issues and those certain issues we are addressing. Your specific issues have now been adjusted and then under those circumstances I would have been comfortable even if you take me back to 2014. However, knowing what I now know, that there was something wrong in the process.

ADV KENNEDY SC: Before I leave this topic of the award of the contract for the hulls, I just want you to refer – so
10 can you put away the bundle 1 that we have been looking at and I would like you to go back to bundle 7 which contains your affidavit. If I can ask you in bundle 7 to turn to your affidavit at page 580?

MR MHLONTLO: Page?

ADV KENNEDY SC: 580. At the top of this page, paragraph 3.18, you refer to emails that were shown to you by the investigators, DLS internal emails that you say you were not privy to. They were discussing details of the tender and then you say in paragraph 3 at 19:

20 “Based on emails evidence VR Laser Services was too close to DLS and the whole process might have been created for and just to favour them. These emails rendered the tender irregular. Had I know this, I would have even opposed the award much more.”

Is that your current state of mind?

MR MHLONTLO: Ja.

ADV KENNEDY SC: Right, thank you. Now the final point on this topic that interests me is 3.20. You refer to something that happened during the Denel Annual Women's Day function in 2014 and you received a call from City Press. Women's Day is in early August, hey? I think it is the 9 August.

MR MHLONTLO: We had a function in the middle of
10 August.

ADV KENNEDY SC: Right, the middle of August was the function and you received a call from City Press. Was that a City Press journalist?

MR MHLONTLO: Yes.

ADV KENNEDY SC: And what were you asked?

MR MHLONTLO: I was asked a question that is it true that the tender for – or relating to Hoefyster would be awarded to VR Laser or procurement would be...

ADV KENNEDY SC: Yes.

20 **MR MHLONTLO:** Ja.

ADV KENNEDY SC: And how did you respond?

MR MHLONTLO: My response was fairly standard to say that any work that we put out there follows a procurement process, so there would be no one at any point who would just know who would be awarded what with and when the

question was posed, it was after Hoefyster had been awarded to Denel and my understanding was that there was going to be a comprehensive process around pieces(?) of work would be put out to the market.

ADV KENNEDY SC: Right, thank you. Chair, with your leave, may we move to the next topic?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Which is dealt with from paragraph 4 on page 580 and I propose to deal with this very briefly.

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: It is the acquisition of the BAE Land System South Africa. Now the BAE is a reference to the British defence entity, is that right?

MR MHLONTLO: Correct.

ADV KENNEDY SC: And that sold a subsidiary that was known as Land Systems South Africa, also referred to in the papers as LSSA, is that correct?

MR MHLONTLO: Correct.

20 **ADV KENNEDY SC:** Now you gave evidence yesterday and this morning about the circumstances of your suspension and the basis on which you were told that they were considering your suspension was that you and your colleagues, Mr Saloojee and Ms Afrika, had misled the board in relation to issues concerning the acquisition of LSSA. Is that what they alleged?

MR MHLONTLO: Correct.

ADV KENNEDY SC: So this is the very company that you are alleged to have given them misleading information about.

MR MHLONTLO: Right.

ADV KENNEDY SC: Correct. Now, Mr Mhlontlo, you have given very helpful detail in your affidavit from page 580 to 587 dealing with the background relating to the acquisition and whether there was anything wrong in relation to that.

10 Now of course ultimately if your disciplinary enquiry had been held you would have had an opportunity to put all of this up before the disciplinary enquiry.

How much of it may ultimately be relevant, if at all, for purposes of the Commission will be for the learned Chairperson to decide in due course but can I just ask you to give by way of just broad summary your overall evidence, summary of your evidence overall as to whether there was anything improper or irregular or unlawful or bad from a business point of view in relation to the acquisition
20 of LSSA from your perspective, from your knowledge.

MR MHLONTLO: Chair, this business had operated in South Africa for many years, it had produced some of the military vehicles that are heavily utilised by our SANDF. It had produced the vehicles that were used in the Middle East by the Americans during various sort of wars and so

on. This company was brought to our attention by ABSA that it was being disposed. My initial reaction was initially I thought I would even meet ABSA to discuss it because Denel was not acquisitive at that stage but out of ensuring that, you know, we had a business relationship with them so we were matched with them I briefed the CEO who undertook to brief various stakeholders before they can take any view whatsoever, and there was a positive or support that it is something that we must look at closely
10 because in the event that there's somebody bought off by other companies that are outside the State there could be certain vulnerabilities that could be there within our forces and anti, and we looked into that, went and viewed the premises of the company ...[indistinct] at the end, we instituted, valuation was instituted, due diligence, we wrote PFMA applications to the Ministry.

After a protracted 15 month period there was a PFMA approval, after various requests or various sets of information and presentation, due diligence was done by
20 the banks outside of our own due diligences and it was then a business that was then bought. There are a few things that were linked to this process. One was that the funder, which was Nedbank, the in-principle funder as we were pursuing this opportunity. When it came to actually just about to conclude the deal they became uncomfortable

and their point was in this funding structure we had incorporated ABSA, the co-funder, and they felt that the securities that had been provided for them versus what had been provided for ABSA were not on par ...[indistinct] basis, they were not equal and they wanted us to exit ABSA and use our own resources to fund. The alternative would be they are no longer going to continue to fund.

At that point our Chair of the Board engaged directly with the executives of Nedbank and the agreement
10 was that there would be a sort of bridging finance for five months to allow a proper restructuring of the funding, and one of the things that stood out in the approval from the Minister was the fact that we needed to ensure that there was an equity partner as a part of the structure in terms of the ownership, not only 100% Denel but there is an equity partnership.

So the position by Nedbank talked to in one way or the other the fact that there was anyway a revisit of the shareholding of the entity. The equity partnership process
20 of our ...[indistinct] session for equity partnership started and there was a preliminary view that that should be a UAE company ...[indistinct] and that all was part of the handover process to the new Board, whereas the new Board did not carry that through.

When we left we had not fully restructured the

funding, because we were running out of time we had arranged that the funding of Nedbank be extended to March 2016, you will see the evidence in the pack, but the one last thing is that ABSA was also exploring to take over the overall funding, instead of the funding being half/half just take over the whole funding but a load of issues with the banking relationship with this institution arose when we were suspended. We had an unbelievable mature relationship with financial institutions, no one deal can be
10 concluded without a financial institution behind it to support it in the form of guarantees etcetera, etcetera. We would have comprehensive engagement with financial institutions, and when those relationships fell apart obviously the institution suffered.

ADV KENNEDY SC: Thank you, now LSSA once it was purchased was then incorporated into the group as part of DVS is that correct?

MR MHLONTLO: Correct.

ADV KENNEDY SC: Yes, and there was an agreement
20 between DVS and VR Laser for a single source supply of particular items. As I understand it Mr Mhlontlo that took place after your suspension, is that correct?

MR MHLONTLO: I have no knowledge of it so it must have happened after I left.

ADV KENNEDY SC: Right. Now I would like to come to

page 594, right near the end of your affidavit, to deal with the final issue if I may, and you were asked to answer questions about alleged interference by the Guptas and their associates. Now you mentioned earlier that in 2014 around mid-August 2014 you got the strange call from the City Press journalist, did the journalist mention anything about the Guptas?

MR MHLONTLO: No.

ADV KENNEDY SC: Were you aware, so it was just about
10 two months later, after the City Press journalist spoke to you strange call, did you participate in the meeting where you joined with your colleagues in signing the recommendation of the motivation to appoint VR Laser for the hull contract, is that right?

MR MHLONTLO: Correct.

ADV KENNEDY SC: When you were part of that meeting were you aware that the Guptas or any of their associates, such as Mr Salim Essa had any shares or interests in VR Laser?

20 **MR MHLONTLO:** I did not, but I would imagine even if I did it would not have mattered.

ADV KENNEDY SC: Right, but you did not at that time?

MR MHLONTLO: No.

ADV KENNEDY SC: You were asked to comment about your knowledge of the Guptas and their associates'

involvement and your contact with them, did you have any business transactions at all to your knowledge at the time that you were still Group Chief Financial Officer, which involved to your knowledge the Guptas or their associates?

MR MHLONTLO: Not directly, I mean that could be within the group, some business I wouldn't know.

ADV KENNEDY SC: But were you aware of that or not at the time?

MR MHLONTLO: No.

10 **ADV KENNEDY SC:** That's why my question was specific, were they involved to your knowledge at the time. Now you were asked as to what contact you may have had with the Guptas or their associates and you've mentioned three things in your affidavit on page 594. The first is a visit to Denel's offices by – in May/June 2013 by Mr Hower, Mr Williams, and a third individual who came to meet your Group CEO, Mr Saloojee and your then business development executive, Mr Ntshepe. Do you remember who the third individual was?

20 **MR MHLONTLO:** I think the first was Patience, I don't know what the surname was.

ADV KENNEDY SC: Patience?

MR MHLONTLO: I suspect.

ADV KENNEDY SC: Okay and were you involved in that meeting, did you understand why those individuals came to

Denel's offices to meet Mr Saloojee and Mr Ntshepe?

MR MHLONTLO: Not really, but when the meeting was – the meeting was roughly about 30 minutes, at the end of that meeting as I was coming out of my office to go for lunch I was called in and introduced to them and they indicated that they had been to us or Denel to look for business opportunity and their understanding was that I am quite influential and would ...[indistinct – dropping voice].

ADV KENNEDY SC: Now your affidavit refers specifically
10 to a subscription for Denel to subscribe to the New Age newspaper and take up advertising space. Was that discussed with you at the time?

MR MHLONTLO: So the meeting that was said would be scheduled for the following week it was scheduled, the same three individuals came to see myself and the Communications Executive and they put to us that they were looking for business opportunities and one if the area would be the New Age newspaper that we could subscribe similar to the SAA and similar to the various government
20 departments and this is what they put to us, and that meeting wasn't – didn't arrive at anything because we said to them we first of all would need to know, do a little bit of homework ourselves, how many businesses they were buying, how many staff we were buying and whatever other newspapers. If we were to subscribe for New Age it will be

within the context of our normal consumption of newspaper and we asked other questions, typically what is your circulation, who is the reader of your paper and to what extent can that be beneficial to us.

For example if they were to say a lot of youth who are good scientists or engineering students are reading this kind of paper, something that we might have looked at because our mandate included ensuring that we do recruit young engineers and nurture those into senior – you know
10 to become proper good engineers, so we asked those business principle questions and the meeting came to an end without – we said look we cannot commit to anything, we must first do our own homework, we do meet in future whatever might happen would be informed by these principles, how they have been – or answered.

ADV KENNEDY SC: Arising from those discussions did you later decide to do any business with the New Age newspaper, either by way of subscription or advertisements?

20 **MR MHLONTLO:** So what happened in about a week or two after that I realised that in my diary there was an invitation to Sahara Computers for lunch, I went over, I thought somebody else within the group was supposed to be coming, but I mean they had the guys that I had met only once a little bit more formal because we had a 30

minutes or so meeting, I had previous met them for five minutes, I thought somebody else was coming. When I got to Sahara Computers it was the three, two gentlemen, plus Patience, plus a fourth person who I battle to locate who might have been and a gentleman of Indian descent.

ADV KENNEDY SC: Sorry, just please speak up a little.

MR MHLONTLO: A gentleman of Indian descent. We met, we sat around a big table and he was chairing the meeting and he did make reference to the fact that they had met
10 with me, his guys had met with me and have they reflected on what they are looking for and – which I confirmed that I had reflected, I have done, I have now had a look at a number of Business Day newspapers that I am buying, the Star that I am buying and any other newspaper that I am buying, I am buying no more than 36 copies of all of those newspapers and the business uses the newspaper on a sharing basis, they put them in a common area ...[indistinct] and then they really were looking for what was the way forward and I regurgitated the same points
20 that we had made with them, to say look to the extent that the newspaper enhances what we are about in terms of our mandate to the extent that the circulation makes sense, any other services that you are selling should be within the context of our own mandate. We must also further take into account the issues of budget and it must be something

that we always wanted, not just because you're selling it, and after this long-winded meeting because essentially, and I am raising those kind of points because the meeting becomes a little bit long-winded, at the end I said to them could it be possible for them to reduce their request into writing and I never heard from them since then, but what's relevant also is the fact that when they were explaining the sort of business or the empire they were trying to create in this country it included setting up ANN7, at that point ANN7
10 was not – was still being built, the studios were being built and I was taken around in terms of where the studios would be and what sort of format of television would be used would be more aligned to some – current affairs program as apparently there is ...[indistinct] somewhere in India that follows that kind of current affairs, so – and I was promised, which happened, I was promised that I would be the first – I would be among the first people who will be invited to the studios once the studios are up and running to come and talk about Denel, so I never heard from them
20 other than that invite was to come and talk about Denel in ANN7 which I went there and did, and that was the last time I heard from them.

ADV KENNEDY SC: Thank you Chair, we have no further questions for this witness.

Thank you.

CHAIRPERSON: Thank you very much. Thank you Mr Mhlontlo for coming to give evidence, we appreciate it very much. If we need you to come back we will ask you but for now you are excused.

MR MHLONTLO: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KENNEDY SC: Chair thank you, our next witness is I understand available and ready to start, and that is Mr Zwalakhe Ntshepe.

10 **CHAIRPERSON:** Okay, you may call him as soon as Mr Mhlontlo has left the witness chair. Are you going to need me to adjourn or it will be smooth without adjourning?

ADV KENNEDY SC: I am sorry Chair?

CHAIRPERSON: Are you going to need me to adjourn before Mr Ntshepe or everything will be smooth we don't need to adjourn?

ADV KENNEDY SC: I don't think so, although the previous week somebody wanted to sanitise the area, I don't know if that may – you may want to adjourn while that is done.

20 **CHAIRPERSON:** Maybe I will adjourn for five minutes.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV KENNEDY SC: Chair thank you we are ready for the next witness. It is Mr Zwelakhe Ntshepe.

CHAIRPERSON: Yes.

ADV KENNEDY SC: May I just indicate Chair that he is legally represented and my learned friend Mr Zed Feni – F-e-n-i – Advocate Feni instructed by Tlale – Tlale Attorneys I beg your pardon if I got it wrong.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Is present Mr Feni is.

10 **CHAIRPERSON:** Okay. You want to just place yourself on record Mr Feni.

ADV FENI: Chair – may it please you Chair I confirm my appearance for Mr Ntshepe.

CHAIRPERSON: Okay alright. Thank you.

ADV KENNEDY SC: Thank you Chair for you guidance. We are dealing now with the affidavits that appear in Bundle – Denel Bundle 8 under the Exhibit number W23. There is a main affidavit and then a – a supplementary affidavit and I would ask with your leave.

20 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: To take the witness to that once he has been sworn in. Thank you.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR NTSHEPE: My name is Zwelakhe [?] Ntshepe.

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

MR NTSHEPE: I do not.

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

MR NTSHEPE: Yes I do.

ADV KENNEDY SC: 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
10 me God.

MR NTSHEPE: So help me God.

CHAIRPERSON: You may be seated Mr Ntshepe.

MR NTSHEPE: Thank you.

CHAIRPERSON: Yes Mr Kennedy you may proceed.

ADV KENNEDY SC: Thank you Chair. Mr Ntshepe thank you for assisting the commission's legal team earlier in providing two affidavits initially requested by the investigators and thank you for assisting us as the legal team in a recent consultation. If I can ask you in the bundle
20 that is in front of you – the file in front of you do you have it open at page 497 the beginning of your affidavit and if you look at the top left printed in black you will see Denel-08-484 is the title page and in fact your affidavit starts I believe at 497, is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now before your affidavit what has been included is a series of questions that you were sent by the investigators. Can I take you to page 486? That is the beginning of a letter that comes from the commission sent to your attorneys Tlale Attorneys, is that right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And they raised a number of issues, questions under specific topics in a list of questions from page 488, is that right?

10 **MR NTSHEPE:** Correct.

ADV KENNEDY SC: So for example the first topic paragraph 1 on page 488 is Denel Asia?

MR NTSHEPE: Correct.

ADV KENNEDY SC: You then responded as they requested in a form of an affidavit that starts at page 497 and you then deal with the – page 497 paragraph C you say:

“I deposed to the affidavit in response to the list of questions contained in a letter and I do so in an affidavit format as a result of a request to respond in such a manner.”

20

MR NTSHEPE: Correct.

ADV KENNEDY SC: The list of questions is the one that we have just looked at, is that right?

MR NTSHEPE: Correct. Correct.

ADV KENNEDY SC: So when you say for example on page

498 paragraph 1 ad paragraph 1 that is obviously the legal – the lawyers terminology ad paragraph 1 that is a reference to paragraph 1 of a list of questions that you received from the investigators?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And may I ask is that your signature that appears on page 522? The first signature on page 522.

10 **MR NTSHEPE**: Correct.

ADV KENNEDY SC: May I ask have you been through this affidavit?

MR NTSHEPE: Yes I have.

ADV KENNEDY SC: And are you satisfied that it is contents are correct save in one respect you make a correction of some detail in the second affidavit which we will come to.

MR NTSHEPE: Correct.

20 **ADV KENNEDY SC**: Apart from that particular aspect that you have corrected in your supplementary affidavit you confirm that the contents of the - this affidavit are true and correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Right thank you. And then before I ask for it to be formerly admitted Chair may I just complete the process of the second affidavit page 523 is another letter

from the commission the acting secretary of the commission 523 to 525 and that was a request by the commission for clarification of some issues that you have raised in your first affidavit, is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And you then were requested to provide a supplementary affidavit to deal with that and may I take you then to page 526 is that the beginning of your supplementary affidavit?

10 **MR NTSHEPE**: Correct.

ADV KENNEDY SC: And if I can take you please to page 531 is that your signature above the typed name Z N Ntshepe?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And again this was signed in front of a Commissioner of Oaths like the first affidavit, is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And have you been through the contents of this supplementary affidavit?

20 **MR NTSHEPE**: Yes I have.

ADV KENNEDY SC: Were both of your affidavits done with the assistance of your legal team?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Right. Thank you. May I ask you say you have been through this supplementary affidavit are you

satisfied and can you assure the commission's Chairperson under oath that the contents are true and correct?

MR NTSHEPE: I can confirm and to say that they are true and correct.

ADV KENNEDY SC: Right thank you. Chairperson we would then formerly move for your leave to admit these two affidavits. The one starting at page 497 together with the questions which are followed by the affidavit as well as the supplementary questions and the supplementary affidavit
10 that starts at page 526. We would ask that the first lot be admitted as Exhibit W23 and the documents that appear from page 523 as Exhibit W23.1.

CHAIRPERSON: Okay I think we will have to separate the questions from the affidavits. The first affidavit you propose should be admitted as Exhibit W23?

ADV KENNEDY SC: Yes Chair.

CHAIRPERSON: W23?

ADV KENNEDY SC: Yes Chair.

CHAIRPERSON: Okay. I suggest that we do it this way and
20 if it is fine with you that the letter appearing at page 486 we make it W23.1. And then the – it has got an annexure so that will be that letter plus the annexure. And then that the affidavit which responds to those questions be Exhibit 23.2. Would that be fine and then...

ADV KENNEDY SC: Yes.

CHAIRPERSON: We will do the same when we go to the other one.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Is that fine?

ADV KENNEDY SC: Yes.

CHAIRPERSON: Okay. The letter starting at page 386 together with the annexure thereto is admitted as Exhibit W23.1 and the affidavit of Mr Zwelakhe Ntshepe starting at page 497 is admitted as Exhibit W23.2.

10 **ADV KENNEDY SC:** Thank you Chair.

CHAIRPERSON: Point – well ja 23.2. And then we go to

ADV KENNEDY SC: Page 523 Chair.

CHAIRPERSON: The next – ja that is 523. The letter starting at page 523 is admitted as Exhibit W23.3 and then the affidavit of Mr Zwelakhe Nthlanganison [?] Ntshepe starting at page 526 is admitted as Exhibit W23.4. Is that fine Mr Kennedy?

ADV KENNEDY SC: Yes thank you Chair.

CHAIRPERSON: Yes okay alright.

20 **ADV KENNEDY SC:** Alright thank you Chair. Mr Ntshepe you deal first in your main affidavit at page 498 with the issue of Denel Asia and you refer to the Minister of Public Enterprises giving approval for the Denel Asia Joint Venture in January 2016 with the formation was after the approval in January 2016. And then you refer to the concept and idea

being introduced to you by Mr Riaz Saloojee. He was at that stage the Group CEO, is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And then we know that Mr Saloojee was suspended from the position and you then took over as acting Group CEO, is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Right when was that?

MR NTSHEPE: That was in September – mid-September
10 2015.

ADV KENNEDY SC: Right. 2015. And before that you were what in business development?

MR NTSHEPE: I was – Group Executive Business Development including new business development.

ADV KENNEDY SC: Right. And you then held the acting GCEO position until you were appointed properly as proper GCEO, is that correct?

MR NTSHEPE: Correct Sir.

ADV KENNEDY SC: When did that appointment take effect?

20 **MR NTSHEPE**: That appointment took place end of 2017 I think in December.

ADV KENNEDY SC: Right.

CHAIRPERSON: This position – I am sorry – the position of Group Executive Business Development that you held before Mr Saloojee was suspended is that in terms of the

structuring of the Group 1 level below that of Group CEO?

MR NTSHEPE: Yes correct, correct Your Honour.

CHAIRPERSON: Okay alright.

ADV KENNEDY SC: Perhaps logically Chair I should have taken him first to his background.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Perhaps Mr Ntshepe with the Chair's leave may I take you to your supplementary affidavit. You did not deal with it in your main affidavit but the
10 investigators then asked you to deal with it in your supplementary affidavit. If you – Chair it is Exhibit W23.4 and if I can take you please to page 526? Are you there?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Mr Ntshepe you refer to your professional journey starting in 1982. You worked at Alfa Romeo and then you went to the United States to study and then you were a night manager at the New York Hilton and you worked as a stockbroker in the USA. You worked for the Council of Churches in South Africa and then later you were
20 a senior consultant to Barry Pieterse and Associate – Associates. Now it seems that you started at Denel in September 1996, is that correct?

MR NTSHEPE: In fact I started in November 1996. Right so when you say in paragraph 10 it should be November not September 1996?

MR NTSHEPE: Yes.

ADV KENNEDY SC: To November 1997 you were an executive consultant?

MR NTSHEPE: Yes.

ADV KENNEDY SC: At Denel Personnel Solutions, is that right?

MR NTSHEPE: Yes. Correct.

ADV KENNEDY SC: Okay thank you. And then it seems you moved up through the ranks. You later became Chief
10 Operations Officer. Would that be of Denel Personnel Solutions?

MR NTSHEPE: Yes correct.

ADV KENNEDY SC: And then later you became a senior marketing manager for Denel SOC Limited and then you became Director Marketing Asia Pacific until June 2004.

MR NTSHEPE: Correct.

ADV KENNEDY SC: And then at that stage you became Group Executive Business Development and Corporate Affairs. That is the top of page 528 and that is when you
20 took up the acting position of Group CEO and later became Group CEO and then you say you resigned around May 2018.

MR NTSHEPE: I resigned May 2018.

ADV KENNEDY SC: Right.

MR NTSHEPE: With a month notice.

ADV KENNEDY SC: Right.

MR NTSHEPE: And – so my effective was it – resignation was in June – end of June.

ADV KENNEDY SC: Alright thank you and then in paragraph 13 you set up your – set out your duties as when you were still the Development – Business Development Manager, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Alright thanks that is by way of your background. Now I would like to go back to your main
10 affidavit page 498 paragraph 1 you start dealing with Denel Asia Joint Venture. And you have referred to your getting to know – I am in the last three lines of 1.1.

“I got to know about the concept around August 2015 at that time I was still a Group Executive Business Development.”

Now if we go to paragraph – page 507 paragraph 1.11 it says:

20 “A trip was taken early around February 2015 to India and tried to find partners as stated before the key ones were already taken etcetera.”

Now in your supplementary affidavit you deal with the question that the investigators raise about when in fact you first became aware of this concept which you have now clarified in your supplementary affidavit, is that correct.

MR NTSHEPE: It is correct.

ADV KENNEDY SC: If I can take you now please to 527 – 528 I beg your pardon Chair. This is what you say at the foot of the page 14.

“Paragraph 3 of the letter addressed to me.”

Now that is the letter from the investigators correct? Mr Ntshepe.

MR NTSHEPE: Correct so.

ADV KENNEDY SC:

10 “Raises an issue of an alleged contradiction
in paragraph 1.1 of the original affidavit
where it is alleged that I stated that the
concept and idea of Denel Asia was first
introduced to me by Riaz Saloojee in
September 2015. It is claimed that in a same
period – in the same paragraph I asserted
that I got to know about the concept around
August 2015. I shudder to think there is any
contradiction. At the time of the formation of
20 the Denel Asia I was Group Executive
Business Development and in August 2015 I
got to know of the Joint Venture through the
grapevine and this was ultimately officially
introduced to me by Saloojee around
September 2015.”

MR NTSHEPE: Correct.

ADV KENNEDY SC: Does that clarify the apparent distinction that the investigators saw between August and September?

MR NTSHEPE: In my understanding yes it does.

ADV KENNEDY SC: Alright thank you. Now then you deal with another – another issue that the investigators raised in relation to travelling to India and here you seem to accept that there was a mistake which you say was an honest
10 mistake in your first affidavit and you clarify that here. Now in your main affidavit you indicated that there was a trip to India and you gave the dates of that. And then there were problems with the dates relating to that. Are the correct facts set out in the supplementary affidavit?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Which say that in fact there were two trips not one?

MR NTSHEPE: Correct Sir.

ADV KENNEDY SC: Okay and let us just – let us just have a
20 look while we are at this. At paragraph 18.

“The trip we undertook in February 2015 did not include anybody from VR Laser. It is only around March 2016 when we went to an exhibition with VR Laser in Goa. It is in 2016 that Denel official used the VR Laser aircraft

and not in February 2015. Late September 2015 I became the acting Group CEO and the duties and responsibilities entrusted to Mr Saloojee fell on me that includes all of the processes including the incorporation of Denel Asia.”

MR NTSHEPE: Correct.

ADV KENNEDY SC: So – so let us go back if we may I am sorry to be jumping around but I just wanted to clear up
10 those discrepancies first. Let us get back to page 498. Now you have already mentioned when you dealt with your previous experience that you were involved at a more junior level as far back as about 2004 where you dealt on behalf of Denel with the Asian market as part of your responsibilities.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now did you – did Denel drop out of the Asian market?

MR NTSHEPE: Yes it did.

ADV KENNEDY SC: And then you refer in your affidavit to
20 the efforts that were made in 2015. There was now the thing that Mr Saloojee indicated to you that Denel was now interested in developing business in Asia. Correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And in particular a focus on India, is that right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now did you go on your first trip to – that you have mentioned to India to look at that possible business?

MR NTSHEPE: Correct. We were three of us and we in 2015 around February/March and we went to several companies to see if we can be able to work with them – Indian companies.

ADV KENNEDY SC: And – so that was three of you from
10 Denel – you and two colleagues?

MR NTSHEPE: Correct Sir.

ADV KENNEDY SC: And anybody from VR Laser get involved in that trip?

MR NTSHEPE: In 2015 no.

ADV KENNEDY SC: Right. And when did you first become aware of VR Laser's possible interest in Denel's project to look at developing business in Asia?

MR NTSHEPE: I became aware officially when it was presented to the board. However I became aware because I
20 was very – working very close with the Chief Executive we were very close that Denel Asia might be a possibility of a JV that could be formed with VR Laser.

ADV KENNEDY SC: Now you have indicated in your affidavit that you got to know about the concept of – of the V – sorry the Denel Asia Joint Venture when Mr Saloojee

raised it officially in August 2015.

MR NTSHEPE: Officially I mean in the sense that when we were talking but officially in writing to the board it was in the September board.

ADV KENNEDY SC: September 2015?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Now who was the – who was the person who really initiated the idea of developing this business in Denel? Was it you or Mr Saloojee or who?

10 **MR NTSHEPE**: I cannot confirm who – on my side I did not develop it because in 2015 we went there to source other Indian companies because in India there is the requirement that you must buy and make in India and we were looking at Indian companies. Unfortunately we found out that we were a bit late. We were – so the concept of going back to India came about because there was the understanding that the banning of Denel in India has been lifted.

ADV KENNEDY SC: When was Denel banned?

20 **MR NTSHEPE**: I would say banned in the form of blacklisted around 2004.

ADV KENNEDY SC: Was this – and that was about the stage that you left the role that you were in Denel trying to promote business in Asia, is that right?

MR NTSHEPE: Yes. Correct.

ADV KENNEDY SC: And – so it was blacklisted? Was it

blacklisted by whom? By the Indian government, the Indian Defence Force or who?

MR NTSHEPE: The – there is a thin line of separation between the Indian government and the Indian Defence Force. If the Indian Defence Force does not want to work with you there is no Indian company that will be able to work with you especially government company.

ADV KENNEDY SC: And was that black – what was the reason for the blacklisting?

10 **MR NTSHEPE:** There was an alleged accusation that Denel has used Asians in India. We were on the brink of securing a huge contract of our countries in 80 vehicles very powerful vehicles selling to India and we were in the process – we were in the process of getting the finalisation through their own processes. And then they – I think the newspaper – the Argus in Cape Town or something like that came out with the story.

ADV KENNEDY SC: So was the blacklisting lifted?

MR NTSHEPE: In my understanding yes it was lifted
20 because we were allowed to come into India and we were allowed to look at possible partners in India.

ADV KENNEDY SC: When was the blacklisting lifted?

MR NTSHEPE: This 20 – in around 2014/2015.

ADV KENNEDY SC: Okay. So does that explain the first trip that you took.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Once the blacklisting was lifted the Indian market was still a possibility and so you went to investigate, is that right?

MR NTSHEPE: Correct. Correct.

ADV KENNEDY SC: And you went with two colleagues and then you came back and then it seems that you then had the matter escalated to the top executive then it was taken to the board you say in paragraph 1.1 in September 2015. Was
10 it then approved by the board that you could then proceed to investigate this project further?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Okay. Now there was the second trip that you took to Asia in 2016 you have indicated?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now before we get to 2016 you have dealt with in your affidavit from paragraph – from page 499 with certain steps that took place in paragraph 1.5. There is a step on the 28th October 2015 a pre-notification to Minister
20 Brown who is the Minister of Public Enterprises and then you got so approval from the Denel Social and Ethics Committee on 28th October 2015. And then there was a submission to the then Finance Minister, Minister Nene on the 29th October. And then there were meetings and presentations etcetera. Now 157 on page 500 refers to a due diligence report by

ENS that is the attorneys firm ENS, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And their forensic unit submitted a due diligence report. What did that relate to?

MR NTSHEPE: The due diligence report was related to the – the circumstances and the – the ableness of VR Laser to be able to be a partner with Denel.

ADV KENNEDY SC: To be a partner to Denel.

MR NTSHEPE: Yes.

10 **ADV KENNEDY SC**: In what business? The Asian business that you were aiming to get?

MR NTSHEPE: Yes the Asian business correct.

ADV KENNEDY SC: Right. Now at what stage had VR Laser come onto the scene? Why were they looking specifically at VR Laser? Who had identified VR Laser as being somebody worth considering to become your partner in the Denel – in the – in the Denel business that you were wanting to expand into Asia?

20 **MR NTSHEPE**: In my knowledge VR Laser was identified by the previous CO from in the sense that he did say that we were going to work with VR Laser very closely.

ADV KENNEDY SC: That was Mr Saloojee?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes. Now Mr Saloojee is going – has already given evidence about I think it was eighteen months

ago before the Chair and he has been asked to testify again later this week to answer specific allegations that have been made by other witnesses such as yourself and he has told us and he will tell the Chairperson on oath later this week that he disputes that he was the origin of the idea that VR Laser should be brought in as the partner to Denel for the Denel Asia business. He says in fact it was you who came up with the idea and that you strongly – strongly promoted that idea that VR Laser should be the preferred entity to be – come
10 into the Joint Venture.

MR NTSHEPE: I dispute that vehemently.

ADV KENNEDY SC: And...

MR NTSHEPE: Mr Sal...

ADV KENNEDY SC: Yes carry on.

MR NTSHEPE: Mr Saloojee introduced me to Mr Essa with the understanding that I must work very closely with him. And Mr Saloojee also informed me that VR Laser is prepared to give about R100 million into the new venture. So we will need to work and make sure that this new venture will
20 happen.

ADV KENNEDY SC: Now...

MR NTSHEPE: So my duty was to make as you will notice that my duty was more action orientated in terms of marketing, in terms of new business development. But I had no reason to believe that VR Laser is the – should be -

because I did not know Mr Essa from anywhere.

ADV KENNEDY SC: Were you aware at that stage that Mr Essa was a business associate of the Gupta brothers?

MR NTSHEPE: As time went on, I realised that Mr Essa has a relationship with the Gupta's.

ADV KENNEDY SC: When did you learn of that, first? Can you recall Mr Ntshepe? I know it is a long time ago. If you cannot recall, tell us but can you?

MR NTSHEPE: I would not recall exactly or around what
10 time that happened because Mr Saloojee did say I must meet Mr Essa as often as I can so that I can be able to get him to be involved in the defence industry.

ADV KENNEDY SC: To get into the...?

MR NTSHEPE: Defence industry.

ADV KENNEDY SC: Defence industry?

MR NTSHEPE: Yes.

ADV KENNEDY SC: In general, or only in relation to the defence industry supplying to the Asian market?

MR NTSHEPE: Well, initially it was in general and I also
20 think he encouraged Mr Essa to – via VR Laser because VR Laser was owned by a different shareholders and I think. And then later on, he encouraged VR Laser that they would be able to be our partner in – to go into the Asian market and that was in 2016.

ADV KENNEDY SC: Now you have said two things that you

think happened.

MR NTSHEPE: Yes.

ADV KENNEDY SC: The one is that you think that Mr Saloojee encouraged Mr Essa to buy the shares in VR Laser and the second thing that you think he did was to encourage VR Laser now under Mr Essa to get involved in the Asian market.

MR NTSHEPE: Correct.

ADV KENNEDY SC: On what basis do you think that that
10 happened? You had to have knowledge yourself of what actually happened.

MR NTSHEPE: Mr Essa when he bought VR Laser initially, was to help to get into the market but also because VR Laser had a very good product, was to supply Denel.

Secondly. Mr Essa and Mr Saloojee were able to – in my understanding – were able to know the Gupta's firstly.

And secondly, that they made me to believe that we were able to run something in India and also to have a buffer between the Denel Holdings and the Indian market.

20 So as if there are problems because we did experience in problems in Indian before. Then we will be able to have a buffer company which is a subsidiary of Denel, rather than Denel Holdings.

ADV KENNEDY SC: Now you mentioned a hundred million. That would be an investment by VR Laser once it was

acquired by Mr Essa. Is that right?

MR NTSHEPE: No, no. Mr Essa had already acquired VR Laser South Africa. The hundred million would have been a contribution that VR Laser Asia.

ADV KENNEDY SC: So that is also in existence already, VR Laser Asia?

MR NTSHEPE: I do not know when it was found but in my understanding that there was a concept of VR Laser Asia whereby they would have the hundred million to contribute to
10 the joint investment.

ADV KENNEDY SC: And what would be contributed, if anything, by Denel, the joint venture?

MR NTSHEPE: What would be contributed by Denel, firstly was, we knew the market and we are *out* of the market for more than ten years.

And secondly, Denel was able – we had the technical expertise in terms of we knew exactly what India was looking for especially on the land system side. And Denel would have been a partner in terms of being able to contribute in
20 the manufacturing.

But also VR Laser South Africa would also have contributed in the hull manufacturing because those items that we were looking at in India, at that point, in time were really – were vehicles.

ADV KENNEDY SC: So ...[indistinct] vehicles? [Speaker

not clear]

MR NTSHEPE: Sorry?

ADV KENNEDY SC: Would Denel then have contributed its know-how but it would not have contributed any actual cash to a joint venture like a hundred million from the VR Laser side?

MR NTSHEPE: Denel would have contributed a product. A not finished product.

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

10 **MR NTSHEPE**: The know-how would still be remaining in Denel. VR Laser would have contributed a hundred million and largely what was to the – for the marketing purposes.

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

CHAIRPERSON: Well... Sorry, Mr Kennedy. Before we move too far. I want to take you back a little bit. You said it was Mr Saloojee who introduced you to Mr Salim Essa.

MR NTSHEPE: Correct.

CHAIRPERSON: And that he is the one also, that is Mr Saloojee, who officially told you about VR Laser for the
20 first time. Is that right? Or did I misunderstand that part?

MR NTSHEPE: No. Mr Saloojee is not the first person who told me about VR Laser.

CHAIRPERSON: Officially?

MR NTSHEPE: Officially when we were going to form a joint venture.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

CHAIRPERSON: Then it was him?

MR NTSHEPE: Yes.

CHAIRPERSON: Okay alright.

MR NTSHEPE: Yes.

CHAIRPERSON: From whom did you hear about VR Laser for the first time if you are able to remember?

MR NTSHEPE: I have been in Denel for more than 20-
10 years. So I...

CHAIRPERSON: Oh, by the way. VR Laser had been there but owned by other people for quite some time.

MR NTSHEPE: Yes.

CHAIRPERSON: Ja, okay alright.

MR NTSHEPE: Correct. Correct, Chair.

CHAIRPERSON: But in terms of associating VR Laser with Mr Salim Essa, when did you become aware of that?

MR NTSHEPE: I became aware of that when – one time he asked me and a colleague who used to be a Denel board
20 member, to go and visit VR Laser. So the three of us
...[intervenes]

CHAIRPERSON: Yes.

MR NTSHEPE: ...went to visit VR Laser.

CHAIRPERSON: Oh.

MR NTSHEPE: It was still owned by other individuals.

CHAIRPERSON: Oh, was he still trying to – was he exploring the possibility of acquiring?

MR NTSHEPE: I do not know.

CHAIRPERSON: You do not know?

MR NTSHEPE: The notion was to say: Let us go and visit this great company.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

CHAIRPERSON: You see, you said that Mr Saloojee
10 introduced you to Mr Salim Essa.

MR NTSHEPE: Correct.

CHAIRPERSON: In his affidavit, he also said that.

MR NTSHEPE: Correct.

CHAIRPERSON: He said he introduced you to – or he introduced Salim Essa to you.

MR NTSHEPE: Correct.

CHAIRPERSON: But he said that he, in doing so, one; he was trying to create a distance effectively between himself and Mr Salim Essa because Mr Salim Essa – I am putting it
20 in my own words – harassing him or pestering him or trying to put pressure on him and he decided that he should get him to deal with you.

But he says he warned you when he introduced you, Mr Salim Essa to you and said you are going to be the contact person or the person that Mr Salim Essa would deal

with.

He says he warned you about his concerns with regard to Mr Salim Essa and said be careful. And I think he said: Make sure that whatever is done will be done in accordance with Denel processes.

What do you have to say about that?

MR NTSHEPE: It is not correct that he introduced him for the reason that he wanted to have a distance because I was paid by Denel to do a real job and I cannot be – but if he
10 says that, then he was using me in appropriately as an employee of Denel to put a distance between Mr Essa and himself.

In my understanding and this was ...[indistinct]. He said to Mr Essa: This is the.. Zwelakhe, this is the marketing guy. You can trust him. You – he will – I would – as you would want to get into the market of defence. We will work together and with him.

Yes. But I do not think that he wanted to put distance between himself and Mr Essa.

20 **CHAIRPERSON:** Yes.

MR NTSHEPE: Because it will be incorrect. In fact, it is inappropriate for him to say that.

CHAIRPERSON: Yes.

MR NTSHEPE: Therefore, I was being used.

CHAIRPERSON: Ja, he says, after some time, he began to

get a feeling that the relationship between yourself and Mr Essa was becoming too strong, I think. That is how I would put it. He was getting concerned. I cannot remember whether he says he spoke to you about that at that stage or not.

MR NTSHEPE: Chair, I saw his affidavit where he mentioned all these things about me

CHAIRPERSON: H'm.

MR NTSHEPE: My job as business development is to get
10 strong relations in the defence environment. Trust is very important, globally. I have...

As I said I have worked for a very long time in marketing and I have created and been able to develop trust in the market we operate especially in the Middle East and South Africa in particular with the defence force.

I would, therefore, not think that I would be involved in a situation whereby I will be doing things with Mr Essa because we have – I come close to him, which he would not know.

20 Because I used to report to him at – because he wanted to know what is happening, every week. If he wanted a distance, why would he want to know every week?

CHAIRPERSON: Okay. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. On page 499, paragraph 1.3, you say you were appointed by the Board of

Denel to be the Chairperson of VR Laser Asia. Is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: We are not talking here about Denel Asia. It is VR Laser Asia.

MR NTSHEPE: Yes.

ADV KENNEDY SC: That was already an existing company. Is that correct?

MR NTSHEPE: Yes.

10 **ADV KENNEDY SC**: Is that correct?

MR NTSHEPE: It was existing in terms of preparations here but it was – what was existing then was the company that – I think VR Laser Asia.

ADV KENNEDY SC: Yes.

MR NTSHEPE: Ja. But not owned by VR Laser South Africa.

ADV KENNEDY SC: So who was it owned by? Was it not also owned by Mr Salim Essa?

20 **MR NTSHEPE**: Mr Salim Essa owns VR Laser, in my understanding, VR Laser South Africa.

ADV KENNEDY SC: So who owned VR Laser Asia?

MR NTSHEPE: I would believe he did.

ADV KENNEDY SC: Sorry, say again?

MR NTSHEPE: I would believe he did.

ADV KENNEDY SC: He did?

MR NTSHEPE: Ja.

ADV KENNEDY SC: Mr Essa?

MR NTSHEPE: I think so, yes.

ADV KENNEDY SC: Yes. So what – were you not aware when you were appointed as chairperson of this company who actually owned it?

MR NTSHEPE: I was aware that mister – I mean, the mere fact that the names are similar, there is a relationship number one. And number two. The mere fact that I was
10 asked to be working very closely with Mr Essa, I would not be able to start another VR Laser Asia which has the name VR Laser without me being – Mr Essa being there, being the owner of the company.

ADV KENNEDY SC: But Denel did not own VR Laser Asia, correct?

MR NTSHEPE: No, they did not ...[indistinct]

[Parties intervening each other – unclear]

ADV KENNEDY SC: It was owned, if I understand you, by Mr Salim Essa.

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

ADV KENNEDY SC: Now what I am interested in is. Why would you have been appointed then to chair a company in which Denel ...[intervenes]

MR NTSHEPE: No, no.

ADV KENNEDY SC: ...did not own the shares.

CHAIRPERSON: And who appointed you.

ADV KENNEDY SC: Yes, correct. Your affidavit, in fact, says you were appointed by the Board of Denel SOC Limited.

MR NTSHEPE: Ja.

ADV KENNEDY SC: To say this Chairperson of VR Laser Asia.

MR NTSHEPE: Correction here Chair. The correction is that it should have been Denel Asia.

ADV KENNEDY SC: Denel Asia?

10 **MR NTSHEPE**: Yes.

ADV KENNEDY SC: So this is another error in your affidavit?

MR NTSHEPE: Yes.

CHAIRPERSON: So you say in paragraph 1.3, where it says you were appointed by Denel SOC to be the chairperson of VR Laser Asia...[intervenes]

MR NTSHEPE: Asia.

CHAIRPERSON: ...you say ...[intervenes]

MR NTSHEPE: It is Denel Asia.

20 **CHAIRPERSON**: ...it is Denel Asia.

MR NTSHEPE: Yes, because VR Laser was owned by LSM.

CHAIRPERSON: H'm.

ADV KENNEDY SC: Now ...[intervenes]

CHAIRPERSON: Well, there would have to be a supplementary affidavit.

ADV KENNEDY SC: Yes.

MR NTSHEPE: [Speaker not clear]

ADV KENNEDY SC: If you can... Yes, the assist the Commission in that regard.

MR NTSHEPE: Yes, help with your ...[intervenes]

[Parties intervening each other – unclear]

ADV KENNEDY SC: ...liaise with the legal team who has already been working with your own legal team.

MR NTSHEPE: Yes.

10 **ADV KENNEDY SC:** Now I would like to go back to page 500.

CHAIRPERSON: And maybe Mr Kennedy. When was it was this happened when you were appointed as Chairperson as Denel Asia?

MR NTSHEPE: I think it was in 2017. Maybe 2017, February/March. Around there. I cannot specifically say. Yes. Ja.

ADV KENNEDY SC: Okay thank you.

CHAIRPERSON: Thank you.

20 **ADV KENNEDY SC:** Can I take you back to page 500, paragraph 157. It is the ENS Forensic Unit Due Diligence Report that you mentioned looked at the ability of VR Laser to work as a joint venture partner with Denel in its Asian operations.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now is it correct that the ENS Due Diligence Report, in fact, raise some concerns?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And what were those concerns?

MR NTSHEPE: In my memo, one of them was that the people who we want to form a joint venture with our PEP's(?) [Speaker not clear] Meaning that they are...[intervenes]

ADV KENNEDY SC: It is Publicly Exposed Persons?

MR NTSHEPE: Yes.

10 **ADV KENNEDY SC:** Publicly or politically?

MR NTSHEPE: Oh, politically, ja. Politically Exposed Persons.

ADV KENNEDY SC: And who were they referring to?

MR NTSHEPE: In my belief, because the owner of VR Laser was Mr Essa. So in my view that was ...[intervenes]

ADV KENNEDY SC: And did you understand their concern to be that Mr Salim Essa was already in the public domain, the public knowledge, media and so forth – already a controversial figure?

20 **MR NTSHEPE:** Yes, I was aware.

ADV KENNEDY SC: Yes.

MR NTSHEPE: But I – for me, the business was separate from the individuals. How the public views the individual. Many companies have done joint ventures with individuals that were perceived to be controversial.

CHAIRPERSON: So are you saying that, to your knowledge, at that time Mr Salim Essa would have fallen within the category of Politically Exposed Persons, within that group of people?

MR NTSHEPE: As per the definition of ENS.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes.

CHAIRPERSON: And that definition necessarily... Does that definition, as you understand it, necessarily have some
10 negative connotation to it or not? Or it depends on each individual?

MR NTSHEPE: I think largely it has a negative connotation.

CHAIRPERSON: It has a negative connotation?

MR NTSHEPE: Yes.

CHAIRPERSON: And you understood him to, at that time, to fall within that – within that category?

MR NTSHEPE: I understood that he has been exposed to the politics of this country.

CHAIRPERSON: Yes.

20 **MR NTSHEPE:** Yes.

CHAIRPERSON: Okay alright. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. But you – as far as you were concerned, that should not disqualify them, it should not be a problem. The mere fact that they were politically exposed or controversial, did not take away from

the fact that they were suitable business partners. Is that right?

MR NTSHEPE: In fact, ENS said we can still go ahead. There is a way I would be able to do that. [Speaker not clear]

CHAIRPERSON: Sorry, just repeat Mr Ntshepe?

MR NTSHEPE: ENS ...[intervenes]

CHAIRPERSON: Ja?

MR NTSHEPE: ...said you – at VR Laser, they are PEP's.
10 However, it is able – it is possible to form a joint venture with VR Laser.

CHAIRPERSON: Yes. Their due diligence, what did it reveal about VR Laser in terms of negative things or Mr Salim Essa that Denel may have needed to be careful about or concerned about if you are able to remember?

MR NTSHEPE: Yes. I remember, one was the issue of the close relationship with the Gupta's.

CHAIRPERSON: Yes, yes.

MR NTSHEPE: Yes. And the – in my understanding, the
20 previous GCEO, he knew that. It was not ...[intervenes]

CHAIRPERSON: Mr Saloojee?

MR NTSHEPE: Yes. It is not – it was not news to him. He knew it.

CHAIRPERSON: Yes.

MR NTSHEPE: Yes. And – however, he encouraged me to

work with him.

CHAIRPERSON: Yes.

MR NTSHEPE: And that for me, that was a major thing which I thought was ...[intervenes]

CHAIRPERSON: Obviously, this being 2015 because paragraph 1.5.7 of your affidavit says:

“In December 2015, ENS provided a due diligence report.”

Obviously, this was quite some time after the Waterkloof
10 plane landing incident that had happened in 2013.

MR NTSHEPE: Correct.

CHAIRPERSON: Yes. Okay alright. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. And then the previous paragraph 165 refers to the Minister of DPE, granting Denel approving in principle to continue discussions with VR Laser. Was that Minister Brown at that stage?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Right. Thank you. And then you get in
158 approval from the Board of Denel. It is final approval of
20 VR Laser as equity partner. That is the
7th of December 2015. Is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: By that stage, you were already acting as GCEO. You were no longer just as the Executive for Business Development. You were now acting GCEO. Is that

right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Right. Now had any consideration or effort being given at the risk point to whether you should be looking at any other person other than VR Laser or was it simply VR Laser and nobody else?

MR NTSHEPE: In 2015, as I said, early 2015, Chair. We went to Indian, in particular to do the exercise to see who can we partner with in India in order to fulfil the requirement
10 of ...[indistinct] [Speaker not clear]

We visited defence companies and we found out because we have been out of the market that they have already been – they have already associated themselves or found JB's with other international companies and we were going to tender for the same products.

And therefore, they told us that that we ...[indistinct] [Speaker not clear] Except for one company that was, if I still remember, BEML. BEML was a state-owned company.

It was prepared to work with us but at a sub-contractor
20 level because they would – they – even the product that they were going to work with Denel was not their product. It was, if I am not mistaken, a shack(?) product ...[indistinct] [Speaker not clear]

ADV KENNEDY SC: Why was it necessary to have a partner at all? Why could Denel not simply do the work

itself? The produced the vehicles, for example, through one of its divisions such as, for example, LMT.

MR NTSHEPE: The vehicle is a specialised vehicle. It is an 8 x 8. And there is a huge vehicle that can take the big, massive cannons. And Denel does not have that capability to do that. We have never produced a truck. Even some of the trucks that you see on the road were never produced by Denel. So we have never produced a truck.

So Denel in certain areas its price(?) sub-systems
10 already existing in the market. Or sub-systems that the client to say that: This is what we would like. Whoever is going to bid for this contract, this is a sub-system we would like to see.

And Patria was a good – is a good vehicle. It is used globally. And the – in fact, there was another time when the TATA also had a truck in India but – and once used the Denel for the cannon to do a demo in India.

And, however, there was – there were problems which in the end, I think there was no compatibility at that point in
20 time.

But the truck from BEML and BEML got a truck from Czech Republic, was the truck that we believed that will be able to carry the big cannons, which was the 155 millimetre which weighs more than, say, 15 tons or more.

ADV KENNEDY SC: Now you mentioned that you needed a

partner for the reasons that you have indicated and that when you went on your trips, the two trips, in 2015 and early 2016, it became apparent that this was now pretty late. You could not find an overseas partner that would work for you. Is that right?

MR NTSHEPE: In 2015?

ADV KENNEDY SC: In 2015.

MR NTSHEPE: Yes, yes.

ADV KENNEDY SC: Because, of course, when you went in
10 March 2016 with VR Laser's people on their company aircraft, you had already formed Denel Asia and entered into an arrangement with VR Laser, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Right. Now you deal in some detail with the process that was followed, how the board gave approval and how there was a shareholders agreement, 1510. 1.5.10. There is a shareholders agreement concluded on the 10th of December 2015 between Denel and VR Laser with some suspensive conditions. And these suspensive
20 conditions included approval under Sections 51 and 54 of the PFMA.

MR NTSHEPE: Correct.

ADV KENNEDY SC: And that process was then followed when you submitted, the next paragraph, on the 11th of December. Denel submitted a formal PMFA

application to Minister Brown at the DPE and Mr Van Rooyen. He was by then the short-term Minister of Finance. Is that correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Right. Now that required a 30-day period to run and in terms of the relevant sections, if there was no response by the end of the 30-day period from the minister's concern, that would be deemed to be approval. Is that right?

10 **MR NTSHEPE**: Yes, that was my understanding.

ADV KENNEDY SC: And then, that expired on the 10th of January. And then you get on the 13th of January, at 1.5.13 a letter from the chairperson of the board, instructing you to proceed to incorporate Denel Asia.

MR NTSHEPE: Correct.

ADV KENNEDY SC: And the Chairperson at that stage was Mr Mantsha.

MR NTSHEPE: Correct.

20 **ADV KENNEDY SC**: Right. Why was he giving you the instruction? Was that not something – was not simply an operational matter that you as acting GCEO would know to do yourself? Why did it come from the chairman?

MR NTSHEPE: The motivation to form the joint venture, went to the board and it was approved by the board.

ADV KENNEDY SC: Now ...[intervenes]

MR NTSHEPE: Secondly, the issue of correspondence with the minister at ministerial level is, in terms of protocol, is with the chairperson of the board, not with me. I correspond directly with the DG.

And Mr Mantsha was able and he was available all the time when he knew about what was happening in terms of forming this joint venture.

And in January, he asked me, in fact, in writing to say that the 30-days have passed. Because Denel, in truth,
10 Denel never had money. Never had money.

CHAIRPERSON: Never had money?

MR NTSHEPE: Yes! Yes.

CHAIRPERSON: For this project or...?

MR NTSHEPE: No, no. Denel had never... I mean, it was never a sustainable company – profitable company.

CHAIRPERSON: H'm?

MR NTSHEPE: As long as I remember. And I do not know why they are not saying that.

CHAIRPERSON: Well, the ...[intervenes]

20 **MR NTSHEPE**: I mean, you can look ...[intervenes]

CHAIRPERSON: ...the Group CFO was here. He told us something different.

MR NTSHEPE: Yes! And because it was a shock after I heard as Group Director Marketing or Group Executive got orders because initially, they were only concentrating in

South Africa. Then after the independence or after the settlement in South Africa, then they have a problem. Because South Africa had stocks(?) and they could not sell.

CHAIRPERSON: Well, I asked him the question with reference to September 2015 when he and the other executives were suspended. I asked him what the financial position of Denel was at that time.

MR NTSHEPE: Yes.

CHAIRPERSON: And then he – he told me about 1992
10 when the years after that but then when it came to 2015 and the years that came – the year – the following years up to, I think, 2018 that the financial situation of Denel was good but then in 2018 or in 2019, it went down.

MR NTSHEPE: Yes, correct. Correct, Chair.

CHAIRPERSON: So you do not dispute that part?

MR NTSHEPE: No, I do not dispute it.

CHAIRPERSON: Oh, okay. No, that is fine.

MR NTSHEPE: Yes.

CHAIRPERSON: I just wanted to make sure.

20 **MR NTSHEPE:** No, I do not dispute that.

CHAIRPERSON: Ja, okay. No, that is alright.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Okay. Then, just to follow the sequence. You then – so you get that instruction on the 13th of January 2016 from Chairperson Mantsha. And then

on the 29th of January 2016, Denel Asia was formed and incorporated in Hong Kong.

Now some people have suggested that this was all a very rushed process which you have denied in your affidavit. What is significant, it seems to me Mr Ntshepe.

That if you look back at the timetable from 1.5.1 where you submit a pre-notification about the formation of Denel Asia to Minister Brown and then you follow the various other processes.

10 It seems to have been remarkably quick, particularly for government which is not always well-known for being very quick in some of these procedures. That it really just took a few months from beginning to end.

And already by the 29th of January 2016, you had actually formed the company in Hong Kong. Correct?

MR NTSHEPE: Correct. The reason ...[intervenes]

ADV KENNEDY SC: You do not find that unusually quick?

MR NTSHEPE: No, I do not think it is quick. Other companies form joint ventures within a month, private
20 companies. This took three months.

And I have to say, our chairperson at the point in time, because he wanted to move Denel forward and he believed in this JV.

And he said, ,you have to work. We used to have many board meetings there. And that is why you see so many

days because I would not be able to the other activity without getting board approval.

And the three months for me – and internationally, I think... In fact, internationally, it could be long, you know. It is not necessarily that it is a quick...

And another thing is that Denel, because it is a government company and then it must be slow. I think that should not be the standard that we measure ourselves.

ADV KENNEDY SC: Yes. Unfortunately, when it came to
10 the actual business that was already been undertaken, the Hoefyster Project, we know that it was delayed by year after year after year, if not more than a decade.

Unfortunately, the speed with which the Denel Asia Project was undertaken, was not always applied in practice for some of the other initiatives or undertakings. Correct?

MR NTSHEPE: Chair, if I can explain on that issue?

ADV KENNEDY SC: Yes.

MR NTSHEPE: The Hoefyster Project was approved in 2008
20 that Denel will do it. And Denel was going to partner with Patria. And Patria was going to transfer its IP to Denel in South Africa.

However, we had two problems. The first problem is that you needed a system, a gun. A gun by itself... I am sorry. Because this is a military business, I have to talk... Ja. It was an American gun.

And our defence force was not very comfortable with that. They said you must – you, Denel must manufacture and make your own gun. And to the accolade of our engineers, they were able to do that, number one.

And number two, the – what do you call – the baseline product – baseline before it is accepted. There was a bit of development that still had to be done, including the gun which took time and the clock was moving.

Mind you, these are technical issues. These are not
10 marketing issues. And it takes time to mature and be able to say that we can bring the client to come and test it. That is it. So they took time.

I am not justifying the long period that they have but I am just explaining how the industry works. It will take time but of course, eleven years is a long time.

CHAIRPERSON: Very long time.

MR NTSHEPE: It is a very long time.

CHAIRPERSON: Ja.

ADV KENNEDY SC: And it had massive financial
20 implications, not so?

MR NTSHEPE: Correct.

CHAIRPERSON: Sorry?

MR NTSHEPE: Chair, my ...[indistinct] [Speaker not clear]

CHAIRPERSON: Yes.

MR NTSHEPE: [Indistinct]

CHAIRPERSON: Sorry?

MR NTSHEPE: A short adjournment Chair.

CHAIRPERSON: Oh. Comfort break. Well, we are at ten past four. Maybe we should take it and – but we are going to have to stop at quarter to six or thereabout.

ADV KENNEDY SC: Quarter to six?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Thank you. That will be in order.

CHAIRPERSON: Ja, so let us take just ten minutes and
10 then we will resume.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may be seated Mr Ntshepe.

ADV KENNEDY SC: Mr Ntshepe, you must just push the button on your microphone please.

CHAIRPERSON: Mr Kennedy, did I say we will stop at quarter to without saying quarter to what or did I say...?

20 **ADV KENNEDY SC:** You said quarter to six if I heard correctly.

CHAIRPERSON: Oh, okay, alright, then it is – I thought I just said quarter to without saying when because I was under the impression that we are after five, it was after five, but it is not after five yet.

ADV KENNEDY SC: No. It may feel like a very day but it ...[intervenes]

CHAIRPERSON: Yes so maybe we will stop at about twenty two six or thereabout.

ADV KENNEDY SC: Twenty to six, thank you. We will try to, I am hopeful we will ...[intervenes]

CHAIRPERSON: And then if we have not finished we can start early tomorrow, as we previously discussed and then once we are done with him then tomorrow's witness can
10 follow.

ADV KENNEDY SC: Thank you, Chair. May I ask if there is still a problem in the afternoon when Mr Seleka, my learned friend, who indicated may be heard tomorrow, but...

CHAIRPERSON: Well, as things stand, the plan is that he will still lead that witness but from what he has said and from what he has told me, he might take between thirty minutes and an hour, so there is room for us to continue subject to that hour. So, as I see it, we certainly could still
20 go up to five.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: With Denel.

ADV KENNEDY SC: Yes, thank you.

CHAIRPERSON: And then if his witness could come after that.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Ja, would that be okay with you in terms of sufficiency of time?

ADV KENNEDY SC: Yes, I hope that we will be able to finish, thank you.

CHAIRPERSON: Okay, alright. Chair, may I just deal with a few aspects still to be dealt with in relation to Denel Asia? The product that you were intending to get VR Laser to produce for sales into the Asian especially the Indian
10 market, was that the armoured vehicle similar to the one that VR Laser was awarded the contract for Denel for the South African market?

MR NTSHEPE: In my understanding, correct.

ADV KENNEDY SC: Yes. But the Chair has already heard evidence in relation to the procurement or the award of that contract to VR Laser and some witnesses have contended that VR Laser was not the only one that could do such a product. In fact LMT in that tender had not only
20 tendered to produce those items, it had been producing similar items previously and was able to do so much cheaper than VR Laser. Now I am not going to go into the detail of that award at the moment because we are focusing on Denel Asia but my question is, why would you be giving the business to VR Laser to do this without following any sort of tender process for their market and in

Asia when in fact there were others such as your own in-house company LMT able to do that production?

MR NTSHEPE: Chair, there were two reasons. One, we did not have R100 million to start a marketing company in India. Before our banning(?) in India we will stand over 300 million in just in the marketing campaign, Denel, and we never getting – ended up getting a contract. So the risks of spending a lot of money in India because in India you evaluate – they evaluate at your own risk. In other
10 words you can spend a billion rand in getting your system to what they need, they can still say no and they are not obliged to pay you any money back. Firstly – so there no other company that was prepared to have a 100 million. Denel did not have a 100 million to go back to India at a point in time to go and start marketing. After being away from the market for more than 10 years. That is number one.

Number two, the vehicle which Denel was going to vie for in India is similar but not exactly like the one in
20 South Africa. Number one.

We were also going to not only VR Laser or Denel Asia alone in India, we were going to have to get an Indian company in India to be able to be our partner and that needed to make sure that also that company will have to contribute to the operations of the organisation and

because by buy and make India means that some technology will remain in India and therefore the Indians will want to make the product themselves in the end, like we are making the Hoefyster ourselves because we got the IP from Patria, you know, licence IP.

So it is two reasons. One, the marketing costs were very high and LMT did not have the money to do that and nor did Denel and secondly, was that you also needed to get an Indian company to be involved in India to be able
10 to do that.

CHAIRPERSON: Well, let us talk about the first reason. Why is the position not this that if you think VR Laser is going to assist Denel by injecting R100 million into the project, what is wrong with you still putting this out to tender because when they tender they will include that benefit and if there is no other bidder who is able to do that you would still then go with them but you will then have gone – complied with the requirements of procurement.

20 **MR NTSHEPE:** I could be wrong, Chair, but my understanding, when you want a partner to do business, especially in the corporate world because Denel, though it was a state owned company, had to operate within the corporate Act, the Companies Act and therefore you do not go out on a tender – like, for instance, when we got the

Rheinmetall, Denel, it did not go out on a tender, it was Denel and Rheinmetall that came into an agreement that this is what we are going to do. It is not only Rheinmetall, there is also Zeiss, Carl Zeiss, which was the same thing.

So I did not see an anomaly in the sense when VR Laser was going to be our partner because we – the issues is competitive advantage. We believed that if we have VR Laser, we – number one, competitive advantage in terms of in terms of cash, we did not have any cash.

10 And number two is that the links within India, itself. Although we were there ten years ago, we were not there anymore, so – and the companies that we knew were already partnered with.

CHAIRPERSON: Ja, you see, I am putting to you this question because when Mr – your answer to Mr Kennedy's question which was why did you not follow procurement procedures you said the first reason why you did not do that was because VR Laser was going to inject R100 million, you know? So but from what you say now, I think
20 what you are giving might be a different reason but whether it is valid or not, that can be looked at, but you are now saying well, your understanding ...[intervenes]

MR NTSHEPE: Correct, correct.

CHAIRPERSON: ...when you – when Denel got into partnership with another company then procurement

procedures would not apply. That is what you are saying.

MR NTSHEPE: Which is the experience I have, Chair.

CHAIRPERSON: Yes, yes. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. What was the R100 million intended for? Marketing costs?

MR NTSHEPE: Yes, initially it was – that was the concept, that we will spend R20 million per year for five years.

ADV KENNEDY SC: And did VR Laser actually put up the
10 R100 million? Was it spent?

MR NTSHEPE: No, not at all, there was no cents spent.

ADV KENNEDY SC: Is that because the project collapsed?

MR NTSHEPE: In my understanding, yes.

ADV KENNEDY SC: Right. Now you said earlier that Denel could not come up with the money, R100 million, and only VR Laser could come up with that sort of money. Did you actually make enquiries through a public participating process to find out? Did you, for example, advertise your
20 intention to enter into a joint venture with a suitable partner to market products in the Asian market and say to the marketplace all potential competitors, if you are interested in tendering we will give you an opportunity but please note that you will have to put up a R100 million for marketing costs. Did you undertake such a process?

MR NTSHEPE: No, we did not undertake it.

ADV KENNEDY SC: But why not? You said that VR Laser is the only one with that sort of - with that money. But how do you know unless you go out on a public tender or similar process? How do you know whether there might be anybody else out there interested and able to do it?

MR NTSHEPE: As I have indicated, we have done this before and we have done it with Rheinmetall and then we have done it with Carl Zeiss and ...[intervenes]

10 **ADV KENNEDY SC:** Done what before?

MR NTSHEPE: Joint ventures.

ADV KENNEDY SC: Joint ventures, yes.

MR NTSHEPE: Yes and there never was a public tender.

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

CHAIRPERSON: Yes, you see, that is a different reason. You see, you said you did not go out to open tender because VR Laser is going to inject R100 million. So Mr Kennedy says but how did you know that there was not going to be another entity that could the same? Then your
20 answer now is, we had never done that before whenever we - we are a joint venture. You see, so that is a different reason. But, of course, if that is what you intend doing to say okay, you understand Mr Kennedy's argument but here is another reason that influenced you, that is fine. Is that what you are saying?

MR NTSHEPE: Chair, if maybe I can repeat? We did not go out on a tender, we did not.

ADV KENNEDY SC: Why not?

CHAIRPERSON: Yes, but he was asking the reason why.

MR NTSHEPE: Why not ...[intervenes]

CHAIRPERSON: And you had initially said it was because of the R100 million.

MR NTSHEPE: Yes.

CHAIRPERSON: And then Mr Kennedy said but if you did
10 not check other companies, how could you know that there was no other company which could do the same.

MR NTSHEPE: Yes, we did not do it.

CHAIRPERSON: And then you said well, whenever in the past you have done joint ventures you had never gone out on open tender.

MR NTSHEPE: Yes. No, we have never.

CHAIRPERSON: Okay. Mr Kennedy?

ADV KENNEDY SC: Thank you. So the next question
20 must be, Mr Ntshepe, the fact that you had never done it before, does that mean that you did not have to do it this time? If you had always followed a practice where you did not comply with any tender requirements, that is no reason why you should not comply with it if the law requires it.

MR NTSHEPE: Correct.

ADV KENNEDY SC: So – but was it in fact not expected

and required of you, leaving aside what your practice may have been, whether that complied with the law or not previously, was there not a requirement at least for this procurement where you would be procuring large scale supply of very expensive vehicles for you to sell in the Asian market? The mere fact that you had never complied with a tender process surely was not an excuse not to comply with it again?

MR NTSHEPE: Correct but what needs to be noted is this.

- 10 The defence market operates slightly differently from the other industries. The tendency is that when you form a joint venture or a partnership you already have to identify the partner, who the partner is, and this is what has happened before but it is true that if in terms of the law or in terms of what is required in South Africa, I think that is where one of the things that needs to be clarified with the defence industry, how do you go out and form – especially if you are a state owned company, how do you form a joint venture? If you follow the normal processes, not
- 20 necessarily are you going to be successful in doing that because it might not necessarily be the partner because the point is, might not necessarily be the partner that would help you to win because the issue is to win the contract. It might not necessarily – I am not saying it is not, Chair.

So in terms of that, this has been the norm in the defence industry. It might be wrong, I concede, but this is - this has been the norm and this is what has been happening in – for a very – not only – for a very, very long time in the defence industry.

CHAIRPERSON: You see, is the position not that supply chain management policies, Section 217 of the Constitution which ought to be known by CEOs and high ranking officials of any state owned entity says whenever you are
10 going to procure goods or services you must do so in a manner that is fair, that is cost-effective, blah, blah, blah, blah, blah, therefore should you not simply be saying am I procuring goods or services? If I am then I know what the law is that applies and the procedures that I must follow.

MR NTSHEPE: Correct, Chair, you ...[intervenes]

CHAIRPERSON: And if you are not going to be procuring goods or services, that might be different.

MR NTSHEPE: Correct, Chair, but you are forming a joint – you are forming a company. Yes, a different company
20 from the existing company. And therefore the operations and the manner in which – and the philosophy behind the formation of that company is not necessarily in line with the 217 Procurement Act in South Africa, especially in defence companies. This is what I am saying.

CHAIRPERSON: But, of course, in a case such as this,

the idea was to procure particular vehicles or products, is it not?

MR NTSHEPE: No, it was not to procure any vehicles made by VR Laser South Africa, whatever.

CHAIRPERSON: Ja.

MR NTSHEPE: The design will come from Denel, the steelwork we believe will come – because usually all steel, almost all steel in South Africa is sold by VR Laser and then the welding will be done by VR Laser and that also
10 depends if you win the contract and you can only win the contract if you are joint – you – we have already – and we have already formed the joint venture at that point in time but if it was just a pure straight procurement, I can understand what you are saying, yes.

CHAIRPERSON: Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. If I may just complete with one or two questions.

CHAIRPERSON: Yes.

ADV KENNEDY SC: But VR Laser would not have gone
20 into the joint venture if it was not going to derive a lot of financial benefit, not so?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And especially in defence market, if this project had taken off.

MR NTSHEPE: Correct.

ADV KENNEDY SC: It would have been very lucrative, not so, for VR Laser?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And hopefully for Denel as well.

MR NTSHEPE: If it is lucrative for VR Laser it must be lucrative for Denel.

ADV KENNEDY SC: Yes. Now VR Laser in fact was taking not just the lion's share it was taken the entire R100 million upfront for marketing costs to get the project off the
10 ground, not so?

MR NTSHEPE: Correct.

ADV KENNEDY SC: It would never have done that if it was not going to get a lucrative benefit at the end.

MR NTSHEPE: Correct.

ADV KENNEDY SC: So you were marketing, you were intending to market the joint venture in order to obtain contracts from the Asian market.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Which would then be – would be for
20 goods that would then be manufactured by VR Laser.

MR NTSHEPE: No, the goods would have been manufactured because largely the design engineers come from Denel. The goods ...[intervenes]

ADV KENNEDY SC: Sorry, I was talking about manufacture, not design.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Who would do the manufacture?

MR NTSHEPE: The manufacturing largely would have been Denel because they cannot make a gun, VR Laser.

ADV KENNEDY SC: VR Laser.

MR NTSHEPE: Yes.

ADV KENNEDY SC: But they would have been manufacturing components, not so?

MR NTSHEPE: Yes, certain components.

10 **ADV KENNEDY SC:** Including the hulls, not so?

MR NTSHEPE: If we got the contract, yes.

ADV KENNEDY SC: Yes.

MR NTSHEPE: But not necessarily all the hulls.

ADV KENNEDY SC: Yes.

MR NTSHEPE: But I think they will be manufacturing, I mean that would be reasonable to think like that.

ADV KENNEDY SC: But if in fact – sorry, may I just stop for a moment? The Constitution that the learned Chairperson has referred you to says in Section 217, as
20 the Chair put to you, when an entity such as Denel, we are not talking about a private company here, we are talking about a state entity such as Denel, is procuring goods and services, it must follow, as the Chair said, a process that is fair, competitive, etcetera.

MR NTSHEPE: Correct.

ADV KENNEDY SC: It does not say except where it is Denel and it does not say except where it is dealing with the defence industry and it does not say except where it does so by way of a joint venture.

MR NTSHEPE: Correct.

ADV KENNEDY SC: The Constitution of course is our supreme law.

MR NTSHEPE: Correct.

ADV KENNEDY SC: So if one accepts that Section 217 of
10 the Constitution requires Denel whenever it is going to get into a relationship with a provider, in this case a provider in a joint venture – and I understand the vehicle would be a joint venture, but at the end of the day VR Laser would be benefitting largely through the production of the relevant items that would go into the finished product. So was it not appropriate for you if you did not know this already because you had been following the practice, was it not appropriate for you to at least take advice and find out is this permissible under law? Can we do this without
20 going out on a tender or similar process?

MR NTSHEPE: What informed me to continue with this, Chair, was the precedents that I have seen before in the company. The precedents – and I am just quoting a few joint ventures that we have done. We have done joint ventures in the Middle East and there was no tender.

ADV KENNEDY SC: No, Mr Ntshepe, I have no difficulty with your point.

MR NTSHEPE: Yes.

ADV KENNEDY SC: I do not know those facts.

MR NTSHEPE: Yes.

ADV KENNEDY SC: But let us assume that you are correct and I am not suggesting anything to the contrary, let us assume that there were ten different joint ventures before this one, it was at number 11.

10 **MR NTSHEPE:** Yes.

ADV KENNEDY SC: Was it not necessary for you, particularly once you were at the head of business development and then as Acting Group Chief Executive to make sure, to be questioning in your mind, I know that the law has developed over the years, not only with Constitution adopted in 1996 but the PFMA was adopted in 1999 and then Treasury regulations keep coming out. So what we may have done in the past, are we up to date with the legal requirements? You seem to be saying to the
20 Chair, if I understand you – and if I am being unfair or incorrect in my understanding please tell us, but you seem to be saying because we have done it this way ten times over, that means we do not have to do it.

MR NTSHEPE: Two things I was saying to the Chair. One is that that is the past. Now in the present going forward,

we did not do that, we were still adopting the processes of the past, that is what I am saying.

CHAIRPERSON: You must just tell me if I misunderstand you. I understand you not to be contesting necessarily the proposition that procurement laws and supply chain management policies were applicable and should have been followed, I understand you to be saying I do not know but there was a practice that had happened before and because of that practice, I acted in accordance of the
10 practice.

MR NTSHEPE: Correct.

CHAIRPERSON: If you tell me that Section 217 of the Constitution was applicable, if you tell me that procurement laws were applicable, I do not know, I am not contesting that, I do not know, but there is this practice that had happened and I followed it. All I can say is, based on that practice, I thought if I acted in accordance with that practice that was in order but if you tell me that it was actually wrong because procurement procedures
20 should have been followed, I accept that.

MR NTSHEPE: I accept it, Chair.

CHAIRPERSON: Okay. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. If I may just take you back to page 499, paragraph 1.5 ...[intervenes]

CHAIRPERSON: Of course, I am sorry, Mr Kennedy, you

may or may not take this further at some stage, of course there would still be the question of whether somebody at the level of Group CEO of a state owned entity, such as Denel, whether or not they would not be expected to know that procurement procedures or laws are applicable.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Of course, when one looks at that question, one will not forget the practice that he is talking about but it does not close the inquiry, so – but you decide
10 whether you take it further or not.

ADV KENNEDY SC: Thank you, Chair. If I can just pick up this question and then return to the point that you have raised, Chair, with the witness.

CHAIRPERSON: Okay.

ADV KENNEDY SC: On page 499 you say in paragraph 1.5:

“According to the opinion which was sought from senior counsel the board resolved to explore a suitable equity partner with the Asia Pacific region.”

20 Now you have not provided a copy of that opinion, we are not sure who the senior counsel is or what he or she may have been asked to advise on or what the advice was. Can you enlighten the Chair?

MR NTSHEPE: The issue was when we were not – Chair, when we were not getting any reply from Treasury, so we

wanted to know, the board wanted to know if have we followed the processes correctly. So we went to senior counsel and I mentioned at the time, when I was consulting, that it was Mr Bhana, senior counsel Bhana, and this is the chronology of events, in support of the – because I think we went to court here and so this is public knowledge. It should be in the public paper.

ADV KENNEDY SC: So that was after you had not got a reply from Treasury, you then went to senior counsel?

10 **MR NTSHEPE:** Yes.

ADV KENNEDY SC: Is there not a difficulty in what you have just said because your chronology indicates in 1.5 that you received an opinion from senior counsel and according to that presumably because you were given advice in that opinion and on that basis, then the board resolved to explore a suitable equity partner and what then followed is the chronology in 151, etcetera, 28 October 2015, 29 October and so forth. Treasury was not involved until much later. In fact if we get to your own chronology,
20 you first mention Treasury at the top of page 502 which is para 15.15 which deals with something that occurred long after the board meeting and that was on the 5 February 2016. At letter came from the National Treasury's Chief Director for Supply Chain Management governance, Monitoring and Compliance to Denel requesting information

to determine whether government prescripts were followed in the formation of Denel Asia. So is your chronology not back to front?

Your chronology seems to be this, according to your affidavit, you go to senior counsel, you ask for advice, you do not indicate what that advice is, and then you say on the basis of that advice the board resolved to explore a partnership for the Asia Pacific region and that is then followed by a whole lot of steps which include the
10 formation of the company, etcetera, and only thereafter, at the end of 2015, beginning of 2016, you have now got the 30 day period expiring where the Minister of Finance, the Minister of Public Enterprises do not get back to you and only thereafter does Treasury first get involved.

I am suggesting to you that your evidence cannot be right, that the counsel's opinion came after Treasury was approached.

MR NTSHEPE: Yes, correct. I might be then the way we have put the 1.5. There is no way that we could have
20 asked senior counsel to form a joint venture.

CHAIRPERSON: I am sorry, just repeat that last sentence?

MR NTSHEPE: There is no way that we could have asked senior counsel, an independent senior counsel if we can form a joint venture or not.

CHAIRPERSON: Oh, that you – would have been your own decision.

MR NTSHEPE: Ja, that had already been done.

CHAIRPERSON: Yes, okay.

MR NTSHEPE: Ja, it was the response to – now to say that Treasury is not responding to whether are they saying yes or no.

CHAIRPERSON: Oh, on Section 54 applications?

MR NTSHEPE: Yes, yes.

10 **CHAIRPERSON:** Okay.

ADV KENNEDY SC: Now you have not provided a copy of that senior counsel's opinion. Did that senior counsel in fact give you advice to do with procurement processes or did it deal with other issues?

MR NTSHEPE: It actually dealt with the issue of – I think it dealt with other issues, in particular the issue of ...[intervenes]

CHAIRPERSON: Section 54?

20 **MR NTSHEPE:** Yes, which we went to – I think we went to court to see if we can get an answer from Treasury.

ADV KENNEDY SC: So it didn't deal with whether you are not here to comply with procurement processes?

MR NTSHEPE: No, no to get an answer, because we already had submitted the application.

ADV KENNEDY SC: No, I am asking simply did Senior

Counsel give you advice dealing with whether or not you had to comply with procurement processes.

MR NTSHEPE: No he did not give us advice on that.

ADV KENNEDY SC: Right, now if I can take you back to this paragraph and I drew your attention to at the top of page 502, a letter from National Treasury's chief director, Supply Chain Management Governance, Monitoring and Compliance, now this is almost as it were a watchdog for government in its various entities and departments not so.

10 Correct?

MR NTSHEPE: Correct, correct so.

ADV KENNEDY SC: A watchdog to ensure that government departments and entities such as Denel are complying with procurement processes and so that letter is then sent and asks has it been complied with and then you refer to in 15.16 to the Chairperson of the Board, that is Mantsha correct?

MR NTSHEPE: Ja.

20 **ADV KENNEDY SC:** He addressed correspondence to Minister Brown providing detail regarding the formation of the venture, a joint venture in Denel Asia.

MR NTSHEPE: Correct.

ADV KENNEDY SC: But then – so that's not dealing with the National Treasury query not so? It is dealing with other issues. It is dealing with the formation of a joint

venture in Denel Asia?

MR NTSHEPE: Yes.

ADV KENNEDY SC: And it is a reply to – it is correspondence with Minister Brown, she is not part of Treasury not so?

MR NTSHEPE: Yes, correct.

ADV KENNEDY SC: Right and then you deal in 15.17 you say the Chairperson addressed a letter to National Treasury indicating that the response to National Treasury's 5 February 2016 letter would be forthcoming once sign off from the Board has been attained.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now can you explain, obviously you weren't the Chairperson, and you said he addressed a letter to National Treasury but did you not give input to the Chairperson as you were acting GCEO on that letter?

MR NTSHEPE: We had various meetings with the Chief Director at National Treasury in trying to resolve this, I think we had four, five meetings before this letter was ready and we would report back to say that this is where we are and this how far we have gone in terms of discussion but we were not moving on that and actually we still owed them a letter for – in response to that question at 1.5.15, so in terms of the input to the letter we gave input to – because the Chair is not operational in the

company.

ADV KENNEDY SC: Exactly.

MR NTSHEPE: Yes, we gave input to the Chair and the Chair was able to write a letter to National Treasury.

ADV KENNEDY SC: But this paragraph indicates that the Chair, presumably based on your input, said that his response about the procurement query would only be given once you got sign off from the Board, is that correct?

MR NTSHEPE: This is part of the response.

10 **ADV KENNEDY SC:** Yes, unless I have missed it you have not dealt elsewhere in the affidavit with any later response that may have been sent to Treasury, was there in fact any response sent to Treasury to deal with this.

MR NTSHEPE: There were many correspondence between Denel and National Treasury during that time. We would go and see the DG, Mr Anwar ...[indistinct] if I am not mistaken and then his team, so there were many, many interactions, so I would not necessarily know exactly in the meetings which meetings did we address these issues
20 exactly, you know in terms of responding to these letters and in terms of being able to find an answer into our problem and say are we going to ahead now.

ADV KENNEDY SC: Now may I take you to page 507, you refer to the trip around February 2015, this is what you have clarified in your supplementary affidavit and in fact

there were two trips and you refer to here the trip in February 2015 to try and find partners before the T1's were already taken for example Barry Forge had partnered with the Israelis, others had already partnered with the French, South Koreans etcetera, no stakeholder was misled.

Now is this what you are referring to here is this the first meeting that you went on without V R Laser?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Right.

10 **MR NTSHEPE:** In 2015.

ADV KENNEDY SC: Yes, and then you say, in fact one of the companies realised that Mr Kamal Singala was related to the Guptas, he immediately agreed to explore a partnership, I therefore cannot – well that's in response to the investigator's question. Who is the company that you referred to realising that Mr Singala was related to the Guptas which meant that – which led that company to say well in fact now we are keen to explore a partnership with you, who was that company?

20 **MR NTSHEPE:** The company as Reliance.

ADV KENNEDY SC: Reliance, and is that an Indian based company?

MR NTSHEPE: Company, yes.

ADV KENNEDY SC: Right, now – yes now what I don't understand is this, if this discussion took place in the first

meeting, early in 2015 around February 2015 where you weren't accompanied – sorry – February?

MR NTSHEPE: 2015 was to explore the possibilities forming joint ventures or partnering with Indian companies in India.

ADV KENNEDY SC: Yes.

MR NTSHEPE: And then in 2016 that is the discussion that took place.

ADV KENNEDY SC: The discussion with ...[intervenes]

10 **MR NTSHEPE:** With Reliance.

ADV KENNEDY SC: With Reliance?

MR NTSHEPE: Yes.

ADV KENNEDY SC: So are you saying that in fact this discussion where Reliance was saying oh this is exciting we have got a Gupta company with Mr Singala as one of the Gupta family, that means they will be keen to explore a partnership. Was that what happened in March 2016?

MR NTSHEPE: Correct.

20 **ADV KENNEDY SC:** Would you agree Mr Ntshepe I am afraid this paragraph has led to huge confusion.

MR NTSHEPE: Correct, that is why I apologised and said it was a mistake.

ADV KENNEDY SC: But it is confusion in a particular context which makes it a bit disturbing and that is that where this Commission is looking into allegations of State

Capture, some of which involved the Guptas themselves it is important for the Commission to understand all the facts, and the way one reads this paragraph of your first affidavit that of course you swore an oath to when you deposed to this affidavit, the way this reads before you corrected it later, in fact suggests that as early as February 2015 not in March 2016, but as early as February 2015 you were already going to the Indian market and saying we are going to be in a joint venture with some of the Guptas. You see
10 the difficulty?

MR NTSHEPE: I beg to differ honourable Chair because I did correct the mistake.

ADV KENNEDY SC: Yes. Now if I can ask you just for a moment, may I have a moment Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Thank you. Now if I can take you for a moment to page 529, paragraph 18, this is in the supplementary affidavit, you said the trip we undertook in February 2015 did not include anybody from VR Laser it is
20 only around March 2016 we went to an exhibition with VR Laser in Goa it is in 2016 that Denel officials used the VR Laser aircraft, not in February 2015?

MR NTSHEPE: Correct.

ADV KENNEDY SC: So how did you go to India in February 2015?

MR NTSHEPE: We used a commercial airline.

ADV KENNEDY SC: Normal flights as a normal passenger on a commercial airline?

MR NTSHEPE: Yes.

ADV KENNEDY SC: But in March 2016 you went to the exhibit on VR Laser's transport, is that right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: Right that then takes us back to page 507, there you refer to the purpose of the trip but here of course you see to be referring, although paragraph 1.11 said the trip was in February 2015 you have corrected that in a later affidavit, but the trip that you are referring to in 1.12 is not the one in February 2015 but the one in March 2016, correct?

MR NTSHEPE: That's in Goa?

ADV KENNEDY SC: Yes and then in the third line VR Laser offered to travel with Denel at no cost to Denel since Denel had always been in financial distress we saw nothing wrong with the use of their aircraft at no cost to Denel. Further if VR Laser was going to be our partner why would we be unwilling to travel with them.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now yes and Mr Singala was on that trip, is that correct?

MR NTSHEPE: To Goa yes.

ADV KENNEDY SC: Yes.

MR NTSHEPE: Correct.

ADV KENNEDY SC: Who is Mr Singala, Kamal Singala?

MR NTSHEPE: Initially I did not know whom Mr Singala – but I knew that he was – can I say related to the Guptas, and it was always part of me, why is he using a different surname than the Gupta surname, but then I realised no Mr Kamal Singala is a relative, or he is related to the Guptas.

CHAIRPERSON: Is that what you were told or it was just
10 your suspicion?

MR NTSHEPE: Well you know as you interact with someone and you realise you pick up some things and also say that he was staying in the Gupta house.

CHAIRPERSON: That he was staying at the Gupta house?

MR NTSHEPE: Yes.

CHAIRPERSON: Yes, of course he could be a friend as opposed to being related, that is what I am trying to – why you would say he was related, because if he was one of their friends he could stay with them.

20 **MR NTSHEPE:** For a long time Chair I did because he seemed to be very involved with them as a family in the Gupta family and ...[intervenes]

CHAIRPERSON: But is your answer to my question that nobody told you that he was related to the Guptas.

MR NTSHEPE: No, no.

CHAIRPERSON: It was your own thinking.

MR NTSHEPE: Ja my deductions.

CHAIRPERSON: Okay.

MR NTSHEPE: Ja.

ADV KENNEDY SC: One of the other witnesses has indicated that to his understanding Mr Singala is in fact the son of one of the Gupta brothers.

MR NTSHEPE: Yes I have read that.

ADV KENNEDY SC: You read that?

10 **MR NTSHEPE:** Yes.

ADV KENNEDY SC: And do you know if that is true or don't you know?

MR NTSHEPE: I think it could be true, I think it could be true, I cannot emphatically say it is true or not, but I think it could be.

ADV KENNEDY SC: Okay thank you Right, thank you, can I ask you to turn to page 508. You say in paragraph 1.15 I did not have any relationship with Mr Salim Essa. I was – were you aware that he was connected to the Gupta
20 family?

MR NTSHEPE: I only realised after some time after I had many – some interactions with him that he has a Gupta relationship.

ADV KENNEDY SC: The you say I was introduced to Mr Salim Essa by Rhia Saloojee around 2012/13 at the Cafe in

Oaklands. Mr Saloojee instructed me in Mr Essa's presence that I would work closely with Mr Essa but because he is trying to enter the defence market.

MR NTSHEPE: Correct.

ADV KENNEDY SC: That of course was some years before you were going in the VR Laser jet to Indian.

MR NTSHEPE: Correct, yes.

ADV KENNEDY SC: So was Mr Saloojee saying you would be – he instructed you in Mr Essa's presence that
10 you must be working closely with Mr Essa because he is trying to enter the defence market?

MR NTSHEPE: Correct yes.

ADV KENNEDY SC: Not simply the defence market that may exist overseas in India.

MR NTSHEPE: No it was very clear that it is in the defence market and in my understanding is that Denel should help Mr Essa to be established in the – because I was a Denel representative. When he says that he was putting me in between that is why I get upset because I
20 don't understand why would he use me.

ADV KENNEDY SC: Now let me understand why you have used the word instructed, he instructed you that you would work closely with Mr Essa. Did you understand that this was an instruction to favour Mr Essa or V R Laser.

MR NTSHEPE: It was my understanding that it was an

instruction to say because ...[intervenes]

ADV KENNEDY SC: An instruction to?

MR NTSHEPE: An instruction to say that because Mr Essa has now bought or VL Laser and he is a black-owned business we should be able to help them to gain a foothold into the defence market.

ADV KENNEDY SC: Did that mean that you should actually give favourable treatment to them if not what was being said?

10 **MR NTSHEPE:** I had no power to give anybody any favourable treatment, because I was not in any line of business whereby I will say you do this or I mean when I was Group Business Development because my business was to combine businesses and work together. But I would not be able, and if – some failed and some succeeded so that is an instruction the way I understood it, not necessarily to do a particular favour but to make sure that I grow the relationship that this company that has been bought by Essa who is classified in the BEE should
20 also be involved in the defence market.

ADV KENNEDY SC: Now you have mentioned the black ownership issue and there has been other evidence and Mr Saloojee will also give evidence we understand dealing with the importance of transforming the defence industry, particularly in relation to Denel which was traditionally

basically white owned and dominated, so I can understand that that would have been an important objective but are you saying that Mr Essa – I beg your pardon – Mr Saloojee were saying to you that you should encourage VR Laser or are you saying that he was expecting you and instructing you to cut corners to break the law or to violate procurement processes or anything of that nature?

MR NTSHEPE: My understand was, using your words, it was to encourage because they had no clue about the
10 defence space.

ADV KENNEDY SC: Right they had no clue about South African defence, is that what you said?

MR NTSHEPE: Yes the defence business, no clue.

ADV KENNEDY SC: Yes, they had no clue about it, they had no knowledge about it?

MR NTSHEPE: Yes.

ADV KENNEDY SC: And they had no previous experience in what?

MR NTSHEPE: In the defence business.

20 **ADV KENNEDY SC:** In the defence business, but of course ...[intervenes]

MR NTSHEPE: And they were buying into a company that had a – Mr Essa was buying into a company that had a long history.

ADV KENNEDY SC: Yes exactly, so it was now that we

are Laser that had a long history in the defence business that while they as owners might not – new owners might not have experience and knowledge of the defence industry they were buying a company that did.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes. If he had in fact been suggesting to you that there should be a violation of the law, and especially to do with the PFMA and procurement what would your attitude have been?

10 **MR NTSHEPE:** I would have told him that it is not possible because you are putting me in a conflict because in the end I will be the one who is responsible and you can always deny it and say you never gave me that instruction, so I would have a problem.

ADV KENNEDY SC: Right, at page 509, paragraph 1.18, now you say that the Gupta family was involved in the preparation of the Section 54 application is not true, the application was prepared by my team comprising of Ms Govender, Ms Legwabe, Mr Behela and Mr Nlshowana to
20 mention just a few.

MR NTSHEPE: Correct.

ADV KENNEDY SC: You confirm that. May I just have a moment to confer with my team? Thank you Chair, with your leave may we then move away from this topic of Denel Asia.

CHAIRPERSON: Ja.

ADV KENNEDY SC: And move on to page 510 of Mr Ntshepe's affidavit and that deals with the VR Laser Contract that was awarded by DLS for the hull platforms. Correct Mr Ntshepe?

MR NTSHEPE: Correct, correct.

ADV KENNEDY SC: There were initially to be 2017 hull platforms later it was reduced to 183 I don't believe anything turns on that though, and you there in 2.1 you say
10 the instruction was to support VR Laser Services and not to favour it.

Now that appears to come from a question that you were asked to reply to, in fact as I understand it your paragraph numbers in your affidavit respond exactly to the paragraph numbers of the questions, is that right?

MR NTSHEPE: Correct.

ADV KENNEDY SC: So if we can page back for a moment to page 491. 2.1 during the interview you attended with the investigators of the Commission, you stated that you were
20 given instructions to support or favour VR Laser Services. Please respond to the following questions. Who gave these instructions to you using what kind of communication and various other questions are put. So if I take you back to page 510 is this a direct answer to the question that you were asked to provide?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Right, so you say the instruction was to support VR Laser Services and not to favour it, favouring it was out of the question since I am not involved in the initial engagement with the entity. I stated when and how I got involved and that does not merit any further mentioning again. The instruction was given by Mr Riad Saloojee through verbal communication. Now so the instruction that you say you received from Mr Saloojee that
10 was to support VR Laser Services but not in a sense of favouring it.

MR NTSHEPE: Yes.

ADV KENNEDY SC: In other words not in a sense of giving it some advantage which it wouldn't have legally been entitled to?

MR NTSHEPE: Yes, correct.

ADV KENNEDY SC: Right, and when was that instruction given to you, was that the instruction given to you at the restaurant in Oaklands in 2012 or 2013?

20 **MR NTSHEPE:** Well the instruction was to work with, in Oaklands in 2013, but we – because I was reporting to him every week the progress of how things are going I would not remember exactly the day and the date.

ADV KENNEDY SC: Yes you say at the top of page 511, paragraph [iii] presumably in answer to a specific question

to when that instruction was given you say Hoefyster starts in 2007, I think the instructions were given in 2013, so that would seem to correlate with your earlier evidence about the lunch at the restaurant in Oaklands.

MR NTSHEPE: It wasn't lunch it was just a cup of coffee.

ADV KENNEDY SC: Just a cup of coffee, I beg your pardon.

MR NTSHEPE: Yes sir.

ADV KENNEDY SC: Right and then in paragraph [iv] it
10 says since we have been doing business with VR Laser for a long time and now that it has been acquired by a black person we need to support the growth of black business in the market. Again while transformation is a healthy objective and of course there's legislation as well as government policy that promotes it, in procurement provision is made for scoring in relation to the BBEE component, this didn't mean that you were simply going to give a contract to VR Laser if it didn't satisfy tender requirements, is that right?

20 **MR NTSHEPE:** No, it did not mean that.

ADV KENNEDY SC: Yes. And in fact we have seen through the evidence of other witnesses the documents relating to this procurement process where in fact BBEE constituted a major score scoring percentage, in fact quite a bit more than price not so?

MR NTSHEPE: Yes.

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

CHAIRPERSON: Can I just go back a little bit, you have made it clear that the instruction from Mr Saloojee was not that you should VR Laser any advantage but it was to give it support.

MR NTSHEPE: Correct.

CHAIRPERSON: In practical terms what did you understand this support that you are supposed to give to
10 them to entail?

MR NTSHEPE: Like for instance what is involved in the defence industry, locally and globally. Like for instance what is involved when you, although they could, I mean I was talking to Mr Essa, not to the company, what is involved when you have to get a permit to export products outside of this country, you cannot just export, you have to have a permit. Like for instance the exhibitions that we have internationally, for them to understand what is involved in that, him and further to understand that in
20 those exhibitions really initially it is the manufacturers, the OEM's for the first exhibitions and then thereafter it is for the public.

Why they do it like is because they want to give the OEM's the opportunity to be able to see what other companies are manufacturing and maybe there might be

ventures, maybe there might be relationships, things like that.

CHAIRPERSON: So basically as you understood the instruction to give support to VR Laser to Mr Salim Essa, your understanding was that it was to share with him information about the industry, the defence industry.

MR NTSHEPE: Yes.

CHAIRPERSON: And to assist him to understand how it works.

10 **MR NTSHEPE:** Likely that but there are also other activities, like for instance if we have to maybe there's a show, there was a show if I can remember ja.

CHAIRPERSON: Ja, in the defence industry

MR NTSHEPE: Yes and also introduce them to the association.

CHAIRPERSON: Ja.

MR NTSHEPE: Him in particular.

CHAIRPERSON: Okay alright. Mr Kennedy?

ADV KENNEDY SC: Thank you Chair. Now you then deal
20 on page 512 with LMT and you say in [i]:

“I was not involved in the identification of LMT so would not know who identified them. LMT had experience but limited by capacity.”

and in paragraph [iv]:

“I do not know who took the decision to invite other

suppliers to bid against LMT for the manufacture of the hulls and when that decision was taken. I assume it was the division mainly involved in the use of the hulls. That is DLS.”

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now in fact your assumption is correct it seems in the light of evidence that has been given by various DLS witnesses that in fact it was decided to invite bids and they invited three entities, the one being
10 VR Laser, the second being LMT and the third being another entity that was also involved in the market.

Now then you say in paragraph [iv]

“The process, if I remember, was done at divisional level. I am not in a position to say whether or not PFMA dictates were not followed.”

So you are not able to say whether the procurement requirements under the PFMA, and presumably the Treasury regulations and the Supply Chain Management Policy were complied with or not?

20 **MR NTSHEPE:** On the hulls?

ADV KENNEDY SC: On the hulls yes.

MR NTSHEPE: No I am not in a position to.

ADV KENNEDY SC: Yes, we are going to deal at a later stage in your evidence with the contract that was awarded for the single source supply of various steel and other

components which in fact authorised. We will deal with that in due course, right.

Then you at page 514 return to the issue of procurement because you say in 2.5:

10 “it should be clear that that the time Mr Mlambo rejected to approve the submission to appoint VR Laser Services the MOA that is memorandum of agreement, had already been signed and there were certain obligations which Denel had to meet in terms of the MOA, and any failure to comply with such obligations would have opened up the way litigation. VR Laser Services would have been within its rights to sue Denel and claim damages as there was a binding contract already. It would have been foolish for anyone to renege from such agreement and expose Denel to litigation and payments of large sums on money in damages at a time when Denel was going through financial difficulties. My, presumably my role, was to look

20 what was best for Denel at the time to avoid plunging the entity into further difficulties. I must point out further the program was about three years late and obviously Denel was incurring penalties for the late delivery. So there was pressure of finally finishing the baseline demonstrations for the

Hoefyster which was about three years late already. This would show that the cost of not going ahead with the appointment based on what Mr Mlambo stated the reasons to be for his rejection far outweighs all reasons for the rejection of such appointment. In my view his decision was not based on fact but on emotion and Denel could not afford to delay further.”

MR NTSHEPE: Correct.

ADV KENNEDY SC: Now – now you reflect on this – on
10 what you have said in this affidavit can I just check with you
are you not here confusing Mr Mlambo’s rejection of
approval after the contract was already signed. Are you not
confusing this which deals with the hull’s contract with a
further contract a single source single supplier contract
because there we have heard evidence – the commission
has heard evidence and we will take you through the
evidence the relevant documents and so forth. We know that
in relation to the single suppliers Mr Mlambo was asked for
approval after the event. And you at that stage was – were
20 acting GCEO and you said well we have to go ahead
because it is too late we have already signed the
memorandum of agreement. That appears to relate to the
single source single supplier contract with steel items not to
the hull contract that you are dealing with here in this
paragraph.

MR NTSHEPE: Here I am dealing with the MOA.

ADV KENNEDY SC: MOA?

MR NTSHEPE: Ja.

ADV KENNEDY SC: Concerning what?

MR NTSHEPE: Concerning the...

ADV KENNEDY SC: The single source single supply?

MR NTSHEPE: Ja single source suppliers of VR Laser.

ADV KENNEDY SC: Yes.

MR NTSHEPE: And there was the – I think there were the
10 Casspirs which is a different vehicle and then also the hulls I
think that [00:02:09]. The one that I signed where Mr
Mlambo had rejected was the hulls because as I said we
were already three years late.

I might have been under estimating because now I
hear it is eleven years – maybe it would have been five or
six years. So the issue for me was the urgency and also
because whenever I met the client and we need to
understand that these vehicles are not just vehicles to save
lives of the soldiers especially because these were South
20 African vehicles – the hulls were with the Hoefyster.

It was important for us to get the PBL go through and
if Mr Mlambo or me was dilly dallying and already we have a
single source – and we have proven and the – proven that
the VR Laser has good quality in that field and there is a
MOA that has been signed why are we dilly dallying because

my issue was that we need to move with speed. Because up till today as you have said it has not – PBL has not been even achieved.

ADV KENNEDY SC: Yes. But just to confirm I just want you to – we will deal with whether Mr Mlambo was right or wrong and whether he was emotional or whether it was good business sense and so forth. I just want to make sure your 2.5 where you referring to Mr Mlambo being asked to approve the appointment of VR Laser services after it had
10 already been – after the MOA had already been signed? That is the MOA dealing with the single supplier not the hulls, is that correct?

MR NTSHEPE: I think the single supplier included the hulls.

ADV KENNEDY SC: Well that has not been the evidence of other witnesses and the agreements do not reflect that.

MR NTSHEPE: Single supplier – the hulls I am sure you know that the hulls is just the body.

ADV KENNEDY SC: Yes.

MR NTSHEPE: Of the vehicle. Whatever type of a vehicle it
20 would be. So being a single supplier that means that that body – that particular body will be supplied by VR Laser. Whether it is the Hoefyster or the Casspirs that is what I understood the MOA to be doing.

ADV KENNEDY SC: Okay so – yes your evidence is different from that of other witnesses but I do not think we

need to go into a big debate with you about that. That is your opinion and your understanding I understand that. But can I take you to – to another bundle.

If you can just put that bundle to the side please and Chair may I ask your learned Registrar to place before you Bundle 1. Mr Ntshepe would you mind just putting that bundle to the side and just finding Bundle Denel number 1. I do not know if it is behind you or maybe in front of you on the left.

10 **MR NTSHEPE**: Yes. Denel number 1?

ADV KENNEDY SC: Is that number 1?

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes thank you if you could open that please. May I take you in Bundle 1 to page 825.

MR NTSHEPE: 825?

ADV KENNEDY SC: Yes. Now 825 in fact 824 is the start of that memorandum. Now this is a memorandum dated the 29th October 2015 from Ms Malahlela the then executive manager Supply Chain in DLS and it was submitted to the
20 Denel Supply Chain Executive that would have been Mr Mlambo correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And...

CHAIRPERSON: I am sorry Mr Kennedy just pace yourself appropriately we are five minutes away from stopping.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Ja okay.

ADV KENNEDY SC: I will just touch on this and then we can...

CHAIRPERSON: No, no that is fine ja.

ADV KENNEDY SC: We can continue in the morning if we may then. Thank you Chair for the guidance. Now this refers in the heading to a conflict between the policy and the signed MOU. Now there has been a – sometimes people
10 refer to a MOU and sometimes to a MOA and you have indicated in your affidavit that you believed there was no difference between the two.

In fact other witnesses have suggested otherwise but again I do not propose to debate that with you now. But what she says is this:

“In giving the approval for the deviation from the normal procurement process and a list of suppliers to be used for the TS demo the Group Supply Chain Executive gave an
20 instruction that DLS must first explore how Denel vehicle systems gear ratio and LMT will be used in the project on condition that they meet the quality price and delivery requirements.”

Now Ms Malahlela has given evidence before this

commission that this specifically was dealing not with the original appointment of VR Laser for the 217 or 183 hulls.

MR NTSHEPE: Yes.

ADV KENNEDY SC: But this in fact related to the later agreement that was awarded to VR Laser by DLS as a single supplier of relevant components.

MR NTSHEPE: This is a demonstration so it is only one vehicle.

ADV KENNEDY SC: Only one vehicle.

10 **MR NTSHEPE**: Yes.

ADV KENNEDY SC: But she then continues and says this:

“Furthermore in terms of the approved Denel Supply Chain policy and a DLS Supply Chain procedure DLS must first approach inter-group companies before procuring outside the group in terms of the Denel Group Supply Chain Policy. Under no circumstances...”

And here she is quoting from the policy.

20 “Under no circumstances shall products or services that can be procured from a Group entity or division be procured from an external supplier or non-Denel company unless there is approval by the Group Supply Chain Executive based on sound business reasons. Having identified a need for a

single source supplier with a supply of steel components and fabrications in May 2015 DLS signed a MOA with VR Laser for this scope of work. VR Laser is 100% black owned entity. In terms of the VR – sorry in terms of the MOA VR Laser prices must be market related and in line with the provisions of the MOA before an order can be placed on them.”

10 Now here she is referring to the – a MOA that was not restricted to a demo model. It referred to the MOA for the single supply.

MR NTSHEPE: Yes.

ADV KENNEDY SC: For multiple purchases.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Of orders correct?

MR NTSHEPE: Yes correct.

ADV KENNEDY SC: Right. And she is referring here to the MOA having been signed in May 2015 and now she is saying
20 there is a problem effectively that this has not complied with the Denel policy which required that you cannot buy outside the group unless the group Supply Chain Executive Mr Mlambo has given his approval on the basis of sound business reasons. Are you with me so far?

MR NTSHEPE: Yes I hear what you say.

ADV KENNEDY SC: Yes. And then she says:

“Due to these contradictory provisions – 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.”

So this is – so her department in DLS went to their
10 management or rather their EXCO – DLS EXCO to say well
which one must we follow? Must we follow the MOA or must
we follow the procurement policy because the procurement
policy seems to have been breached? And then she says at
the foot of the page:

“Given the time frame urgency and history EXCO’s recommended that the work be done by VR Laser. I hereby request permission to implement the EXCO decision in this regard.”

Now presumably you were not involved in Mr
20 Malahlela’s interactions with the EXCO within her divisional
level?

MR NTSHEPE: No.

ADV KENNEDY SC: Correct. So she has given evidence to the Chair that you presumably cannot comment on namely that she told him no we cannot do – we cannot continue with

the MOA although it is already signed because this is a conflict with our policy. And she was then told you are now instructed to put together the motivation. You cannot comment on that presumably?

MR NTSHEPE: No I cannot comment on that.

ADV KENNEDY SC: Okay thank you. Now – so then she gave evidence further and Mr Mlambo also gave evidence that this was then said to him at Group level Head Office level where he was the most senior person dealing directly
10 with Supply Chain. And he instead of signing above the word approval where his name – it is misspelt it is spelt as Denise Mlambo it should be Dennis Mlambo Group Supply Chain Executive. He refused to sign in there and instead he wrote the portion that is in writing here. You see that? And what he wrote there is:

“NB DVS and LMT must submit proof that they cannot meet the requirements prior to the contract being awarded to VR Laser.”

Now – so what he was saying in his evidence was
20 this. Ms Malahlela was correct to pick up that the MOA that had already been signed conflicted with the Denel Group Procurement Policy.

Because if you were going to procure goods or services outside the Denel group where you already have DVS and LMT there must be a good business reason and he

must be satisfied before he would give approval that there is a good business reason so he is saying effectively here, I am prepared to consider it but both DVS and LMT will have to submit proof that they cannot meet the requirements before I give approval. Now that was his attitude.

And his evidence is that LMT and DVS did not provide proof nor did anybody else in DLS that there was a good business reason that they could not meet the requirements.

10 But instead his evidence was that you then approved it effectively overriding his decision. Is it correct that the word approved below the handwritten portion that I have just read is your handwriting?

MR NTSHEPE: Yes it is correct.

ADV KENNEDY SC: And then it is in print – printed very clearly GCEO Z Ntshepe yourself, correct?

MR NTSHEPE: Correct.

ADV KENNEDY SC: And is that your signature?

MR NTSHEPE: Correct.

20 **ADV KENNEDY SC**: Is that correct? Okay.

CHAIRPERSON: And is it correct that you were overriding his –his position?

MR NTSHEPE: Yes correct.

CHAIRPERSON: Yes okay.

ADV KENNEDY SC: Do you – it is not dated I am about to

finish if I may Chair?

CHAIRPERSON: Ja.

ADV KENNEDY SC: It is not dated can you recall when you signed this?

MR NTSHEPE: I – what is it the 9th?

CHAIRPERSON: The memorandum is dated 29 October 2015.

MR NTSHEPE: I do not remember. Maybe ...

CHAIRPERSON: A few days after that?

10 **MR NTSHEPE:** A few days or a week or two.

ADV KENNEDY SC: Okay. Interestingly the title I do not know if that is your handwriting the bold written portion below your signature is that your – is that your own writing?

MR NTSHEPE: No that is not my writing.

ADV KENNEDY SC: Okay somebody else presumably put that in.

MR NTSHEPE: Ja.

ADV KENNEDY SC: And it has not – it does not indicate you then as being acting it actually shows that you were then
20 the...

MR NTSHEPE: That is not my writing.

ADV KENNEDY SC: The fuller fledged GCEO.

MR NTSHEPE: Yes.

ADV KENNEDY SC: Yes. Can you remember when you signed this whether by then you were still acting or whether

you were the GCEO?

MR NTSHEPE: I think I was still acting.

ADV KENNEDY SC: Okay. Thank you. May I suggest Chair that the witness then proceed to explain why he took this decision and approved it in the morning when we resume?

CHAIRPERSON: You propose that he explains tomorrow morning or you would like that to happen now?

ADV KENNEDY SC: I know that you are under time pressure with other commitments Chair. I am suggesting that he
10 continue tomorrow so that we do not breach the time limit.

CHAIRPERSON: Yes, yes.

ADV KENNEDY SC: But I am happy if you want to proceed to ask him?

CHAIRPERSON: No, no, I think it is – let us do it – let us continue tomorrow.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Yes. As things stand what is your estimate of how much time you would need with him before your next witness tomorrow? How much time do you think he will
20 take?

ADV KENNEDY SC: I believe we should finish within an hour maximum.

CHAIRPERSON: Oh okay alright.

ADV KENNEDY SC: That is my estimation.

CHAIRPERSON: Okay. So should we start at nine or half

past nine?

ADV KENNEDY SC: May I suggest respectfully nine o'clock Chair.

CHAIRPERSON: Nine o'clock.

ADV KENNEDY SC: I know you have many other demands.

CHAIRPERSON: Okay.

ADV KENNEDY SC: But I think that we have a fairly busy day tomorrow.

CHAIRPERSON: Yes. Who do we have as tomorrows...?

10 **ADV KENNEDY SC:** After Mr Ntshepe we have scheduled Dr Nel.

CHAIRPERSON: Yes.

ADV KENNEDY SC: He was at LMT.

MR NTSHEPE: Yes.

ADV KENNEDY SC: And then after that Mr Van der Merwe.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Who has requested and we need to approach you in chambers to ask for guidance in relation to his request to have the hearing virtually tomorrow?

20 **MR NTSHEPE:** Okay alright.

ADV KENNEDY SC: But those are the two witnesses apart from the completion of Mr Ntshepe's evidence.

CHAIRPERSON: Ja. No that is fine. Let us start at – and the person who would have been your second witness tomorrow how long is he likely to be?

ADV KENNEDY SC: Dr Nel I would think probably about two to three hours.

CHAIRPERSON: Is that so?

ADV KENNEDY SC: Yes.

CHAIRPERSON: Okay let us start at nine tomorrow morning.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Yes. Mr Ntshepe we will adjourn for the day and then we will start at nine tomorrow morning.

10 **MR NTSHEPE:** Yes thank you.

CHAIRPERSON: Okay. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 11 NOVEMBER 2020