

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

26 NOVEMBER 2020

DAY 313



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TRANSCRIBERS:

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PROCEEDINGS RESUME ON 26 NOVEMBER 2020

CHAIRPERSON: Good morning Mr Chaskalson, good morning everybody.

ADV CHASKALSON SC: Good morning Chairperson.

CHAIRPERSON: Are we ready?

ADV CHASKALSON SC: We are Chairperson. There are two Counsel who should put themselves on record at the start of proceedings. Mr Mpofu.

CHAIRPERSON: Yes.

10 **ADV CHASKALSON SC:** And Ms Goodman.

CHAIRPERSON: Yes okay let them do so. I think they will come and do it at the podium there Mr Chaskalson.

ADV MPOFU: Good morning Chairperson.

CHAIRPERSON: Good morning Mr Mpofu it is good to see you.

ADV MPOFU: Always a pleasure to see you Chair as well.

CHAIRPERSON: Yes.

ADV MPOFU: Chairperson I appear with Mr Naidoo my learned friend and junior for the witness Mr Ramosebudi.

20 **CHAIRPERSON:** Okay thank you.

ADV GOODMAN: Good morning Chairperson.

CHAIRPERSON: Morning.

ADV GOODMAN: I appear on behalf of Nedbank Chairperson I am instructed by Allen and Overy and I am accompanied by my attorney Ms Carrs.

CHAIRPERSON: Yes give me your name please?

ADV GOODMAN: Isabel Goodman.

CHAIRPERSON: Thank you very much.

ADV GOODMAN: Thank you Chair.

CHAIRPERSON: Okay. Yes Mr Chaskalson.

ADV CHASKALSON SC: Chair Mr Ramosebudi will be testifying today. Mr Ramosebudi has not furnished a full witness statement but he has responded to a Rule 10.6 Notice Chair.

10 **CHAIRPERSON:** Hm.

ADV CHASKALSON SC: You will find that 10.6 Notice which is dated 5 October 2020 at page – Flow of Funds Bundle 4 page 8. And Mr Ramosebudi's responses to the questions in that notice run from page 14 in this Flow of Funds Volume 4 Bundle.

CHAIRPERSON: Well did he comply with the 10.6 Directive?

20 **ADV CHASKALSON SC:** Yes Chair he furnished answers to questions. We are not suggesting that Mr Ramosebudi was in contempt of the notice. He did furnish answers. They were slightly later than the anticipated return date and in some respects the answers were fairly cursory and anticipated answers that might come in these proceedings. But we do not want to make an issue of that at this stage Chair.

CHAIRPERSON: Well it does not appear to me that he complied with the 10.6 Directive that I issued. The 10.6 Directive directed him to deliver an affidavit or affirmed declaration. What I have seen is neither an affidavit nor an affirmed declaration.

ADV CHASKALSON SC: That is – that is correct Chair. Maybe we can cure that.

CHAIRPERSON: And there seems to be – he does not seem to have provided an explanation as to why he did not
10 provide an affidavit or affirmed declaration when the directive was quite clear. That is number 1.

2. There are areas where he was supposed to give information and he says he will give it at the hearing. He does not give it in the document in which he is supposed – was supposed to give it.

ADV CHASKALSON SC: That is true too Chair. There are – there are a number of questions which he does not – or there are two questions really under Item 20 where he says information in this regard will be provided at the hearing. I
20 understand from Mr Mpofu that in certain – that in respect of these questions the witness will be asserting a right against self-incrimination.

CHAIRPERSON: Well you see if in the affidavit that is what he said then that – then one would understand. It is just that he says I will provide information at the hearing

but he is not providing it there. That is not – that does not appear to be somebody who is asserting that right.

ADV CHASKALSON SC: That is true Chair.

CHAIRPERSON: But of course I think Mr Mpofu might wish to say something on this before we proceed. Let me hear.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: What Mr Mpofu.

ADV MPOFU: My – Shall I...

CHAIRPERSON: Ja.

10 **ADV CHASKALSON SC:** In relation to the – the failure to furnish an affidavit that I submit could be cured if Mr Ramosebudi confirms the contents of his statement under oath in front of you Chair.

CHAIRPERSON: Yes. No it could be cured but I am concerned about the fact that it is still not compliance.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: You know if you are directed to furnish an affidavit or a affirmed declaration that is what you furnish. You – and there – because there is a reason why the
20 requirement is it should be an affidavit or an affirmed declaration and not just a statement.

ADV CHASKALSON SC: Indeed Chair I certainly am not going to argue to the contrary.

CHAIRPERSON: Yes. Yes let me hear what Mr Mpofu may have to say. Let them sanitise Mr Mpofu before you – Mr

Mpofu.

ADV MPOFU: Yes Chair. Chairperson well I was going to address you anyway Chair or just on the approach that we are going to take.

CHAIRPERSON: Yes.

ADV MPOFU: So may I propose that I – so that I do not have to come up and down but that ...

CHAIRPERSON: You can do everything.

ADV MPOFU: And then in the process then deal with the
10 contents.

CHAIRPERSON: Ja okay. Yes okay.

ADV MPOFU: Thank you. Thank you Chair. Chair well I will be very brief I wanted to just to put on record a few things.

Mr Chaskalson and I have had some discussions and I am happy to say that we have at least we understand each other or found each other on certain broad areas.

CHAIRPERSON: Well I might be the [00:08:07] generally that certainly I am not – I think it is the same in other fore
20 in which I have been involved but certainly when you have been appearing here there has been lots of cooperation.

ADV MPOFU: Thank you Chair.

CHAIRPERSON: From your side and so I am not surprised if you found each other broadly speaking.

ADV MPOFU: Thank you; thank you very much Chair I

appreciate that. So in a nutshell Chair as in the spirit that the Chair is alluding to one has always tried to find this balance between protecting the constitutional rights of the witness but assisting the commission and not being obstructive.

So what we have done is to indicate to Mr Chaskalson there are three broad topics in respect of which we will assert the privilege or against self-incrimination.

10 Now Chair you and I have had this debate before.

CHAIRPERSON: Yes.

ADV MPOFU: We know – we are fully aware that...

CHAIRPERSON: Yes.

ADV MPOFU: The privilege cannot be affected broadly.

CHAIRPERSON: Yes.

ADV MPOFU: Then it amounts to the right to silence.

CHAIRPERSON: Yes, ja.

ADV MPOFU: We also are aware that it also cannot be asserted you know by broad topics but when I say broad
20 topics I know that it must be asserted question by question. But Mr Chaskalson and I will know which those areas are.

CHAIRPERSON: Yes, yes.

ADV MPOFU: Then Chair we will of course we will also employ what I will call the Mogetsi Method which we

employed before of just being here to police Mr Chaskalson to make sure that he does not stray. We know it is very tempting Chair.

CHAIRPERSON: Well I think that the experience that happened in the – during Mr Mogetsi's evidence was really positive.

ADV MPOFU: Yes.

CHAIRPERSON: Experience it was cooperation, it was a commitment to assist the commission as much as possible.

10 My recollection is that it was only or two...

ADV MPOFU: Or two serious.

CHAIRPERSON: Maximum three questions that he – he in respect of which he asserted his privilege but otherwise with your advice he was able to just give answers and give evidence ja.

ADV MPOFU: Yes. Thank you Chair particularly in this case in fact the same as Mr Mogetsi if you remember Chair that there were areas where effectively he was educating all of us about how things work.

20 **CHAIRPERSON:** Yes. Ja.

ADV MPOFU: So Mr Ramosebudi will do the same. I know that Mr Chaskalson wants to ask him certain technical questions.

CHAIRPERSON: Ja.

ADV MPOFU: Because the area where he works is very

technical just so that we are all on the same page.

CHAIRPERSON: Ja okay.

ADV MPOFU: And we will be happy to do deal with that.

CHAIRPERSON: Okay.

ADV MPOFU: There may of course be areas where there is a difference of opinion, whether the line has been crossed and then the Chair will just give a ruling.

CHAIRPERSON: Yes.

ADV MPOFU: If that happens.

10 **CHAIRPERSON:** No, no that is fine.

ADV MPOFU: Yes. Now Chair I also wanted to indicate up front but I – at some stage I will sneak out.

CHAIRPERSON: Yes.

ADV MPOFU: I will leave Mr Naidoo.

CHAIRPERSON: Okay.

ADV MPOFU: To take over.

CHAIRPERSON: Okay.

ADV MPOFU: So I do not want the Chair to send the police on me.

20 **CHAIRPERSON:** Ja you have got to make sure.

ADV MPOFU: You never know at this stage. So apart from that Chair to address the concerns that the Chair has raised let me just indicate that the 10.6 response happened before Mr Naidoo and I were involved in this matter.

CHAIRPERSON: Okay.

ADV MPOFU: We – we do not want to make any excuses. We accept Chair that strictly speaking it does not comply with the obvious requirement.

CHAIRPERSON: Yes.

ADV MPOFU: To have it done under oath.

CHAIRPERSON: Yes, yes.

ADV MPOFU: So there are two issues that the Chair has raised. The first one about it being done under oath we – I
10 was going to propose what Mr Chaskalson has proposed.

CHAIRPERSON: Ja.

ADV MPOFU: Just for the sake of progress.

CHAIRPERSON: Yes.

ADV MPOFU: That can be cured by simply Mr Ramosebudi confirming his statement under oath.

CHAIRPERSON: Ja.

ADV MPOFU: Now here.

CHAIRPERSON: Yes, Yes.

ADV MPOFU: As far as the second issue Chair is
20 concerned which is the – the failure to answer certain questions. Indeed the Chair is quite correct. What really should have been indicated there even at that stage was that he will be asserting his right.

CHAIRPERSON: Ja.

ADV MPOFU: But we would really humbly ask the Chair to

condone such and compliance.

CHAIRPERSON: Yes.

ADV MPOFU: On the understanding that the statement will be confirmed under oath.

CHAIRPERSON: Yes.

ADV MPOFU: And number 2 wherever it is vague it really should have said that he will be asserting his Section 35 rights.

CHAIRPERSON: Okay.

10 **ADV MPOFU:** Thank you Chair.

CHAIRPERSON: Okay no that is alright. No thank you Mr Mpofu.

ADV MPOFU: Thank you very much.

CHAIRPERSON: Thank you very much ja. Mr Mpofu I always say that it is – it is always good to be with experienced lawyers who know what their case is. They focus on the real case and not on other things. Thank you.

ADV CHASKALSON SC: Thank you Chair. We – I need to ask you for guidance Chair.

20 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: Because there is just the Rule 10.6 Notice and a response for the purposes of numbering annexures there is not a statement with affidavits attached. But there is a large bundle of documents that the commission has prepared for the questioning of Mr

Ramosebudi. We will be referring to very, very many of those documents and might I suggest that we give the bundle an annexure number with pagination references in the bundle rather than making each new document an annexure number because there will literally be hundreds that we may traverse in the course of today.

CHAIRPERSON: I think what we should do is

1. Yes the file should be given a bundle number.

That is one which you say and I think at some stage it
 10 need not be now I think at some stage there must be a process of formally admitting those documents. Now you say there are lots of them but once they have been identified and they can be marked. They can be given the exhibit number that would be used outside of this process. But at a certain stage you can come back and say the documents as they appear from page whatever – whatever you ask that they be admitted – each of them be admitted and given the exhibit number that you would allocated and I can just take five minutes to do that. How is that?

20 **ADV CHASKALSON SC:** Chair the one – my one concern with that is that when we come – when you come back to read the record it may be difficult to correlate references in today's testimony with what the exhibit numbers will subsequently turn out to be.

CHAIRPERSON: Well before we give the exhibit numbers

we would have used page numbers.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: Is it not?

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: And even if the exhibit numbers are there as long as everyone remembers what page they appear that should be fine is it not?

ADV CHASKALSON SC: Indeed. If that file VVF – sorry FOF 4.

10 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: Remains in your possession in the form that it currently sits.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Then you will be able to identify which documents [speaking over one another].

CHAIRPERSON: Yes. The pagination would remain.

ADV CHASKALSON SC: Indeed.

20 **CHAIRPERSON:** As it is but I think as a formality it is important to admit them at a certain stage and then give them exhibit numbers. But anyone wishing to refer to them does not have to say exhibit number so and so. If they say such a document appears on page so and so that is still good enough.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Ja. Okay alright.

ADV CHASKALSON SC: But then I think what we can do immediately in relation to exhibit numbers is introduce the 2 Rule 10.6 notices and the response as exhibits VV4.1, VV4.2 and VV4.3.

CHAIRPERSON: Yes before we do that let us just confirm the file that you will be using is Flow of Funds Bundle 4?

ADV CHASKALSON SC: Indeed and only that file today.

CHAIRPERSON: Ja okay. And are there 1 10.6 Directives?

10 **ADV CHASKALSON SC:** The first...

CHAIRPERSON: Or are they the same one?

ADV CHASKALSON SC: No there are two Chair. The first is requiring Mr Ramosebudi's presence today to testify.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: That is the document at page 3.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Which I would ask to be VV4.1.

20 **CHAIRPERSON:** The first Chairperson's Directive in terms of Regulation 10.6 starting at page 3 is admitted as Exhibit 4 – VV4.1 is that right?

ADV CHASKALSON SC: VV4 – VV4.1 We are on our VV – VV.

CHAIRPERSON: VV. Ja okay. VV4.1. If you put VV together it could be W. Okay so that is the first one and the second one will be...

ADV CHASKALSON SC: At page 8.

CHAIRPERSON: Exhibit VV4.2. Is that right?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Yes so the second directive in terms of Regulation 10.6 starting at page 8 will be admitted as Exhibit VV4.2. Okay.

ADV CHASKALSON SC: And then Mr Ramosebudi's response to the second 10.6 which appears at page – from page 14 can be VV4.3 Chair.

10 **CHAIRPERSON:** Mr Ramosebudi's response to the 10.6 Directive starting at page 14 is admitted as Exhibit VV4.3. Ja.

ADV CHASKALSON SC: Thank you Chair. At this point I think we are good to begin.

CHAIRPERSON: Thank you. Thank you. You may proceed.

ADV CHASKALSON SC: I think Mr Ramosebudi needs to be sworn in.

20 **CHAIRPERSON:** Oh yes. Will you please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR RAMOSEBUDI: Phetolo Ramosebudi.

CHAIRPERSON: I think you must just raise the microphone and then try and speak up a bit.

REGISTRAR: Please state your full names for the record.

MR RAMOSEBUDI: Phetolo Ramosebudi.

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

MR RAMOSEBUDI: No.

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

MR RAMOSEBUDI: Ja.

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

MR RAMOSEBUDI: So help me God.

CHAIRPERSON: Thank you. Yes you may proceed Mr Chaskalson.

ADV CHASKALSON SC: Thank you Chair. Good morning Mr Ramosebudi.

MR RAMOSEBUDI: Good morning.

ADV CHASKALSON SC: Mr Ramosebudi I first just want to cure the problem with the statement that we have
20 discussed earlier and can I ask you to turn first of all to page 8 of that file in front of you. The pages I will be using are the page numbers are the black ones on the left hand side and on the top left and you will see they say FOF-04- and then there is a number. It is the number after FOF-04 that I will be referring to today. Do you recognise

the document on page 8?

MR RAMOSEBUDI: Yes I do.

ADV CHASKALSON SC: And that was a Notice in terms of Regulation 10.6 of this commission that was served on you and if you go down to page 13 you will see that it is dated 5 October 2020.

MR RAMOSEBUDI: Yes I do.

ADV CHASKALSON SC: And will you confirm that it was served on you?

10 **MR RAMOSEBUDI:** Come again.

ADV CHASKALSON SC: You had – you did receive this notice in – on 5 October or shortly thereafter?

MR RAMOSEBUDI: Yes. Yes I did.

ADV CHASKALSON SC: And you furnished a response to it which starts at page 14. Will you confirm that is the case?

MR RAMOSEBUDI: Yes I did.

ADV CHASKALSON SC: And the document that runs from pages 14 to 19 is your response which is dated 7
20 November 2020. Will you confirm that the contents of that document are correct?

MR RAMOSEBUDI: Yes I can confirm they are correct.

ADV CHASKALSON SC: Thank you. Mr Ramosebudi in that statement you touch very briefly on your history in the public sector. Can you just describe to the Chairperson

your career in – well from the beginning until the point at which you left Transnet?

MR RAMOSEBUDI: Thank you Chairperson. My career started in 1992 when I was an academia with the Medical Investments Southern Africa which then – when I was then academia I did my MBA with University of Pretoria after which then I went to work for the Nedcor Group in Syfrets Asset Management. Thereafter then I went into stock broking. From stock broking I went to National Treasury.

10 That is when I started working in the public sector.

ADV CHASKALSON SC: And can you give a date to the Chair?

MR RAMOSEBUDI: The – I started working in National Treasury in 1990 – 1998 I think it is around August/September 1998 which then I left in 1999 April.

Subsequent to that I went back into the private sector but then I think in late 1999 I went to work for Development Bank of Southern Africa in the Treasury function.

20 From then then I started working in the public sector from DVSA, NHFC, Transnet, ACSA, South African Airways and back then again to Transnet.

ADV CHASKALSON SC: And just to get the chronology Mr Ramosebudi you deal with this at paragraph 226 of your statement. You were at the Development Bank from 1999

to 2002. Is that correct?

MR RAMOSEBUDI: That is correct Chair.

ADV CHASKALSON SC: The National Housing Finance Corporation that was NHFC 2002 to around 2006. ACSA 2007 to 2011. SAA 2012 to February 2015 and Transnet 2015 to 2018 and what I have skipped out there is that you were Deputy Treasurer of Transnet back from 2006 to May 2007.

MR RAMOSEBUDI: That is correct.

10 **ADV CHASKALSON SC:** At ACSA, SAA and Transnet you were treasurer, is that correct?

MR RAMOSEBUDI: At ACSA yes I was the treasurer and SAA I was a treasurer.

ADV CHASKALSON SC: And Transnet from 2015 to 2018?

MR RAMOSEBUDI: I was a treasurer.

ADV CHASKALSON SC: Yes. Then at page 16 of your statement you deal with a range of entities with which you have a relationship or in which you have an interest or your family members have an interest. Can I start with the
20 first entity which is at [vii] on page 16 Risk Stats Consulting. Can you tell the Chair what Risk Stats Consulting is and what interest if any you had in it?

MR RAMOSEBUDI: You are referring to page 16 on my side – okay.

ADV CHASKALSON SC: Top left hand side.

MR RAMOSEBUDI: Okay. Risk Stats was a trading company of one of my companies called Risk Maths.

ADV CHASKALSON SC: So it was a subsidiary – is it a – it is a separate entity that was a subsidiary of Risk Maths.

MR RAMOSEBUDI: No. It was a trading name for Risk Maths.

ADV CHASKALSON SC: A trading name. So it is not a company in its own right? Mr Ramosebudi?

CHAIRPERSON: It is...

10 **MR RAMOSEBUDI:** Ja we can Risk Maths there was a number trading names for – which we can call it subsidiary from that aspect.

ADV CHASKALSON SC: So Risk Stats is not actually an entity in its own right but it merely a trade name that was...

MR RAMOSEBUDI: In Risk Maths.

ADV CHASKALSON SC: Okay. And your interest Risk Maths? What was – what was or is your interest in Risk Maths?

20 **MR RAMOSEBUDI:** I was the – a shareholder – 100% shareholder of that company.

ADV CHASKALSON SC: Thank you. And Ka Ditlou Health Services what is your relationship to Ka Ditlou Health Services Pty Limited?

MR RAMOSEBUDI: This is my younger brother's company.

ADV CHASKALSON SC: And which young – do you have

just one younger brother?

MR RAMOSEBUDI: No I have got a number of siblings.

ADV CHASKALSON SC: Okay which brother is the brother with the interest in Ka Ditlou Health Services?

MR RAMOSEBUDI: The Psychology.

ADV CHASKALSON SC: Psychology Ramosebudi? Rams Capital CC.

MR RAMOSEBUDI: That is my company.

ADV CHASKALSON SC: And is it again 100% interest?

10 **MR RAMOSEBUDI:** Ja 100% interest for myself.

ADV CHASKALSON SC: And Azana - it is Azana not Azania?

MR RAMOSEBUDI: Azana.

ADV CHASKALSON SC: Azana Capital Markets which trades as Venus Liquor Store.

MR RAMOSEBUDI: Ja it was one of my company.

ADV CHASKALSON SC: And when you said was one of your companies are you saying at one stage you had a 100% interest in it?

20 **MR RAMOSEBUDI:** Yes.

ADV CHASKALSON SC: And when did you ...

CHAIRPERSON: Sorry was that answer yes? Was your answer yes I did not hear?

MR RAMOSEBUDI: Yes – I said yes.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And when did you cease to have 100% interest in Azana?

MR RAMOSEBUDI: No it got registered I cannot remember.

ADV CHASKALSON SC: Until de-registration it was your company?

MR RAMOSEBUDI: Yes.

CHAIRPERSON: Sorry I did not hear the answer. So you have to try and speak up Mr Ramosebudi. I think Mr
10 Chaskalson asked you whether until it was de-registered it was your company.

MR RAMOSEBUDI: I said yes. I said yes I did.

CHAIRPERSON: Yes okay I did not hear that answer. Okay.

ADV CHASKALSON SC: Then Mr Ramosebudi before we get into any details relating to past events because we are going to be talking about interest swaps and currency hedges I thought we might take advantage of your expertise just to explain what we are talking about here.
20 So could you briefly describe to the Chair what an interest swap is?

MR RAMOSEBUDI: Thank you, Chairperson. An interest swap, is exactly as the name means. It means two things. One, it is an interest rate. The other two is – the second one is a swap. A swop has different meaning. You are

exchanging things.

So in an interest rate swap, one party could be having a fixed interest rate. The other party could be having a variable interest rate.

In the industry, they call it a floating rate interest rate. So one particular – if you want to wish to exchange the swap, the fixed one for a floating one. And that is who it happens in the market.

ADV CHASKALSON SC: So I have an overdraft at my bank
10 which has a variable rate at prime and I want to plan for the future and I want to know exactly what I am going to be owing my bank on my overdraft on a fixed amount.

So I want someone who is willing to lend the money that I am going to owe the bank at a fixed rate to me, so they will give me their fixed interest rate and in return, that assume, the variable interest rate that I owe the bank.

And now my liability is to pay a fixed interest, not a variable interest rate. That is, obviously, for individuals, household expenses. It is a company issue. But is that
20 broadly what we are talking about?

MR RAMOSEBUDI: That is exactly what it is Chairperson.

CHAIRPERSON: Basically, you could be talking of two, shall I call them regimes, interest regime. The one interest regime is a fixed rate interest. The other one is a variable one. And you could be having a particular regime, interest

regime for a certain period and you want to change that and move to the other interest of regime. Basically, that is what it is.

MR RAMOSEBUDI: That is what it is Chairperson

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: And sometimes you refer or sometimes one sees reference being made to hedging interest exposure. Would that be a situation where you have a certain rate interest exposure where you would want to
10 swap up and down or you have variable interest rate exposure that you want to turn into a fix one and you enter into a swap. Would that be a hedge of your variable exposure?

MR RAMOSEBUDI: That is true Mr Chaskalson. Chairperson, the hedging in the process, it means protecting ourselves. It is a word that is used in the market or in the financial market in the sector. Hedging, you are protecting yourself.

You can be protecting yourself from a volatile interest
20 rate environment or you can be protecting yourself from a volatile inflation, you know, market.

So, you either use any of those two instruments, the fixed one or the other one. And it depends in which position you are sitting which you want to protect.

ADV CHASKALSON SC: And we will also be encountering

currency hedging. Can you explain to the Chair what a currency hedge is?

MR RAMOSEBUDI: Chairperson, the – a currency hedge or a protection from the currency exposure or a volatility of the exchange rate is precisely using the cost currency interest rate swaps or forward interest rate swaps that you can use to protect the position that you are sitting in.

If you happen to be going to buy and equipment outside the country which is priced in a currency that is not South
10 African Rand. So you need to make sure that you protect yourself over the volatilities of that... You are exempted(?) against those ...[indistinct]

[Speaker is not clear.]

ADV CHASKALSON SC: And could you explain to the Chair what sort of devices you would use? Let us talk about Transnet buying locomotives. Assume Transnet wants to buy locomotives that are going to be Dollar denominated and some of them are going to be delivered in five years' time at a Dollar price.

20 What sort of hedging mechanisms would Transnet be able to adopt to make sure that it knows how much it is going to pay in Rands?

MR RAMOSEBUDI: In that case and in most of the institutions that I have come across in my working life. The institutions will use for a cost currency swaps to hedge the

expected purchase or delivery of an equipment that is coming from a foreign country. And that is how most of these institutions are using it and then... I think Transnet have been using it.

ADV CHASKALSON SC: So cross-currency swap would be, you go to a bank and you say: Here is a schedule of Dollar payments that I want to receive from you and what is the corresponding schedule of Rand payments that I have to make to you? Is that correct?

10 **MR RAMOSEBUDI:** Simplistically, yes Chairperson. That is what it is. But you need to work out what is an average rate applicable to those, you know, cash flows so that at Day 1 today, you are not in a lost position or in a gaining position when you transact that position.

ADV CHASKALSON SC: But you will be doing is, you will be agreeing over the next five years on such and such a date, you will transfer a million Dollars to me and I will pay back to you so many Rands. Or it may not be on the same date.

20 This is the schedule of the Rand payments I will be making on these dates. This is a schedule of Dollar payments, you will be making to me on those dates.

MR RAMOSEBUDI: Chairperson that is true. So the intermediate cash flows will be exchange during the course of the contract itself. At the end of the contract you are

changing it back into your currency.

ADV CHASKALSON SC: Thank you, Mr Ramosebudi. Can we now start looking at some of the details of your career as Treasurer and can we start with ACSA? And the first document I want to take you to, it is a document that appears at page 20. So quickly go to page 20 again, on the top left-hand the black number.

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: And, do you recognise that
10 document?

MR RAMOSEBUDI: No, I do not recognise it.

ADV CHASKALSON SC: Okay. Well, it looks like an invoice issued by Regiments Capital to ACSA on 25 September 2009. I think you might be on the wrong page Mr Ramosebudi. Top left, page 20.

CHAIRPERSON: Yes, whenever Mr Chaskalson refers you to page numbers, it will be the black numbers on the top left corner of each page. So you can ignore the red numbers.

MR RAMOSEBUDI: Page 20. Yes, it is an invoice. I
20 cannot remember this invoice. Yes.

ADV CHASKALSON SC: Yes. But what it reflects is that Regiments is invoicing ACSA. Is that correct?

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: And in the bottom left, just above payment details, there is a note:

“Total agreed outstanding fee per Phase 4 as per mandate. And that is R 2.734 million. 50% of outstanding funding invoice final billing 603610.”

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: Now it talks about a mandate. Was Regiments Capital engaged by ACSA at that stage?

MR RAMOSEBUDI: As the document says. So it means there was a mandate, you know, between ACSA and Regiments.

10 **ADV CHASKALSON SC:** But I am asking you. Do you recall that ACSA had engaged Regiments? And if we go up to the heading in relation to a funding plan. It is what the invoice is heading. Had ACSA engaged Regiments in relation to a funding plan?

MR RAMOSEBUDI: ACSA did work on the ACSA Funding Plan but I have never seen the mandate but I heard that there is a mandate.

ADV CHASKALSON SC: Sorry, I did not hear your answer.

MR RAMOSEBUDI: ACSA worked on the Funding Mandate
20 – on the Funding Mandate ...[intervenes]

ADV CHASKALSON SC: ACSA or Regiments?

MR RAMOSEBUDI: Regiments worked on the ACSA Funding Mandate.

ADV CHASKALSON SC: Yes.

MR RAMOSEBUDI: But I never had a copy myself.

ADV CHASKALSON SC: So you have never seen this invoice?

MR RAMOSEBUDI: No. Not – no, I am not saying. I cannot remember the invoice but I have never seen the mandate.

ADV CHASKALSON SC: Oh, okay.

MR RAMOSEBUDI: You are reading the total agreed outstanding fees as per Phase 4 as per mandate.

ADV CHASKALSON SC: Yes, together with the heading of
10 the invoice just below the address of ACSA where it says
ACSA Funding Plan Phase 4. Are you aware of what this
Funding Plan was and what role Regiments played in it?

MR RAMOSEBUDI: Yes, I am aware.

ADV CHASKALSON SC: And can you tell the Chair?

MR RAMOSEBUDI: In 2008 sometime, Regiments were brought in to work on the Funding Mandate for Airports Company South Africa. And through that mandate, the advice on a number of funding structure, you know, within the mandate that we are referring to here.

20 **ADV CHASKALSON SC:** And did they get that appointment pursuant to a tender?

MR RAMOSEBUDI: Chairperson, as I said. That is why I said that I have never seen the mandate. So the – they came in and as I know, they are working through a mandate but I have never seen the mandate.

ADV CHASKALSON SC: My question was slightly different. Not whether you have seen the mandate but whether you are aware whether it was preceded by a tender process?

MR RAMOSEBUDI: With my recollections, you know, with this particular company, Regiments. When I came in 2008 Chairperson, I think they were there in 2007 on a similar mandates of a funding plan.

10 So whether during that time they went through a process, I do not know. I was not working for ACSA at the time.

ADV CHASKALSON SC: So you do not know whether there was any procurement process involving competitive bids or anything in relation to the Regiments mandate?

MR RAMOSEBUDI: I do not know. I do not know.

ADV CHASKALSON SC: Can I take you to this invoice again? And it says:

20 “Total agreed outstanding fee per Phase 4 as per mandate and R 2.734 million. That suggests it was a fixed fee for the mandate that Regiments was performing at ACSA.”

Would you agree with that?

MR RAMOSEBUDI: I cannot answer that. I do not know.

ADV CHASKALSON SC: It is a ...[intervenes]

MR RAMOSEBUDI: I really do not know.

ADV CHASKALSON SC: It says agreed outstanding fee per

Phase 4 as per mandate.

MR RAMOSEBUDI: I have not seen the contract with Regiments. So I cannot say if there was a fixed fee or not.

ADV CHASKALSON SC: Okay. Do – could you describe to the Chair what sort of work Regiments performed pursuant to this mandate when you find them at ACSA when you arrived?

MR RAMOSEBUDI: When I was... Chairperson, when I was at ACSA, they developed the Funding Plan, you know. The Funding Plan, it is a piece of information within the PFMA
10 that is a required, you know, that the board needs to approve, send to the shareholder or the Minister of Finance of National Treasury.

And from that perspective, the institution at the time, ACSA then could go out to raise any funding that it requires as per the funding in our plan that is to develop.

So that is when the Funding Plan came through and the how Regiments have been implementing the Funding Plan.

Where they have raised the money, I cannot remember a lot of – a number of those institutions but they have raised
20 some money for ACSA.

ADV CHASKALSON SC: So was Regiments' mandate just to design the Funding Plan or actually then to go out and raise money in terms of the Funding Plan?

MR RAMOSEBUDI: Chairperson, through yourself, I am do not want to respond in terms of whether the mandate

because I have not seen that. But what I have seen Regiments doing is, they have developed a Funding Plan. They have actually put the Funding Plan in action to raise the money that has been determined for the Funding Plan's perspective.

ADV CHASKALSON SC: So they did both. You just do not know which – whether both or one or the other form part of this particular mandate?

MR RAMOSEBUDI: Ja, they executive the Funding Plan.

10 **ADV CHASKALSON SC:** If they were executing the Funding Plan and it was not part of that mandate, would there have be any procurement process necessary for them to go through to executive the Funding Plan?

MR RAMOSEBUDI: Chairperson, I am sorry to respond to that. Like, I do not know because I do not know the details of the mandate, whether it was to develop the Funding Plan and execute it or whether it was to develop the Funding Plan and then go out to the market to raise funding. That I have got no information Chair.

20 **ADV CHASKALSON SC:** So you do not know what the mandate was?

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: Can I then take you to the next document which is, on its face, an email from someone called Mario Viznenza(?). mariov@nedbank.co.za. It is

dated 1 October 2009 and it is addressed to Eric Wood, cc Moss Brinkman and Elize Brits. Can I first ask you? Do you know who Mario Viznenza is?

MR RAMOSEBUDI: Mario Viznenza is – I am not sure if he is still but was one of the traders in Nedbank.

ADV CHASKALSON SC: Okay. Eric Wood?

MR RAMOSEBUDI: Eric Wood is one of - was or is – was one of the directors of Regiments.

ADV CHASKALSON SC: Moss Brinkman? Brickman, not
10 Brinkman.

MR RAMOSEBUDI: He is also one of the traders at Nedbank.

ADV CHASKALSON SC: And Elize Brits.

MR RAMOSEBUDI: I do not know that one.

ADV CHASKALSON SC: Right. The heading is ACSA Interest Rates Swaps. And the email reads:

“Hi, Eric. Here are the current indicative rates on these transactions, bearing in mind the strategy are staggering the trades over a few days.”

20 And then some rates are set out. Am I correct that what this would be is an email sent from Nedbank to Eric Wood on – who is acting for – they are acting in his capacity as Regiments Implementing ACSA Funding Plan and looking for funding for ACSA. Is that the context in which this email would have been sent?

MR RAMOSEBUDI: This is what I am seeing, yes.

ADV CHASKALSON SC: So there is then a description of what the indicative rates are, R 1.7 billion swaps and the details are set out. R 250 million and the swap and the details are set out.

And then there is a line that I want you to comment on.
Mr Vizzenza says:

“We leave it up to you to include a margin for us to share on the usual 50/50 agreement.”

10 Is this Mr Vizzenza saying to Mr Wood: Here are our terms for the swap. You add in a margin. In other words, increase the amount that ACSA is going to pay. And we will share that on a 50/50 basis.

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Is that how you would understand it as a person in finance?

MR RAMOSEBUDI: Yes, I see – I read it that way, yes.

ADV CHASKALSON SC: You do read it that way?

MR RAMOSEBUDI: H'm.

20 **ADV CHASKALSON SC:** Were you aware that Mr Wood and Nedbank were doing this 50/50 agreement at the expense of ACSA?

MR RAMOSEBUDI: No, Chair I was not aware of that.

ADV CHASKALSON SC: Well, appear to have been doing it. We do not know whether they did do it. So you were not

aware that Mr Wood and Nedbank appeared to have been including margins for them to share on a 50/50 agreement at the expense of ACSA?

MR RAMOSEBUDI: No, I was not aware.

ADV CHASKALSON SC: Can I take you to the next document which is at page 22? It is four days later. Another email from Mr Vizzenza to Erich Wood, then copies to Mr Brickman. It says:

“Fee calculations on ACSA swaps. Regiments fee.

10 Hi, Eric. I have attached the spreadsheet with the calculation of the fee due to Regiments on the two ACSA swaps dealt last week.”

You will recall the previous email had two. R 1.75 billion and a two hundred – I think it was R 250 million.

“Yu will see that the calculation has been done on the same basis as the previous ACSA transaction.”

Do you know what the previous ACSA transaction was that he is referring to here?

20 **MR RAMOSEBUDI:** No. Actually, I do not even know who is the transaction that are referring to here.

ADV CHASKALSON SC: Sorry, Mr Ramosebudi. Can I ask that you speak a little bit closer to your microphone

MR RAMOSEBUDI: No, I am saying ...[intervenes]

ADV CHASKALSON SC: ... because it is difficult to hear your answers.

MR RAMOSEBUDI: I am not sure whose transaction here they are referring to here.

ADV CHASKALSON SC: We... Thank you. That is all I wanted to ask you. The 10 BP, that is ten basis points.

“Due to Regiments over the life of the transactions equates to a BP That that is present value amount of R 11 548 551,00.

10 On the invoice to Nedbank, please include a line confirming that you agree to Nedbank clause back a portion of the fee should the transaction to ACSA terminate early, as well as confirming that ACSA is aware that a fee is being paid by Nedbank to Regiments on these transactions.

Let me know if you any queries.”

So can I take it step-by-step?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: The ten basis points due to Regiments over the life of the transactions, equals a present value amount of R 11 548 551,00. Is he saying there that: If
20 we increase the interest that ACSA is going to pay to Nedbank by ten basis points over the life of the transaction?

And we looked at all those values and take a present value. That will equate to R 11 548 551,00. Is that what he is saying?

MR RAMOSEBUDI: That is what I see – I read here.

ADV CHASKALSON SC: Yes. And if we read this with his previous 50/50 agreement email from a few days previously, that would suggest that in addition to the R 11 million that Regiments is going to receive at the expense of ACSA on this transaction, Nedbank will be receiving a similar amount at the expense of ACSA. Would you agree with that?

MR RAMOSEBUDI: If they are applying the same basis, then I will say but if – I do not know which basis they are applying. [Indistinct] is going to reapplying on ...[indistinct]

10 [Speaker is not clear.]

ADV CHASKALSON SC: Yes. I must – I am saying, assuming they are doing this 50/50 basis.

MR RAMOSEBUDI: Assumptions is very difficult to ...[indistinct]

ADV CHASKALSON SC: Yes, we will deal with the difficulties. You just have to answer my questions on the basis of an assumption and you – then the difficulties are mine, not yours.

20 So on the basis of my assumption, would Nedbank also be getting the same fee at the expense of ACSA?

MR RAMOSEBUDI: On the basis of assumption Mr Chaskalson. Yes, Chairperson. But maybe the arrangement could be on a different asset, you know ...[intervenes]

ADV CHASKALSON SC: Yes. No, no ...[intervenes]

MR RAMOSEBUDI: That is why I do not want to make an assumption.

ADV CHASKALSON SC: Ja, but I will ask a lot of questions on the basis of assumptions. I would ask you to take those assumptions as given. Obviously, you cannot be blamed if the assumptions turn out be false later. I will be blamed.

Then the next line.

10 “On the invoice to Nedbank, please include a line confirming you agree to Nedbank clause back the portion of the fee should the transaction to ACSA terminate early, as well as confirming that ACSA is aware that a fee is being paid by Nedbank to Regiments on these transactions.”

Let us take the first part of that sentence.

“Please include a line confirming you agree to Nedbank clause back the portion of the fee should the transaction to ACSA terminate early...”

20 Is he saying there, if this – your fees have been calculated on a basis that this transaction runs to term, that ten basis points, BP, is ten basis points of the whole life of the transaction?

But if ACSA – and we are going to pay back to you now – but if ACSA terminate mid-way through this transaction, we are going to be out of pocket because we would have paid you the R 11 million but we will not be getting it back from

ACSA.

So we need a clause from you saying that if that happens, we get back part of your fee. Is that what he is saying?

MR RAMOSEBUDI: Yes, that is true.

ADV CHASKALSON SC: Yes. Then he says:

“We want a line confirming that ACSA is aware that a fee is being paid by Nedbank to Regiments on these transactions.

10 So we want a line on your invoice, saying that ACSA is aware that this fee is being paid....”

Can I ask you to go to the next page which is an invoice dated – sorry page 23. And there we see an invoice from Regiments to Nedbank.

It is invoice Ned409 addressed to Ms Moss Brickman at Nedbank. And you see underneath – the invoice is for R 11 548 000,00 plus VAT, giving R 13 165 348,00.

And as I understand it, that is the amount that ACSA will be paying back over the life of the swap transaction with
20 Nedbank. Is that correct?

MR RAMOSEBUDI: Yes, as the calculation is mentioned here.

ADV CHASKALSON SC: Yes. And it says:

“Origination and facilitation of R 2 billion interest rates swap between Nedbank Capital and ACSA.

The service amount was determined as per agreement with Nedbank Capital.

This issue is issued under the introduction of derivative transactions agreement between Regiments and Nedbank, dated 30 June 2009.

Regiments Capital (Pty) Ltd has informed its client that it is earning a fee for the facilitation of the above transaction.”

Did Regiments inform ACSA that it was earning a fee
10 from – on this basis on the transaction? Were you aware
that Regiments was going to be paid R 13 million by ACSA –
by Nedbank and that ACSA would have to pay that back to
Nedbank over the life of the swap?

MR RAMOSEBUDI: Ja, I think I know that they will be
earning a fee but I am not sure if there was communication
around it.

ADV CHASKALSON SC: Well... Sorry, let us take that
slowly. You think you know that they were going to be
earning a fee?

20 **MR RAMOSEBUDI:** Ja.

ADV CHASKALSON SC: Did you know what the fee was?

MR RAMOSEBUDI: I would not have known because I
cannot remember if there was a written confirmation around
it.

ADV CHASKALSON SC: So you might not have known that

the fee was R 13.165 million?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: But ACSA was going to have to pay that amount back to Nedbank. Regiments would not have to pay that.

MR RAMOSEBUDI: I would not have known the quantum but I would have known that ACSA would pay a fee for structuring of the swap.

ADV CHASKALSON SC: But that fee could have been one
10 million, it would have been 13 million, it could have been 50 million. Would you not have taken steps to find out how much you were committing your organisation to pay back?

MR RAMOSEBUDI: True. But as I say, the financial instruments, they were your price(?) in. You will look at the fair value. The fair value is a composted interest rate that is given for a counterparty, like in this case, ACSA to pay.

So you need to then go back and check, you know, from a pricing point of view, whether this rate that you are getting relatively true(?).

20 The other instruments that you have and the other instruments that you have benchmarked, have used yourself, is it too high or not.

And then from that perspective, then you can make a determination. So you will look at the composing, you do not look at the component.

[Speaker is not clear.]

ADV CHASKALSON SC: No, I hear what you are saying but let us go back to procurement processes. You said earlier that you were not aware what the mandate of Regiments was. Is that correct?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: So it is possible that that original mandate ...[intervenes]

CHAIRPERSON: Hang on, hang on. Mr Ramosebudi, when
10 you nod, that will not be on the record. So just articulate your answer and say yes, if the answer is. No, if the answer is no. Ja. I think you must repeat that question Mr Chaskalson.

ADV CHASKALSON SC: Mr Ramosebudi, you said earlier that you were not aware of what Regiments' mandate under the Funding Plan was. It might have just been to design the plan. It might also have been to raise money in terms of the plan.

MR RAMOSEBUDI: True.

20 **ADV CHASKALSON SC:** Thank you. Now, if it was just to design the plan, then there was no existing mandate that covered Regiments' taking this fee at ACSA's expense via Nedbank for placing – for raising this money from Nedbank. You – would you accept that?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: There are one or two possibilities. Let me take a step back. There are one or two possibilities. Either the mandate did cover raising funds or it just covered designing the plan but not raising funds. You will agree to that?

MR RAMOSEBUDI: Chairperson, I think Mr Chaskalson is making very simple. I said, I have never seen that mandate, what it entails. And in this case, with respect, we are talking only invoice that was dealing with Funding Plan.

10 So from that perspective, I said I do not know whether it was the developing of Funding Plan and the execution(?) of the Funding Plan.

But the mandate could have covered a number of other issues including interest rate swap. So which we did not discuss at that time.

CHAIRPERSON: Yes, but I think Mr Chaskalson's question is aimed at establishing your understanding of the effect or implications of a certain mandate, such as, or lawyers.

20 If you are a lawyer, I instruct you to defend me in a criminal case at the magistrate's court. That does not necessarily mean, if you lose, I am convicted.

I want you to appeal, unless I ask you to object. Give you that mandate. Because I might think you are the one who did not do your job. So I must get – so what he is trying to establish is what would be your understanding of

what a particular mandate would mean. If he had this type of mandate would it mean he could also do a, b, c, d or could it mean he could not do that unless he had that other mandate? That is what I think he is seeking to establish. Maybe, Mr Chaskalson, you can then take it from there.

ADV CHASKALSON SC: Thank you. Thank you, Chair. Let us assume that the – and again, it is an assumption that I am going to make, okay? Let us assume that the original mandate included raising funds. Make that
10 assumption.

MR RAMOSEBUDI: And risk management.

ADV CHASKALSON SC: And...?

MR RAMOSEBUDI: Risk management.

ADV CHASKALSON SC: And risk management. And risk management and designing the plan, it was an all-embracing one. If it did, we would expect to find in that original mandate payment terms for Regiments, would we not? This is what you will get paid for doing the risk management and the fund plan, this is how we will
20 reimburse you when you raise funds. Would that not normally be what we would expect in the public sector?

MR RAMOSEBUDI: Probably so.

ADV CHASKALSON SC: So then if Regiments went off to Nedbank and said to Nedbank we are raising money in terms of our – we are raising money for ACSA, what can

you give us and Nedbank said well, we can do this swap for 1.75 million and this one for 250 million, the terms of the original mandate would determine what Regiments fee would be vis-à-vis ACSA, is that not correct?

MR RAMOSEBUDI: If it is exclusively stated so in the mandate that should be – that is the case.

ADV CHASKALSON SC: Yes, if it was covered by the mandate. Now if the mandate did not cover raising funds then Regiments would not have had the authority of ACSA
10 to go to Nedbank to raise funds for ACSA and Nedbank would not have been able to charge a fee to ACSA for raising those funds. If somebody comes and says to Mr Mpofu I understand you want to go, cheers, you can leave now, I will look after Mr Ramosebudi for the rest of the day and then presents you with a bill at the end of the day, are you going to pay that bill?

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: So if Regiments mandate did not include the raising of funds and they took it upon
20 themselves just to raise funds, was ACSA obliged to pay them anything?

MR RAMOSEBUDI: It is not.

ADV CHASKALSON SC: And so either ACSA had no obligation to pay them or ACSA would have had an obligation to pay them but that obligation would have been

set out in a mandate of which you were not aware, is that correct?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Did you make any enquiries in relation to Regiments' fee when they came back to you and said we have done this deal with Nedbank, we will be taking a fee for ourselves?

MR RAMOSEBUDI: That enquiry I would have made if I had made an appointment of Regiments and then I would
10 have to check the payments against the mandate itself. So in this case the appointments which preceded my time could not be questioned.

ADV CHASKALSON SC: Yes but I mean – you say you were aware that Nedbank was taking a fee but, as I understand your testimony now, you were not really aware whether they were entitled to take a fee. They may have been, they may not have been, you did not know.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Did anybody else at ACSA know
20 that Regiments were taking a fee?

MR RAMOSEBUDI: The signatures for the settlement of money should have known that.

ADV CHASKALSON SC: Sorry, Mr Mpofu has said something.

CHAIRPERSON: Something he said, oh.

ADV CHASKALSON SC: If I – my question was did anybody else at ACSA know whether Regiments was taking a fee? If I said Nedbank instead of ACSA that was an error. So my question is did anybody else at ACSA know whether Regiments was taking a fee on this transaction between ACSA and Nedbank?

MR RAMOSEBUDI: Ja, I would guess that those that authorised the appointment of Regiments to come and assist on this funding plan, through that mandate they
10 know that they did not come to [inaudible – speaking simultaneously]

ADV CHASKALSON SC: I am not asking what you assumed, I am asking what you knew. Did you know that anybody else at ACSA knew that Regiments was taking a...?

MR RAMOSEBUDI: Yes, yes, yes.

ADV CHASKALSON SC: Who else at ACSA knew that Regiments was taking...?

MR RAMOSEBUDI: I am sure the FD knew that Regiments
20 was taking a fee.

ADV CHASKALSON SC: And who was that FD?

MR RAMOSEBUDI: At the time it was Priscilla Mabelane.

ADV CHASKALSON SC: Priscilla Mabelane. And you knew that she knew that Regiments was going to take a fee on this transactions.

MR RAMOSEBUDI: The ...[intervenes]

CHAIRPERSON: In other words, you knew as opposed to you assuming that she knew.

MR RAMOSEBUDI: I am assuming that she knew because she had made an appointment on Regiments to come and execute the funding plan.

CHAIRPERSON: Well, I think Mr Chaskalson is – well, his question might be a more nuanced one, maybe directed towards the end rather than the beginning when they were
10 appointed, that whether she knew in the end that they were taking this fee but he wants to know whether you knew that person that you have mentioned knew that or whether – he is not asking whether you assumed, he just wants to know what you knew.

MR RAMOSEBUDI: Mr Chaskalson, thorough yourself, Chairperson, I think it is a common cause that when you appoint somebody to do something that they would be remunerated. So that is my assumption. Whether she knows that that was the case, I do not know.

20 **ADV CHASKALSON SC:** So you do not – it is not as though you and Priscilla Mabelane were ever in a room with Regiments who said oh, we are taking 13 million fee on this deal.

MR RAMOSEBUDI: Ja.

CHAIRPERSON: So you never had any discussion with

her ...[intervenes]

MR RAMOSEBUDI: No.

CHAIRPERSON: On the basis of which you can say she knew.

MR RAMOSEBUDI: No.

CHAIRPERSON: All you are saying is because she may have been involved in appointing them you take it that she would know whether they would be entitled or not entitled to that.

10 **MR RAMOSEBUDI:** On the basis that she appointed them.

CHAIRPERSON: Ja, but not that you ...[intervenes]

MR RAMOSEBUDI: But we never had ...[intervenes]

CHAIRPERSON: A discussion.

MR RAMOSEBUDI: Ja.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: And if we still stay within your assumption then if the assumption flows from the fact that she appointed them, you would assume that she would appoint them on particular terms that would govern their

20 fees, would you not?

MR RAMOSEBUDI: No because I could not get into the discussion with her on the appointment of Regiments.

ADV CHASKALSON SC: Would it ...[intervenes]

CHAIRPERSON: Sorry, I am sorry, what did you say? Just repeat your answer?

MR RAMOSEBUDI: I am saying I did not know because we have never had a discussion about the appointment of Regiments with Priscilla.

CHAIRPERSON: Yes but I think Mr Chaskalson was saying when you said because she was involved in appointing them she would know, was that because you are saying in appointing them the issue of what they would have been paid or what they would be entitled to would be dealt with in the appointment documents.

10 **MR RAMOSEBUDI:** Precisely, Chairperson.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: So you would have assumed that an appointment of Regiments would have been made that would have governed their appointment and the fees payable for that appointment.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: Let us go to the next document which is page 32, deals with the new swap.

CHAIRPERSON: Might this be the convenient time, Mr
20 Chaskalson?

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Yes, let us take the tea adjournment, we will resume at half past eleven. Yes – oh, Mr Mpofu, you are excused. Okay, thank you, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV CHASKALSON SC: Thank you, Chair. Mr Ramosebudi, can I take you to a new document, it is on page 32.

MR RAMOSEBUDI: I am here, Mr Chaskalson.

ADV CHASKALSON SC: Again it is an email from Mario Visinenzo(?) to Eric Wood, copy to Moss Brickman. The subject is ACSA interest rate swap as an attachment of the
10 spreadsheet.

“Hi Eric, current indicative rate on the interest rate swap is as follows.”

And then the terms are set out. It is going to be 1.5 billion swap and then the same sentence:

“We leave it up to you to include a margin for us to share on the usual 50/50 agreement.”

I have to ask the same question to you again, were you aware that Regiments and Nedbank were going to share a margin on a 50/50 basis at ACSA’s expense?

20 **MR RAMOSEBUDI:** No, Chairperson.

ADV CHASKALSON SC: Can we then go down to page 34 which is the spreadsheet that was attached to that email. Can you describe to the Chair what this spreadsheet on page 34 is describing? It is called Swap Profile.xls.

MR RAMOSEBUDI: Chairperson, the sheet on page 4 just

show the cash flow profile for a particular transaction that matures on the 29 December 2023. Sorry, on the 18 March 2024.

ADV CHASKALSON SC: Can we then go over the page to page 36 and start with the email at the foot of page 36. Sorry, start with the email at the foot of page 34.

MR RAMOSEBUDI: Page 34 is the cash flow profile.

CHAIRPERSON: 34?

ADV CHASKALSON SC: I am looking at the wrong
10 numbers, I beg your pardon, I am looking at red numbers. Go to the bottom of page 36, I am sorry.

MR RAMOSEBUDI: Okay.

ADV CHASKALSON SC: Mario Visinzenzo(?) to Eric Wood
10 March 2010.

“Hi Eric, the attached spreadsheet illustrates the estimated future cash flows on the proposed swaps based on today’s swap and CPI curves. On the Jibar legs of the swaps Nedbank will pay ACSA a quarterly interest rate payment calculated as three
20 month Jibar plus 2.6% of the amortising notional profile. Nedbank will not pay any capital amount. On the CPI leg of the swaps ACSA will pay Nedbank a quarterly interest payment calculated as the quoted real rates on the adjusted CPI notional amounts. The notional amounts on this leg of the

swap are therefore adjusted by the change in the CPI level over the transaction period. Please note that ACSA will also have to pay Nedbank a capital amount on the maturity of the swaps, this amount being calculated as the difference between the adjusted notional amount on the maturity date and the initial notional amount on inception. This capital settlement is as per standard CPI swap convention. I hope that the mechanics of the CPI swaps are now clearer but call me if you have further queries.”

Can you explain to the Chair what he is describing there? And if it may assist you the spreadsheet that he is referring to starts at page 38. Maybe I can assist you. If you go to page 38 you will see swap 1. Is this the swap 1 on page 38 relating to the Jibar leg of the swaps which Mr Visinenzo describes in his email where ACSA pays a quarterly interest payment calculated as three month Jibar plus 2.6% on the amortising notional profile.

20 **MR RAMOSEBUDI:** Chairperson, this is – on page 38, let me explain just what Mr Chairperson requested me to explain to you, Chairperson, on page 36, an email from Mario to Eric. In here Mario says to Eric that the swap has two regime – I am just borrowing your terminology, Chairperson.

CHAIRPERSON: Yes.

MR RAMOSEBUDI: The swaps has two regime, one regime is a floating rate of Jiba plus 260 basis points, 2.6% and then the other regime it is an inflation index or a capital adjusted with and inflation index, so – and what he says here, ACSA will pay on a quarterly basis, every three months, and a CPI rate or an inflation rate that is adjusted on the capital determined by a real rate on a quarterly basis until maturity whereas Nedbank will be paying Jiba
 10 plus 260 basis points, Jiba plus 2.6% on the same quarterly basis on an amortising profile of the loan. So the loan amortises up until the end of the period, Nedbank will not pay any capital amount. But somewhere here it says Ned - ACSA will pay a settlement adjusted for CPI at the end of the convention period meaning that the balance of the capital is adjusted by the inflation and over a period of time then ACSA will settle that adjusted capital over a period of time even though it is paying on amortising profile but the balance accrue with inflation because it is
 20 paying on a real rate. That is what he says on this particular email.

ADV CHASKALSON SC: And that is the Jibar leg of the swap because there are also the CPI legs.

MR RAMOSEBUDI: No, no, the Jibar rate is what Nedbank pays ACSA and then the CPI rate is what ACSA is

paying Nedbank.

ADV CHASKALSON SC: Can I take you down to page 38 because I think the situation is slightly different because there are two separate regimes.

MR RAMOSEBUDI: Okay.

ADV CHASKALSON SC: He has one regime on which he calls swap 1 on page 38 and there you will see the Nedbank paying ACSA Jibar plus 260% over the amortising profile. So the amortising profile is reflected in the
10 decreasing notional in the 1, 2, 3, 4th column, is that correct?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: What Nedbank pays to ACSA is Jibar plus 2.6% on those decreasing amounts, that is in the next column.

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: Then there is a CPI notional column which is going to determine what ACSA pays Nedbank and ACSA's payments to Nedbank are in the far
20 right column and as you pointed out there will be a settlement, a large settlement payment at the end, that 903 million.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: But then if you down a page you will see that there are separate swaps which he calls swap

2A, swap 2B and swap 2C and there is a separate schedule of payments in relation to these three related swaps. So swap 2C sets out – 2A sets out the payments that everyone will pay at page 39. If you go down a page you see swap 2B and swap 2C on the last page which is 41 and if we go back up to his email on page 36 – it is possibly clearer on the email at the top of the page 36 which is a follow-up email from Mario to Eric and Moss where he says:

10 “Finally the revised schedule and rates for the proposed inflation linked swaps with ACSA, see attached spreadsheet...”

Which we have just been looking at.

“...swap 1 is based on a notional amount of 1.5 billion amortising on the Jibar leg to match the underlying loan...”

That is what you described.

“...whilst the notional and the CPI leg is a constant amount of 1.5 billion adjusted by CPI.”

20 He then describes – and then he talks about swap 2A, swap 2B and swap 2C.

“...have been structured in order to replicate the amortising nature of the underlying loan. We have now calculated the notional amount such that the real rate is the same on all three swaps, interest payments to ACSA on the Jibar leg so the swaps

will add up to the interest payments on the underlying amortising loan.”

So can you explain to the Chair what swaps 2A, 2B and 2C are?

MR RAMOSEBUDI: The swaps 2A to C, Chairperson is the is a three swap that breaks the 1.5 billion in to three swaps and they are pricing to a CPI rate against the 2.6% over Jibar rate. So the 1.5 billion was, you know, broken down in three swap.

10 **ADV CHASKALSON SC:** And at a later stage when they refer to the CPI swaps, so they are going to be referring to 2A, 2B and 2C?

MR RAMOSEBUDI: Yes.

CHAIRPERSON: That was a yes?

MR RAMOSEBUDI: Yes, Chairperson.

ADV CHASKALSON SC: Can I take you next to page 46? It is an email from Thabo Letlaka to yourself. Do you recall receiving this email dated 19 March 2010?

MR RAMOSEBUDI: Yes, sir, I am on the page.

20 **ADV CHASKALSON SC:** My question was do you recall receiving this email?

MR RAMOSEBUDI: You know, Chairperson, I see the email, probably it came to my inbox. I cannot recall but I think it came to me.

ADV CHASKALSON SC: Well, maybe if you look at the

attachments there are two. The one is a spreadsheet, similar to the one that we have just seen and then there is one that is called – a document called the Airports Company of South Africa.docx. Maybe that will refresh your memory. So if you go to page 42 you will see the document.

MR RAMOSEBUDI: I recall this document.

ADV CHASKALSON SC: So you recall this document.

MR RAMOSEBUDI: Yes.

10 **ADV CHASKALSON SC:** And would it be correct to say that this document is motivating the wisdom of entering into the swaps that we have just been looking at?

MR RAMOSEBUDI: No, I think this document explains the swap transactions that have been entered into.

ADV CHASKALSON SC: But it is not just explaining the swap transactions that have been entered into, it is motivating them. If I can take you down to – you go to page 43, you will see:

20 “I feel that ACSA can get better value by changing the profile of the loan, proposing that ACSA enters into a swap agreement with an intermediary bank.”

So what the memo is doing is it is referring to an existing DBSA loan and it is saying you will get value by swapping your exposure on that loan by entering into an interest rate swap. Would that be a correct summary of this

memorandum?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Do you recall who advised ACSA in the first place to take out the Development Bank loan for 1.5 billion?

MR RAMOSEBUDI: It was Regiments.

ADV CHASKALSON SC: Regiments Capital, yes. Who is writing this memorandum? Mr Letlaka, where does he work?

10 **MR RAMOSEBUDI:** It comes from Regiments, I do not know who wrote it.

ADV CHASKALSON SC: Yes. Well, so it comes from Regiments. So Regiments advised ACSA to enter into a Development Bank loan for 1.5 billion. Were they paid a fee for that?

MR RAMOSEBUDI: I think so.

ADV CHASKALSON SC: And now they are saying you will get better value if you get out of the loan that we advised you to get into and swap and enter into an interest rate
20 swap, is that correct?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: Just remember to articulate your responses audibly, Mr Ramosebudi. Sorry, I just make sure I pronounce your surname correctly.

MR RAMOSEBUDI: Yes, Chairperson, ja.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: Can I then – and did ACSA enter into this interest rate swap with those three CPI swaps? Did it follow Regiments' advice in this regard?

MR RAMOSEBUDI: I cannot recall but ACSA did trade the interest rate swaps.

ADV CHASKALSON SC: Well, let us maybe go a little bit lower down which might refresh your memory. If you go
10 down to page 57 you will see an email from Moss Brickman to Eric Wood dated 23 March 2010. So we are still talking about the same process. It says:

“Hi Eric, below is the schedule of fee payments that we should be able to capture on the proposed ACSA transaction. The values in the table are per basis point actual on the prescribed dates.”

And then it says:

“Payment of fees to Regiments”

It has got ACSA on the left hand side and it has got a
20 schedule of dates and it says.

“Total per basis point per rand R1 178 673 per basis point.”

Am I correct in interpreting this email that Nedbank is writing to Regiments saying we can capture these fees for you which will be paid by ACSA on the following dates and

the total that you will get per basis point is 1.178 million?

MR RAMOSEBUDI: Ja, as per this sheet, yes.

ADV CHASKALSON SC: And what fee – do you recall what fee Regiments took on the last swap where we saw their fee? Do you recall how many basis points they took?

MR RAMOSEBUDI: The last invoice which we saw was about R11 million.

ADV CHASKALSON SC: Yes, do you recall how many basis points that translated to? We did actually...

10 **MR RAMOSEBUDI:** I think they were quoting in the document, the email, 10 basis points.

ADV CHASKALSON SC: 10 basis points?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: So if we applied to same 10 basis point rate here, what would the fee to Regiments be?

MR RAMOSEBUDI: Ja, without doing the calculations, I cannot vouch for it.

ADV CHASKALSON SC: No, but it says – look, this is easy mental arithmetic. Total per basis point 1 178 673, 10
20 basis points would you give you 11.786 million, is that not correct?

MR RAMOSEBUDI: Chairperson...

ADV CHASKALSON SC: Well, let me put the question a different way, if the total per basis point is this amount and they get 10 basis points, they will get ten times that

amount, is that not correct?

MR RAMOSEBUDI: Ja, ja, simple arithmetic calculation, yes, it does exactly but if you compare the numbers because there is time value of money here the numbers are different. Here is 11 786 000, the other one is 11 540 000.

ADV CHASKALSON SC: No, we are talking about different transactions that is why they do not correlate, this is a new transaction.

MR RAMOSEBUDI: Okay.

10 **ADV CHASKALSON SC:** They have already got their 13 million fee from the last one. So you will agree that if on the new transaction at 10 basis points they will be looking at 11.78 million?

MR RAMOSEBUDI: True.

CHAIRPERSON: The answer is yes?

MR RAMOSEBUDI: Yes.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Were you aware that they were going to be paid this amount of 11.78?

20 **MR RAMOSEBUDI:** No.

ADV CHASKALSON SC: You were not?

MR RAMOSEBUDI: No, I was not aware.

ADV CHASKALSON SC: You were not. Can I take you a little bit lower down to page 61, which is now 26 March 2010 and we see now an invoice from Regiments to Moss

Brickman, it is invoice Ned 5 of 2010, it goes to Nedbank and the narrative on it is origination and facilitation of the 1.5 billion interest rate swap transactions between Nedbank Capital and ACSA and would those be those transactions that we were just looking at? Do you recall they were 1.5 billion?

CHAIRPERSON: You are now at page 62, Mr Chaskalson?

ADV CHASKALSON SC: I am page 62.

CHAIRPERSON: Ja, you initially said 61 but I think you
10 are now on 62.

ADV CHASKALSON SC: I apologise, Chair.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: 62, yes. So origination and facilitation of the 1.5 billion interest rate swap transactions between Nedbank and ACSA. Underneath the last sentence:

“Regiments Capital (Pty) Ltd has informed its client that it is earning a fee for the facilitation of the above transaction.”

20 Now you have earlier said that you had assumed that Regiments would get a fee but you have also said that you were not aware that the fee would be – I think said 11.78, we see this one says 10.78. Were you aware that the fee would be 10.78?

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: Were you aware that Regiments
...[intervenes]

MR RAMOSEBUDI: No, Chairperson.

CHAIRPERSON: Ja, just remember to make sure your
answer is audible.

ADV CHASKALSON SC: Were you aware that Regiments
and Nedbank apparently had an arrangement where they
split a margin on a 50/50 ...[intervenes]

MR RAMOSEBUDI: No, Chairperson.

10 **ADV CHASKALSON SC:** ...basis. You were not aware of
that either. Can I then go down to a transaction between
Standard and ACSA and that is at page 80 and there you
will see an email from Mr Zaid Moola of Standard,
Wednesday 19 May 2010 to Eric Wood, c.c. Johan Roos
and it says:

20 “Hi Eric, thank you for your assistance in securing
this deal, we really appreciate it. The following are
outstanding from ACSA, please can you chase it up
for us? Can you also please send us some
documentation disclosing the agreement between
yourself and ACSA and the fee disclosure, our legal
head would like it on file.”

So Nedbank just want Regiments to put a statement on
their invoice, Standard are saying we actually want the
documentation that chose your agreement that you can

take a fee from ACSA. Then if you go down to page 82, you see the document and there you will see an email from Eric Wood to yourself, 20 May 2010, copy to Zaid Moola and several other people at Standard and the subject is interest rate swap. Do you recall receiving this email?

MR RAMOSEBUDI: Chairperson, sometime that I see it came to me.

ADV CHASKALSON SC: That is - are you accepting that you would have seen this email at this time?

10 **MR RAMOSEBUDI:** Yes, I am accepting that I have seen, ja.

ADV CHASKALSON SC:

“Hi Phetolo, the following interest rate swap was transacted between ACSA and Standard Bank on 19 May 2010. 1.5 billion swap transacted on 19 May, nature of underlying ability, the client, the nature of the swap, Regiments’ fee 11 basis points. Person at client informed the Regiments fee, Phetolo Ramosebudi, Treasurer, 20 date informed Wednesday 19 May 2010, telephonic, verbal. Should you require any further information or assistance please contact myself.”

Do you recall have a telephonic conversation with Mr Wood where he said we are about to conclude a 1.75 billion transaction for ACSA with Standard and we are going to

take an 11 basis point fee for ourselves which ACSA will pay back over the life of the swap. Do you recall a conversation of that nature?

MR RAMOSEBUDI: I cannot recall the call, it has been some time, but yes, I saw it happened.

ADV CHASKALSON SC: Well, let me ask a different question, if it had not happened, what would you have done when you received this email?

MR RAMOSEBUDI: So he is informing me on the
10 transaction that is being concluded and the fees that they have charged us.

CHAIRPERSON: Well, he is saying there was a telephone conversation with you during which he told you about this. So the question is, when you received this email and you would have seen what he says, namely that he had had a telephone conversation with you in which he had told you this, if there had been no such telephone conversation what would you have done if what he was saying was not true?

20 **MR RAMOSEBUDI:** Let us look at the transaction because what he is saying here, he has transacted on the 19 May. And after the transaction on the 19 May he informed me of what the transaction entails, including the fees that he has charged, which what he has captured on here. So he has informed him what he has charged us on the transaction

that he executed.

CHAIRPERSON: But apart from that - and Mr Chaskalson you must tell me if I misunderstand something. Apart from that he is saying that he had a telephone conversation where he told you about these things, he told you that here is what he had done and that he is going to be – he is charging a fee for it. If, when you read this email, you thought but he never spoke to me, why is he saying he spoke to me, what would you have done?

10 **MR RAMOSEBUDI:** That is why I said it has been some time, so I cannot recall whether he called me.

CHAIRPERSON: Yes but normally if somebody sends you an email and says you have spoken, maybe you have agreed on something and you never had that conversation, what would you do, how would you handle that?

MR RAMOSEBUDI: Normally if he has – because he might have called me the time he was writing the email and then when he spoke to me at the time then I said please, can you reduce that in writing because I might have asked
20 that question, can you reduce what you are telling me in writing so that at least I have something? I could have done that, Chair.

CHAIRPERSON: Well, Mr Chaskalson, you might be able to - maybe that satisfies you or ...[intervenes]

ADV CHASKALSON SC: It is good enough for my

purposes, Chair.

CHAIRPERSON: Ja, okay, okay.

ADV CHASKALSON SC: But, Mr Ramosebudi, there is another issue around this email that I want to raise with you, it says:

“Person at client informed of Regiments’ fee...”

And bear in mind this is copied to Standard Bank as you see in the c.c. lines.

10 “Person at client informed the Regiments fee, Phetolo Ramosebudi.”

So on an email copied to Standard Mr Wood is saying I have informed Ramosebudi of ACSA of our fee. Did it not strike you as strange that he was identifying you as the person at ACSA to cite this authority for his fees as opposed to Ms Mabelane?

MR RAMOSEBUDI: No. No, Chairperson, because here he is stating the person he has informed of the transaction, not the person who is authorising the transaction. So he has informed his colleague who required from Standard
20 Bank a confirmation that the client knows about the fee, which he spoke to me, that I have charged 11 basis points. That is what he stated.

ADV CHASKALSON SC: So – but you did not know whether he was authorised to take this 11 basis point fee or not, did you?

MR RAMOSEBUDI: I would not have known because I do not know the details of the mandate that they have, whether it was on a fee base, on a fixed term or on a saving base, that I have not known that, Chairperson.

ADV CHASKALSON SC: Yes, so you do not know whether he is authorised to take this fee and yet he is citing you as the only person at ACSA who he has told about the fee. Did that not concern you in any way?

MR RAMOSEBUDI: No, I was the – at the time I think I
10 was the sole person at the Treasury at ACSA, I had one or two people that were working with me and mostly the transactions they were executed by myself.

ADV CHASKALSON SC: Yes but you didn't know whether he was allowed to take this fee on your version.

MR RAMOSEBUDI: Excuse Mr Chairperson.

ADV CHASKALSON SC: On your version you didn't know whether he was allowed to take this 11 basis point fee.

MR RAMOSEBUDI: Because I don't know the detail of the mandate he has.

20 **ADV CHASKALSON SC:** Did you not think that maybe it be prudent to find out whether he was entitled to take over R10 million rands at ACSA would have to pay back?

MR RAMOSEBUDI: The transaction of this nature and the attracted fee, but the relative amount of that I don't know because the mandate I don't have it.

ADV CHASKALSON SC: But did you say earlier that you were the one who executed this transaction?

MR RAMOSEBUDI: I am saying yes, because I had the loan for five, so I gave him the loan for five and also they were working with him there at the loan profile to do this transaction. That is why from ACSA point of view I was the coordinating point.

ADV CHASKALSON SC: So you are the coordinating point, you commit ACSA to a transaction which will involve
10 paying over R10 million rands to Regiments and you don't know whether ACSA actually is obliged to pay R10 million to Regiments or not.

MR RAMOSEBUDI: I don't think Chairperson that is the correct version of what this person says here. Here he informed me of the charge of the interest rate. He has been appointed by somebody higher than me in ACSA, so who gave them the commitment to commit ACSA? I did not commit ACSA.

CHAIRPERSON: But I think the point is this Mr
20 Ramosebudi, they have been appointed.

MR RAMOSEBUDI: Correct.

CHAIRPERSON: And on your understanding of the position, if they were appointed, they were not appointed to do this work for free.

MR RAMOSEBUDI: Precisely true.

CHAIRPERSON: They were, they were going to charge.

MR RAMOSEBUDI: True.

CHAIRPERSON: For this work.

MR RAMOSEBUDI: True.

CHAIRPERSON: So when he phones you and says, I am charging for this, should you not have said, why are you telling me about this specific charge? You are charging of course, why are you telling me about this specific charge?

MR RAMOSEBUDI: You are correct Chairperson.

10 **CHAIRPERSON:** What is the purpose? Why, why – you haven't told me about other charges, why are you telling me about this one?

MR RAMOSEBUDI: For the purpose of responding to because Standard Bank needed a confirmation, because Standard Bank needed a confirmation whether this Regiments is doing this transaction on behalf of ACSA. Because they might have not done it on behalf of ACSA.

CHAIRPERSON: Well if I take into account what I have heard, it appears that Standard Bank was confirmed, was
20 confirmed that nothing should be done and no fee should be earned or taken unless ACSA knew about it and had authorised it. That's, that's why they wanted that they even wanted to know who knew about it.

And then they are this person says, well I phoned Mr Ramosebudi, he is the person who knows about it. And

the question is, when he phoned you, if he did phone you, we assume he did, when he phoned you and said, you know there is this transaction and I am charging for this, shouldn't your natural reaction have been why are you telling me that you are charging for this?

Because of course you, you are charging for the work in accordance with whatever agreement, so what is the purpose of telling me? So the question is, shouldn't your reaction have been precisely that?

10 **MR RAMOSEBUDI:** Chairperson, I don't, I don't see it in that fashion.

CHAIRPERSON: Yes, tell me how you see it.

MR RAMOSEBUDI: And how I see it, it is precisely from the email from Zaid Muller here. Zaid Muller wanted a disclosure agreement between ACSA and Regiments. And he wanted that disclosure to actually even specify the fee that is going to be charged.

It was not about yes Regiments were transacting with Standard Bank on behalf of ACSA and therefore there
20 is a fee to add. That one is a normal, is in a normal cause of business. You transact on behalf of anybody you charge a fee. But what Zaid was looking for, is a disclosure agreement.

Which this email which Eric has sent to Standard Bank it is not saying that. Here it says, I – he told me of

the fee. He informed me that there is a fee of 11 basis points that is with these bank charges.

CHAIRPERSON: Why would he have to tell you about this fee if the fee fell within the agreement? Why would he need to tell you? If he was charging a fee that was in accordance with his appointment, with their appointment?

MR RAMOSEBUDI: There could be two things.

CHAIRPERSON: Yes.

MR RAMOSEBUDI: One could be that maybe in terms of
10 the disclosure that he forwarded to Standard Bank this, that Standard Bank required, the fee that he is charging is outside the boundaries. That is one.

CHAIRPERSON: Is outside?

MR RAMOSEBUDI: Outside the ...

CHAIRPERSON: The agreement?

MR RAMOSEBUDI: The terms of the ...

CHAIRPERSON: The terms of the agreement, ja.

MR RAMOSEBUDI: Or I could have asked myself, for this transaction maybe I was doing the calculation and then he
20 is not giving me the numbers that I am expecting. And it says, how much have you charged your fees on this? What are the trading, the trading cost of this transaction? Because then I also have to satisfy myself that the fare, the price that I am taking is fair.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: Thank you Chair. Can I take you to Regiments' invoices for these two transactions? If we go to – we have seen the 10.78 billion invoice at page 62 that Nedbank paid Regiments. And I take you to the Standard invoice, if you go to page 84. You will see there that Nedbank invoiced Standard 22 million for this transaction, were, were you aware of that, that 11 bases points would translate to 22 million?

MR RAMOSEBUDI: I can't ...[indistinct].

10 **CHAIRPERSON:** You said Nedbank, you mean Regiments.

ADV CHASKALSON SC: Regiments invoiced Standard 22 million.

MR RAMOSEBUDI: I can't recall. I can't, this is the normal ...[indistinct] of calculating.

ADV CHASKALSON SC: Sorry Mr Ramosebudi I did not hear that answer.

MR RAMOSEBUDI: I did not see this because they normally didn't come through to me.

ADV CHASKALSON SC: So you didn't see the invoice,
20 but would you have known that 11 basis points would translate to around 22 million?

MR RAMOSEBUDI: Probably if I did you know work out numbers at the time I could have maybe.

ADV CHASKALSON SC: But on a transaction of that nature you would have been aware broadly presumably.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: That 11 basis points will mean around 22 million ...[indistinct].

MR RAMOSEBUDI: Ja. The challenge with this type of transaction is that Chairperson they, they are of the nature where we call them over the counter transactions. So over the counter transactions in their nature they are not liquid.

So meaning that there are no willing buyers and sellers waiting on the wings to take them. And therefore
10 should you want to transact at the time, the price you get might not be fully disclosed to you because they charge so many things, you know the bankers in this type of transaction. So at the time I could have seen a number, but how it was made of I couldn't determine that.

ADV CHASKALSON SC: No but in this particular case, Standard had told you 11 basis point amount on this one 0,7 billion swop is going to be paid to Regiment. They had told you. So you knew, whatever else you didn't know about the details of the swop you knew that ...

20 **MR RAMOSEBUDI:** Ja.

ADV CHASKALSON SC: ACSA would be paying 11 basis points.

MR RAMOSEBUDI: Yes. It will be paying 11 basis points.

ADV CHASKALSON SC: Yes. So, so you could have – the broad amount that ACSA was going to pay Regiments

you knew.

MR RAMOSEBUDI: Not exactly.

ADV CHASKALSON SC: Well but you are treasurer of ACSA, you know what 11 basis points on a swop of 1, 7 billion on those terms is going to yield in terms of the present value.

MR RAMOSEBUDI: Not ...[indistinct] extend that I did do the calculation at the time, I could have done the calculation. Yes it would have told, informed me.

10 **ADV CHASKALSON SC:** So, so if you were, if you had been interested you would have been able to find that out yourself.

MR RAMOSEBUDI: And normally you never get to the same number because it depends on the curve that we are using. I might have used different curves.

ADV CHASKALSON SC: Yes.

MR RAMOSEBUDI: And different curves.

ADV CHASKALSON SC: Yes.

20 **MR RAMOSEBUDI:** And therefore the numbers come differently.

ADV CHASKALSON SC: Yes. But I mean you would not have reached a number of sort of one million.

MR RAMOSEBUDI: There could be anything. The standard ...[indistinct] is wide as 10 percent depending on the terms.

ADV CHASKALSON SC: 10 Percent sounds like quite a big standard deviation to me, but even at 10 percent you would have known that Regiments were getting at least approximately 20 million on this transaction.

MR RAMOSEBUDI: Okay.

ADV CHASKALSON SC: Can I, can I ask you before we go a little further, how do you understand the procurement arrangements in relation to paying these sorts of amounts of money? 22 Million to Regiments on the standard swop?
10 13 Million on the one Nedbank swop. 11 Million on the other.

It is over 40 million that has been paid to Regiments. How do you understand the procurement arrangements that relate to paying these amounts of money to Regiments? Where, where does this happen in the procurement process?

MR RAMOSEBUDI: The procurement at the time was not within treasury, it is, it was within a division of the treasury of finance. So I don't know to what extent when the
20 appointment of Regiments' were effected, how was the procurement process at the time.

ADV CHASKALSON SC: But was it not your responsibility to establish what the procurement process was and whether Regiments were entitled to these vast fees that you were now seeing? 40 Million that we have looked at

and it gets bigger.

MR RAMOSEBUDI: You are quite correct Mr Chairperson. True yourself Chairperson, should I have initiated the process to appoint Regiments to execute the funding plan and risk management? I think that is a process I would have undertaken. Firstly to know what my delegation of authority is. So that I can make sure that I do it within my authority.

So in this case they were already appointed, they
10 brought in, this is what they are going to do. And therefore any payments that was that, was done was as per that appointment. I did not question my boss or whoever.

ADV CHASKALSON SC: But, sorry. Mr Ramosebudi we've already seen or you didn't know what that appointment said.

MR RAMOSEBUDI: Precisely.

ADV CHASKALSON SC: We have already seen that the two payments, the two large payments that Regiments took were not on the same basis. They took 11 basis points
20 from Standard, 10 basis points from Nedbank. So they couldn't have been governed by one set of rules.

And if there had been a procurement process which appointed Regiments on particular terms, there would have been a standard rate for, for all of the fund that they raised presumably. Is that not right?

MR RAMOSEBUDI: Quite correct.

ADV CHASKALSON SC: So – well what I have to put to you is that you were at best bravely negligent in allowing these sorts of transactions to pass through without establishing whether Regiments had the authority of ACSA to take these fees. Do you have a comment on that?

MR RAMOSEBUDI: Chairperson I don't think it is quite true that I was negligent to the best of Regiments. I think Regiments were appointed and it was pre my time to be at
10 ACSA and therefore the execution on their mandate and the payments that have effected in the past could also not have been my negligence.

And therefore any payment that was effected even in my tenure, what I need to know on my side was that, was there value for what they did. Because that was my responsibility and what I was accountable for, is the value for the work that they did.

And that is what I was making sure that there is, otherwise then I was going to be negligent and stuff
20 Chairperson.

ADV CHASKALSON SC: No but Mr Ramasubudi that is not how procurement works in the public sector. You don't have individuals called upon to make individualised judgment calls and whether individual transactions which may or may not have been authorised grant value.

You require some regular procurement processes. Do you not accept that? And where, on what basis could you have assumed that there was a regular procurement process governing these fees that Regiments was taking?

MR RAMOSEBUDI: The process that was undertaking to broad Regiments at ACSA in 2007 and till the best of the time that they have been there, I didn't know how that was followed. And I was not in procurement at the time.

ADV CHASKALSON SC: So you didn't know whether they
10 did have authority or didn't have authority? You said that already. But you were happy to stand by while on your watch fees of more than 40 million rand were paid to them on ACSA's account.

MR RAMOSEBUDI: The question Chairperson is there value for money. That is what my responsibilities were. They were brought in by this, the FD at the time. And says you will work with these people and I worked with them. And what I needed to make sure was, is there value for what they going to be paid. And that is what I did.

20 **CHAIRPERSON:** Well I am not sure that it's possible to say your focus will just be, was about whether there was value for money, because that suggests to me that you wouldn't mind if they did something that they have no authority to do. As long as in the end that well it is a good, it is a good thing.

Whereas there is a prior question, before they can do anything, it must be something that fell within their mandate. And if they have a good idea, an idea that they think would add value through the transaction they would need to come back to the client and say, you know there is this idea but it falls outside our mandate.

This is how we think it would be good for you, if you just want your authority that we can go ahead. But if we go ahead, this is how we will charge you. And if the client
10 says, yes you can go ahead and that is the agreement about what you will charge, then it is fine.

Or the client might say yes, it is a good idea but in terms of our financial situation blah, blah, blah, no don't, don't do it. And in which case they would not be entitled to charge. Or the client might say, it would be nice to have, but it is not essential so don't do it.

Go, I am saying to you when you answer on the basis of saying your focus or your job was to see whether there was value for money, it gives me the impression that
20 you are saying, it wouldn't matter whether they give something that fell outside their mandate or not. Do you want to comment on that?

MR RAMOSEBUDI: I think certainly sir. Ja, let me put it to you in this fashion. In a corporate environment the way I am narrating this is as if I was the only person who was

doing the transaction and communicating with Regiments and Standard Bank and Nedbank. That was not the case.

I every week or every day I had interact with my boss to tell him about the transactions that are happening. Because if he or she was to sign off something, they need to understand who are they signing off, they are signing off. Secondly, there is a board, an executive committee of – executive committee of management of the organisation at the time.

10 Those transactions needed to be reported there. And subsequent to that they had to go to finance and risk management committee. A board sub-committee and a board committee so that they understand the transactions that were happening.

Should there have been at the point when I was narrating all the steps throughout the management, my boss, my management committee, executive committee and board at the time, something that indicated to me that when this guys were doing this transaction, how did you
20 appoint them. I would have taken a different step. But none so ever at the point when we were doing this transaction.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: Now Mr Ramosebudi did you tell any of your supervisors that Regiments were taking fees of

10 basis points or 11 basis points on these transactions?

MR RAMOSEBUDI: I can't recall Mr Chairperson. I can't recall Chairperson.

CHAIRPERSON: Can I, can I just go back a little bit because maybe I may have misunderstood this. And it goes back to the question of your role in regard to this. You said that they, the Regiments were appointed before your time. Is that right?

MR RAMOSEBUDI: True.

10 **CHAIRPERSON:** Yes. You came in when they were already appointed.

MR RAMOSEBUDI: True.

CHAIRPERSON: And then you said those who appointed them would have known what fee arrangements had been made. Is that right?

MR RAMOSEBUDI: True.

CHAIRPERSON: Yes. Now wasn't your role after you came in to see to it that they acted in accordance with ACSA's expectations of what they were supposed to do and
20 were paid for what they were asked to do? Wasn't that part of your role?

MR RAMOSEBUDI: That part was not, was not, was not discussed between myself and my boss.

CHAIRPERSON: Who, who ...

MR RAMOSEBUDI: For the management of the contract

itself.

CHAIRPERSON: Do you know whose responsibility as far as you are concerned that would have been, because there must be somebody who was supposed to do that?

MR RAMOSEBUDI: Of the number of institutions that I have worked for if there is that part of procurement process that the payments have been done and made on behalf of an organisation, the guys in procurement have to track, to track the contract amount, the contract period, the
10 contract payments and then how much is outstanding, whether it is still within so that it does not become part of the irregular expenditure at some point in time.

ADV CHASKALSON SC: Okay, can I just ask a question Mr Ramosebudi? Because I think you are right about how the system should work. But the particular magic of these transactions from the perspective of Regiments is that they will not show up anywhere in ACSA's books as payments to Regiments.

They will just show up in Nedbank's books as an
20 amount that gets paid to Regiments. All that the ACSA books will show is repayment of amounts to Nedbank on terms of, in terms of a swop transaction. No one looking at the transaction from the outside would know that Regiments have taken 10 million out of it.

So your whole proposition, that if there is

something irregular about this it will be picked up by people seeing irregular expenditure. I must put to you breaks down because the transaction is designed to hide the fee payments to Regiments. What is your response to that?

MR RAMOSEBUDI: I don't think so Chairperson.

ADV CHASKALSON SC: Let me, let me follow up. Who is going to see that Nedbank has paid Regiments 13 million on the one, 11 million on the other? Who inside ACSA is
10 going to see that?

MR RAMOSEBUDI: So the nature of the transaction itself, as I said on the day one, on the day one the accountants do the entries such that they can then split the number and the amounts that have been paid or that are going to be paid to different parties. And on the day one, the first value of the swop is zero. The swop including its costs on day one is going to be zero.

ADV CHASKALSON SC: Mr Ramosebudi you are not answering my question. Sorry Mr Ramosebudi I must ask
20 you to answer my question. Who inside ACSA by looking at these transactions is going to know that Nedbank has paid Regiments 13 million on one transaction, 11 million on another and that ACSA is paying back to Nedbank those amounts? Who is going to see that on any of this documentation? Where is it going to be visible?

MR RAMOSEBUDI: The accountants knows in terms of the, the – how they do the accounting on the swop transaction. So those that are in the accounting they would know how they do the accounting from that perspective when they compare the effective rates and the executed rate at the time.

ADV CHASKALSON SC: Yes, but they won't know that built into the rate that is being paid by ACSA to Nedbank is 10 basis points that are going to be present value by 10 Nedbank to pay an amount of 13 million to Regiments. Would they know that?

MR RAMOSEBUDI: The nature of the transaction doesn't, it doesn't allow to book the losses or the profits immediately on day one.

ADV CHASKALSON SC: Yes. Is no one looking at these transactions from ACSA's side will see anything that tells people at ACSA that Regiments has been paid 13 million on this particular transaction. 11 Million on that transaction. Is that not correct?

20 **MR RAMOSEBUDI:** During the life of the transaction itself, through yourself Chairperson, the movement of the truck itself will then determine the fair values which it falls, the profit or the losses of the instruments. Because the rate itself is a composite of a number of element.

ADV CHASKALSON SC: Mr Ramosebudi we are not

talking, we are not talking about whether people inside ACSA know what ACSA is paying in terms of the swops in a globular sense. Of course they do.

But would anybody know that one component of that payment is 10 basis points that are going to repay a fee of 13 million that Regiments has taken? Would anyone know that? That is the question I want you to answer.

MR RAMOSEBUDI: If so ever we then request the detail component of the swop itself, then we can apportion what
10 the fee structure is.

ADV CHASKALSON SC: And did, did anyone at ACSA request the detail?

MR RAMOSEBUDI: In this case yes, disclosed 11 basis points to me.

ADV CHASKALSON SC: And did you disclose that to anybody else? Because I have asked you earlier.

MR RAMOSEBUDI: From an accounting perspective that was not how we accounted the financial instruments.

ADV CHASKALSON SC: So does that mean you didn't
20 disclose it to anybody else?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Thank you. So nobody inside ACSA would know other than you would know that on this transaction, let's take the Standard transaction where there was complete disclosure at Standard in systems. No one

would know that on that transaction Regiments had been paid 22 million rands at ACSA's expense. Is that correct?

MR RAMOSEBUDI: To the extent, to the extent through yourself Chairperson that the, the settlement agreement does not stipulate, then nobody would know. But half the time the settlement agreement must stipulate what are we settling between the two parties.

ADV CHASKALSON SC: Well can you point me to a single other person at ACSA who would know that
10 Regiments were paid 22 million by Standard and that ACSA was paying that back on the swop to Standard?

MR RAMOSEBUDI: Me myself Chairperson, I don't remember who had indeed at ACSA at the time so I can't point anybody.

ADV CHASKALSON SC: Can you say with certainty that there would be anyone other than you that would have known that Regiments had been paid 22 million?

MR RAMOSEBUDI: I also did not know that they were paid 22 million until today I see this.

20 **ADV CHASKALSON SC:** Yes, but you did know they were being paid 11 basis points on a swop of 1,7 billion and we talked about?

MR RAMOSEBUDI: You are correct.

ADV CHASKALSON SC: Margins of errors. So you knew they were being paid something between about 19,8 million

and 24,2 million or 24,4.

MR RAMOSEBUDI: You are correct.

ADV CHASKALSON SC: Yes, so you knew that, did anybody else know that?

MR RAMOSEBUDI: I was the only one who was taking this transaction to swop and those that are in the accounting.

ADV CHASKALSON SC: And would people in account had known that Regiments were getting around 22 million out of
10 this?

MR RAMOSEBUDI: How did the accounting, probably could have. But on the day of transaction, the swop itself is zero.

ADV CHASKALSON SC: Yes.

MR RAMOSEBUDI: [Indistinct].

ADV CHASKALSON SC: We are talking of cost purposes. We are not talking about the value of the swop. We are talking about the value that Regiments took out of the swop.

20 **MR RAMOSEBUDI:** But that is how we determine through a self-check and the effective rate that you are going to pay.

ADV CHASKALSON SC: Alright, let me move on. You have been talking about value for money a great deal. Are you talking about value for money for ACSA or value for

money for you?

MR RAMOSEBUDI: Value for money for ACSA.

ADV CHASKALSON SC: Well let me take you to another email. Can you go to page 59?

MR RAMOSEBUDI: Where?

ADV CHASKALSON SC: 59.

MR RAMOSEBUDI: 59?

ADV CHASKALSON SC: Yes. And I want to put it in the chronology. We have been talking about events in March
10 2010. So we have been talking about events in March 2010 just to put it back in chronology, you recall there was that email exchange that page 57 about between Moss Brickman and Eric Wood about the fee we should be able to capture on the ACSA swop.

That was 23 March. And that the invoice that Regiments issued to Nedbank in respect of the swop was issued on 31 March for 10,784 million. So between 23 March and – 23 March Nedbank and Regiments were looking for a fee to capture and on 31 March, that fee has
20 crystallised into an invoice at 10,784 million.

Let's look at a date between that. 23 March. Do you see this email? It's addressed from you to Eric Wood and Niven Pillay. Who is Niven Pillay?

MR RAMOSEBUDI: Niven Pillay is one of the Directors of Regiments.

ADV CHASKALSON SC: And do you recall sending this email?

MR RAMOSEBUDI: I can't recall.

ADV CHASKALSON SC: You can't recall.

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: Can you say positively that you never sent this email?

MR RAMOSEBUDI: I might have sent, but I can't recall.

ADV CHASKALSON SC: Okay. Let me read what the
10 email says:

“Dear Eric,

I would like to borrow E18 stock from Regiments' fund managers and could repo the stock with Repo Trader. I am going to trade the cash in the Money Market which will be collateralised with Regiments, there is no risk from Regiments' point of view. I can do this trade under Regiments.”

Does that refresh your mind? Do you recall asking Regiments to borrow stock from them?

20 **MR RAMOSEBUDI:** I know for a fact that I am also a market participant so there's a number of transactions that I do on my own.

ADV CHASKALSON SC: Yes, but I am asking a separate question which is for the purposes of your market transactions in your individual capacity, this would have

been in your individual capacity, would it not be?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Yes, did you ever borrow stock from Regiments for your individual transactions?

MR RAMOSEBUDI: I think I wanted to borrow but I do not think I got.

ADV CHASKALSON SC: Right so you asked them to borrow and they said no we are not going to lend to you. I see let us...[intervene]

10 **CHAIRPERSON:** Sorry what is the answer?

ADV CHASKALSON SC: Mr Ramosebudi the Chair just want you to repeat your answer.

MR RAMOSEBUDI: I said I wanted to borrow but I was not offered.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: So they would not lend to you, is that correct they would not lend the stock?

MR RAMOSEBUDI: They did not lend me.

ADV CHASKALSON SC: Yes, but you asked.

20 **MR RAMOSEBUDI:** I asked yes.

ADV CHASKALSON SC: Yes, let us look at another email. Can you go down to – let us look at the dates of the Regiments invoice the standard again that is on page 84, 20 May 2010. That is on page 84 if one goes to page 712, can I ask you to turn page to 712 you will see an email that

is addressed from you to Eric Wood the date is 28 July 2010.

CHAIRPERSON: I am sorry I am still trying to locate page 712. I think some of the pages do not have the black numbers on, I see some Nedbank documents they have got the red numbers only.

ADV CHASKALSON SC: It is right at the back of the file Chair.

CHAIRPERSON: Okay I have got it.

10 **ADV CHASKALSON SC:** Do you have it Mr Ramosebudi?

MR RAMOSEBUDI: Yes, I do.

ADV CHASKALSON SC: It is an email from you to Mr Eric Wood dated 28 July it says:

“Dear Eric,

Please receive a copy of the research and will appreciate the review and comments as soon as possible for finalisation, regards.”

Had you recall sending that email?

MR RAMOSEBUDI: I cannot recall.

20 **ADV CHASKALSON SC:** You cannot recall maybe this will refresh your memory if you go down a page to 713 and if you just look at that email on 714 there is an attachment called workbook 2 and excel spreadsheet. If you go down to 713 we see what that spreadsheet was and it is an invoice from Risk Stats Consulting, would you just remind

the Chair what Risk Stats Consulting is?

MR RAMOSEBUDI: Chairperson in the beginning I spoke about Risk Stats Consulting as one of the subsidiary of Risk Mats which one of my companies.

ADV CHASKALSON SC: And if I recall correctly you had a 100% interest in that.

MR RAMOSEBUDI: Yes, I did.

ADV CHASKALSON SC: And you will see the date is defaulted to today's date that it was an attachment to an
10 email on 28 July 2010. You will see that it is an invoice to Regiments Capital for an amount of 400 000,00 plus 56 000,00 VAT for actuarial and risk management consulting on behalf of Regiments Capital. So do you recall sending this invoice to Regiments Capital?

MR RAMOSEBUDI: I cannot recall Chairperson.

ADV CHASKALSON SC: You cannot recall?

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: Do you recall doing any actuarial and risk management consulting on behalf of Regiments
20 Capital?

MR RAMOSEBUDI: Chairperson I have been advised by my lawyers not to respond on this one in case I incriminate myself.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Can I move on then. Can I ask

you to go to page – I must check that my note is right here, can I ask you to go to page 665. Now you cannot speak to this because this is a bank statement of Regiments Capital and the date of the bank statement is 30 June 2010 and I presume you have never seen this bank statement before you came to the Commission or before the Commission gave you documents. Is that correct?

MR RAMOSEBUDI: Yes, it is the first time I see it.

ADV CHASKALSON SC: Well there is an entry on 1 June
10 2010 in which an amount of 456 000,00 is paid to Risk
Stats Consulting. That what you may well have
seen...[intervene]

CHAIRPERSON: I am sorry Mr Chaskalson 665 you said?

ADV CHASKALSON SC: 665 Chair.

CHAIRPERSON: Let me just, that is the red ones not the
black one?

MR RAMOSEBUDI: No the black one 665 black.

CHAIRPERSON: The black one.

MR RAMOSEBUDI: The 665 there in red there is no black
20 there.

CHAIRPERSON: I think what is confusing is that there
are a number of pages which have only the red numbers. I
can see 597, I can see 604 then it looks like it skip a lot of
pages that do not have the black numbers on my side.

ADV CHASKALSON SC: Chair I must apologise for this,

this is going to be, it is going to make this part of the cross examination particularly difficult because...[intervene]

CHAIRPERSON: Ja the next number I have is a black 712 but from 604 the next black page number is 712 so I do not know what happened with the pagination. It maybe that it should be fixed during the lunch break.

ADV CHASKALSON SC: Chair I think we must do that because otherwise, because we going to get in some detail bank transactions which will make this complicated.

10 **CHAIRPERSON:** I think 604 appears and it appears the page next to it, the page after 604, black 604 is red 603 but there is no black pagination for the red 603 and then you go on and on until the red 710 and red 710 is black 712 and then between black 604 and black 712 it looks like there are no black numbers.

ADV CHASKALSON SC: Chair I think what I must do because I doubt that we are going to be able to put black numbers on your file and Mr Ramosebudi's file and all the legal teams file. I must work out how my black numbers
20 correlate to your red numbers...[intervene]

CHAIRPERSON: Well I think they could be put as long as the numbers are the same because the pages that have been skipped maybe are about 100 pages which could be done but if you have another way that can be used when we come back that is fine. So we can do one of two things

now it is about fourteen minutes to one we can either take the lunch break now and this can be attended to during the lunch break or we can use the last fourteen minutes of the time for you to ask on issues that do not require these pages.

ADV CHASKALSON SC: Chair let us use the time.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And what we can then come back to tying up any references that we want.

10 **CHAIRPERSON:** Ja, that is fine.

ADV CHASKALSON SC: Mr Ramosebudi can I take you then to a document that is at black 714 and that document is dated – do you have the document Mr Ramosebudi?

MR RAMOSEBUDI: 714?

ADV CHASKALSON SC: 714.

MR RAMOSEBUDI: Black?

ADV CHASKALSON SC: Black 714.

MR RAMOSEBUDI: Yes.

20 **ADV CHASKALSON SC:** And that is an email addressed from you to Mr Wood on 27 September 2010 again with an attachment workbook 1.xlsx:

“Dear Eric,

I will appreciate your review and comments on this doc.”

Do you recall sending that email?

MR RAMOSEBUDI: I cannot recall Chairperson.

ADV CHASKALSON SC: If I take you to the attachment it is at 715 and invoice from Risk Stats Consulting for consulting work it is addressed to Box 78, Midrand, 1685. Do you know what Box 78, Midrand 1685 whose address that is?

MR RAMOSEBUDI: I cannot recall; I do not know.

ADV CHASKALSON SC: You cannot recall, and it says actuarial and risk management consulting on behalf of
10 Regiments Capital 700 000,00. Do you recall sending an invoice of this nature to Regiments Capital? Sorry 700 000,00 plus VAT so a total of 798 000,00.

MR RAMOSEBUDI: Chairperson through yourself may I reserve my rights not to respond to this one in case I incriminate myself.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Can I then take you to page 716 that is an email from yourself to Eric Wood dated 4 October 2010 with a subject research report and an attachment
20 invoice with tax calculation 1.xls it is another spreadsheet. Do you recall sending this email to Mr Wood?

MR RAMOSEBUDI: I cannot recall it.

ADV CHASKALSON SC: And can I take you to the attachment which is at 717 it is an invoice addressed to Niven Pillay of Regiments Capital. Can you just remind the

Chair who Mr Pillay is?

MR RAMOSEBUDI: Niven Pillay is one of the directors of Regiments.

CHAIRPERSON: What page Mr Chaskalson?

ADV CHASKALSON SC: 717.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And it has the reference flow funds four, sorry it is in the name of Azana Capital Markets. Can you remind the Chair what Azana is?

10 **MR RAMOSEBUDI:** Azana is one of the companies that I had and deregistered.

ADV CHASKALSON SC: And you had a 100% interest in it before it was deregistered?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: And the description on the invoice is consulting service for the development of portfolio optimisation and performance attribution at per agreed rate of 1950 per hour for 19 days and the amount is 296 400,00 plus VAT giving a total of 397 896,00. Do you
20 recall sending this invoice to Mr Pillay at Regiments Capital?

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: Your answer is no you do not recall.

MR RAMOSEBUDI: I do not recall.

ADV CHASKALSON SC: I see, are you saying you did not send this invoice to oh sorry do you recall sending this invoice to Mr Woods email on 4 October 2010?

MR RAMOSEBUDI: Chairperson through yourself may I not respond to this question in case I incriminate myself.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Can I ask you to go to page 718 that is another email addressed from you to Mr Wood on 4 October 2010. It has a different spreadsheet called
10 workbook 2 attached to it, do you recall sending that email to Mr Wood?

MR RAMOSEBUDI: I cannot recall.

ADV CHASKALSON SC: Can we go down to page 719 and there we see an invoice addressed to Regiments Capital in the name of Risk Stats for actuarial and risk management consulting on behalf of Regiments Capital an amount of 403 595,99 which if you add VAT comes to 460 099,43. Do you recall sending that invoice to Mr Wood on 4 October 2010?

20 **MR RAMOSEBUDI:** Chairperson through yourself may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Can we go to page 720 there is what appears to be an email from Eric Wood to Niven Pillay on 7 April 2010 forwarding an email from you to Eric Wood on 7 April sorry 2011 forwarding an email from you to Eric

Wood on the same day 7 April 2011 the time that your email apparently was sent it is 11:36 in the morning and it refers to invoice 202. Do you recall sending that email to Eric Wood on 7 April 2011?

MR RAMOSEBUDI: I cannot recall it Chairperson.

ADV CHASKALSON SC: Let us look at invoice 202 that was attached to it, it was at page 721 it is an invoice from Ka Ditlou Health Services trading as Rams Pharmacy, would you remind the Chair who Ka Ditlou are?

10 **MR RAMOSEBUDI:** Ka Ditlou Health Services is a company of my younger brother.

ADV CHASKALSON SC: It is your younger brothers company and that invoice is addressed to Eric Wood at Regiments Capital and the services are for a site inspection of Regiments premises relating to storage and personal a consultation, I list that as item 1. Supply health products, herbal health products, multivitamin supplements, non-scheduled medical products and then training facilitation offered by a dietician, a personal
20 trainer, a pharmacist, a physician, another personal trainer and some travelling and logistics. The total is 185 810,94 when you add VAT it is 212 964,00. Do you know if your brother provided these services to Regiments Capital?

MR RAMOSEBUDI: Chairperson through yourself may I not respond to this one in case I incriminate myself.

CHAIRPERSON: I see that oh okay I see that Ka Ditlou Health Services traded depending on whether it is still trading as Rams Pharmacy. Am I correct in thinking that Rams is derived from part of your surname?

MR RAMOSEBUDI: That is true Chairperson.

CHAIRPERSON: Okay alright, thank you.

ADV CHASKALSON SC: And it is your younger brother's business Ka Ditlou?

MR RAMOSEBUDI: Yes.

10 **CHAIRPERSON:** Okay I am sorry I think we spoke at the same time and that would also be your younger brother's surname?

MR RAMOSEBUDI: Yes.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: Can we go back up to page 85 I should have taken this a little earlier in the chronology. Do you have page 85?

MR RAMOSEBUDI: Yes.

20 **ADV CHASKALSON SC:** That is an email sent from yourself to Eric Wood and it says forward, subject line is forward invoice with tax calculation to dot xls and you can see – and then there is an attachment an invoice with tax calculations to dot xls. You can see that what was forwarded if you go a little bit lower down was an email from you at your ACSA address

VitoloRamosebudi@airport.co.za to yourself at your risk mats address with the same subject invoice with tax calculation to dot xls. Can I ask you first do you recall forwarding an email of this nature from your ACSA address to your risk mats address in May 2010?

MR RAMOSEBUDI: Through yourself Chairperson I cannot recollect this.

ADV CHASKALSON SC: Okay.

MR RAMOSEBUDI: It has been some time.

10 **ADV CHASKALSON SC:** Yes, and can I ask again do you recall sending this email to Mr Wood on the same day 27 May 2010?

MR RAMOSEBUDI: I cannot recollect that Chairperson.

ADV CHASKALSON SC: You cannot recollect, well attached to that spreadsheet, attached to that email was a spreadsheet with seven different tabs. Can we look at the first tab it is at page 86 it is an invoice in the name of Venus Liquor Store and can you just remind the Chair what Venus Liquor Store is?

20 **MR RAMOSEBUDI:** Venus Liquor Store was my business trading under Azana Markets.

ADV CHASKALSON SC: And the invoices is billed to Niven Pillay of Regiments Capital we remember Mr Pillay. The description is provision of liquor beverages and catering services for the function at Regiments Capital an

amount is 257 362,37 and when you add VAT that comes to 293 393,10. Do you recall sending this invoice to Mr Wood on 26 May 2010?

MR RAMOSEBUDI: Chairperson through yourself may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Can I then ask you do recall ever providing liquor to Regiments Capital for a function that was large enough to cost 257 000,00 in liquor in 2010?

10 **MR RAMOSEBUDI:** Chairperson with your persimmon may I not respond to this one in case I incriminate myself.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: If you then can go down to page 87 which was the second of the seven tabs on the spreadsheet that is another invoice from Venus Liquor Store also addressed to Niven Pillay of Regiments Capital. That is described provision of liquor beverages and catering services for the function at Regiments Capital that is 51 021,00 and then you're in conference equipment 49
20 150,00 a total of 100 171,00 and when you add VAT that becomes a 114 194,94. Do you recall sending this invoice to Mr Wood on 26 May 2010?

MR RAMOSEBUDI: Chairperson through your persimmon may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Can I ask you then did your

business Venus Liquor Store ever provide venues and conference equipment to Regiments Capital?

MR RAMOSEBUDI: Again Chairperson through your permission may I not respond to this one in case I incriminate myself.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Can we go down to page 88...[intervene]

CHAIRPERSON: Before we go to page 88 Mr Chaskalson
10 so on the basis of the two invoices one at page 86 the other one at page 87 it would appear that Venus Liquor Store sent invoices, two invoices at least on the same day in regard to the provision of liquor for which it charged probably about more than R400 000,00.

ADV CHASKALSON SC: That would appears if you put the two together indeed Chair it is over 400 000,00.

CHAIRPERSON: Okay, alright, thank you. We are at 1 o'clock would this be a convenient time or you want to...[intervene]

20 **ADV CHASKALSON SC:** Chair...[intervene]

CHAIRPERSON: You can finish something if you want to.

ADV CHASKALSON SC: If we can just finish the invoices attached to that email.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Page 88 invoice from Risk Stats

Consulting to Regiments Capital for developing of the risk monitoring methodology for and on behalf of Regiments Capital 295 000,00 plus VAT which gives 336 300,00. Do you recall sending this email to Mr Wood on the 26th May 2010?

MR RAMOSEBUDI: I cannot recollect.

ADV CHASKALSON SC: You cannot recollect.

MR RAMOSEBUDI: I cannot, I cannot recollect.

ADV CHASKALSON SC: No, no I heard your answer but
10 in fairness to you, you have been asserting a right against self-incrimination up till this point.

MR RAMOSEBUDI: That is exactly what it is.

ADV CHASKALSON SC: Sorry?

MR RAMOSEBUDI: I cannot recollect sending the email.

ADV CHASKALSON SC: You cannot recollect, okay.

MR RAMOSEBUDI: I cannot respond.

CHAIRPERSON: Yes but I think Mr Chaskalson wants to say to you Mr Ramosebudi if you say you cannot recall you are responding to the question.

20 **MR RAMOSEBUDI:** Okay.

CHAIRPERSON: So you must make up your mind whether you want to assert your privilege or you want to give an answer. So he was seeking to make sure that you understand that, okay.

MR RAMOSEBUDI: Just through yourself Chairperson I

think the logic that I was using was that he was referring to an email then I say I cannot recall and then he referred to an invoice then I say I cannot respond.

CHAIRPERSON: No, no that is fine as long as you are aware it is maybe that you say in regard to a particular question you have an answer but in regard to another question you wish not to answer but he wants also to make sure that you understand.

MR RAMOSEBUDI: Okay.

10 **CHAIRPERSON:** Okay.

ADV CHASKALSON SC: Maybe if I can ask questions slightly differently did Risk Stats invoice Regiments Capital for the developing of a risk monitoring methodology for and on behalf of Regiments Capital on 26 May 2010?

MR RAMOSEBUDI: Chairperson through yourself may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: And then on page the following page 90 and invoice again from Risk Stats again 26 May 2010 actuarial and risk management consulting on behalf
20 of Regiments Capital for 946 017,00 plus VAT which is R1 078 456,30. Did Risk Stats Consulting invoice Regiments for actuarial and risk management consulting on behalf of Regiments in an amount with VAT of 1 078 456,30 on 26 May 2010?

MR RAMOSEBUDI: Again through yourself Chairperson

may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Then over the page, page 91 another invoice from Risk Stats dated 26 May 2010 also for actuarial and risk management consulting on behalf of Regiments Capital this time the amount is 546 014,30 with VAT that goes to 622 456, 30. Did Risk Stats issue this invoice to Regiments Capital on 26 May 2010?

MR RAMOSEBUDI: Through yourself Chairperson may I not respond to this one in case I incriminate myself.

10 **ADV CHASKALSON SC:** And then on page 92 another Risk Stats invoice to Regiments for actuarial and risk management consulting on behalf of Regiments for 400 000,00 plus 56 000,00 VAT 456 000,00 in all. Did Risk Stats issue Regiments with this invoice in May 2010?

MR RAMOSEBUDI: Through yourself Chairperson again with this one may I not respond to it in case I incriminate myself.

ADV CHASKALSON SC: Chair we have now reached the end of those seven invoices that were attached to the
20 email of 26 May and would this be a convenient time to break?

CHAIRPERSON: Yes, just before we do that Mr Ramosebudi do you have any qualifications for providing actuarial services, yourself?

MR RAMOSEBUDI: Chairperson if you go to my

statements it clearly articulates my qualifications, I have got a very strong mathematical background.

CHAIRPERSON: Mathematical background, yes.

MR RAMOSEBUDI: Ja, which deals with a whole number of issues actuarial, risk management so that if my forte, that is my experience.

CHAIRPERSON: Oh okay, no then that is fine. Okay let us take the lunch adjournment we will resume at ten past two, we adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV CHASKALSON SC: DCJ if we can continue then to page 723 – in fact 722 black 722.

CHAIRPERSON: Okay. Did you devise a plan how to handle?

ADV CHASKALSON SC: When we get to the ones that we need red numbers.

20 **CHAIRPERSON:** Oh okay.

ADV CHASKALSON SC: I will refer only to the red numbers.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: I have worked out how to reconcile them Chair.

CHAIRPERSON: Yes 722 you said?

ADV CHASKALSON SC: 722 black.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: 720 red.

CHAIRPERSON: Ja okay. Okay.

ADV CHASKALSON SC: So that is an email addressed from you to Mr Wood on the 20 April 2012 it says:

“Dear Eric. Please receive the attached.

Regards.”

Do you recall sending it to Mr Woods – Mr Wood on
10 the 20 April 2012?

MR RAMOSEBUDI: I am sorry Chairperson I think even this one Chairperson may I not respond it in case I incriminate myself?

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Can I ask you in relation 723 which is the attachment it is a spread sheet with two tabs. Well let us start with the one on 722 which is an invoice addressed to Regiments Capital for the development of an enterprise wide risk management framework for R212 000.00 no VAT from
20 Rams Capital. Did Rams Capital issue this invoice to Regiments Capital in April 2012? That was my question did it – did Rams Capital issue this invoice to Regiments Capital in April 2012?

MR RAMOSEBUDI: I am sorry Chairperson I may not be able to respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Can I – can I ask – the strange thing about the spread sheet and – is that there are two invoices on it. There is the one we have just dealt with but there is another one addressed to Mr William Matamele that is at page 723. Do you know a Mr William Matamele?

MR RAMOSEBUDI: Chairperson similar to the previous one may I not respond to it in case I incriminate myself.

ADV CHASKALSON SC: And just for completeness sake did Rams Capital issue an invoice to William Matamele in – for
10 the amount of R540 000.00 for the development of an enterprise wide risk management framework in April 2012?

MR RAMOSEBUDI: Again with your permission Chairperson may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Can we go to – I think we have reached the end of these for now we will come back to one a bit later. Can I take you now to some bank statements and the first one that I would ask you go to is on page 604 in the red numbers.

CHAIRPERSON: Are you going to use red numbers?

20 **ADV CHASKALSON SC:** Red numbers for the bank statements Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Because they are the ones which do not have black numbers on them.

CHAIRPERSON: You will just have to for the record say that

in regard to this bundle most of the time the numbers for the pagination that I used are the black numbers but for – in regard to a small portion of the bundle the red numbers will be used. The red numbers that are used are on pages that do not have black numbers. Is that correct Mr Chaskalson?

ADV CHASKALSON SC: That is correct Chairman. It might be simpler if whenever I refer to a red number I say red number.

CHAIRPERSON: Yes, ja. So when you do not refer to the
10 colour

ADV CHASKALSON SC: It is black.

CHAIRPERSON: It is black. Or if you obviously if you say black number it will black number. But if it is red you will always say red number.

ADV CHASKALSON SC: I will Chair.

CHAIRPERSON: Ja okay alright.

ADV CHASKALSON SC: So if we look at red number 604 it is a statement for Regiments Capital from Nedbank for the month of November 2009. If you go down to – most of it is
20 redacted but there are two entries which unfortunately not very legible because they have been highlighted as well as not been redacted but it is 11 November 2009 with the reference Ka Ditlou Health and an amount of R336 300.00 that was paid out of the Regiments Capital account. Are you aware of a payment from Regiments to Ka Ditlou of

R336 300.00 on 11 November 2009?

CHAIRPERSON: I am sorry Mr Chaskalson I do not see that on page red 604.

ADV CHASKALSON SC: Chair if you go down to the – the yellow – the only yellow entry there.

CHAIRPERSON: Yes. Yes.

ADV CHASKALSON SC: Because it is highlighted it is not very legible but it is 11.11.2009 is the date.

CHAIRPERSON: Yes.

10 **ADV CHASKALSON SC:** Ka Ditlou Health

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Or Ka Dittou I do not think there is a L that Regiments put into their reference. Ka Dittou Health and the amount is R336 300.00.

CHAIRPERSON: That is the number that I cannot see. I can see date 11.11.2009 and then I see Venus Liquor and then I see 114,194,94. That is page 604 somewhere to on the last third of the darkened portion. Are we on the same page?

ADV CHASKALSON SC: No we are not Chair.

20 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: I thought I had solved this problem but I evidently have not.

CHAIRPERSON: Nedbank documents that I have got – statement but...

ADV CHASKALSON SC: Oh Chair I now understand the

problem. Mr Ramosebudi I withdraw that last question because the entry I was speaking to has been redacted in everybody else's document. We are on the right page. So let us look at the one that is visible. 11.11.2009 Venus Liquor R114 194.94. Do you recall a payment from Regiments Capital to Venus Liquor on 11 November 2009 for R114 184.94?

MR RAMOSEBUDI: Previous Chairperson may I ask that I might not be able to respond to this one in case I incriminate
10 myself.

CHAIRPERSON: Hm.

ADV CHASKALSON SC: Can we then go to red number 626? That is a bank statement for Regiments Capital for the month of December 2009 and – sorry if we go back up to 624. I beg your pardon 624. 625 – 625 – 625 red 625. Are you at red 625? Sorry Mr Ramosebudi are you at red 625?

MR RAMOSEBUDI: Yes I am at 625 the red one.

ADV CHASKALSON SC: And there on the 10 – that is a statement for Regiments Capital of the month of November –
20 sorry December 2009 and there we see an entry on 10 December 2009 a payment to Risk Stats and the amount is R336 300.00 – R336 300.00. Do you recall a payment to Risk Stats by Regiments Capital in December 2009 in the amount of R336 300.00?

MR RAMOSEBUDI: With your permission Chairperson may I

not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Chair if I might ask just to make a note against this page that it corresponds to the amount on the invoice that one sees at page 88. If we can then go

CHAIRPERSON: Was that page?

ADV CHASKALSON SC: 88.

CHAIRPERSON: 88 okay. Thank you.

ADV CHASKALSON SC: If we can then go to page 647? Red page 647. Again a Regiments Capital bank statement
10 for the month of March 2010 and there on the 2 March you will see an entry that says Risk Stats Consulting R350 541.71. Do you recall a payment from Regiments Capital to Risk Stats Consulting on 2 March 2010?

MR RAMOSEBUDI: With your permission Chairperson may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Chair if I might just refer you to the cross-reference to the invoice at page 89 in the same amount.

CHAIRPERSON: Page?

20 **ADV CHASKALSON SC:** 89 Chair.

CHAIRPERSON: 89 Ja. The amounts correspond?

ADV CHASKALSON SC: The amounts correspond R350 541.71.

CHAIRPERSON: Hm.

ADV CHASKALSON SC: If we can then go down to page

667?

CHAIRPERSON: 667? Did you say 667?

ADV CHASKALSON SC: 667 indeed.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Chair.

CHAIRPERSON: Okay right.

ADV CHASKALSON SC: Sorry Chair before we get to 66 –
667 while we on that invoice can we – sorry that payment
can we – can we go to 687 – 687 first? 687. And maybe go
10 back up a page to 686 to see what we are looking at. Mr
Ramosebudi do you recognise the document at red 686? It
appears to be an FNB bank statement for Risk Maths
Solution for the month of – month ending 10 March 2010?

MR RAMOSEBUDI: With your permission Chairperson may I
not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Chair I will then take you down to
page 687 and there you will see the entry for 2 March 2010
of a credit of R350 541.71 with the trans – the transaction
reference Regiments Capital.

20 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: And Mr Ramosebudi I have already
asked whether you recognise the document or recall this
transaction. I am not going to ask that question again.

CHAIRPERSON: Ja no I said through yourself Chairperson
may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Then Chair can we go to page 667? Red 667. And that is a bank statement of Regiments Capital for the month ending 31 May 2010. If one goes down to 4 May 2010 one sees a payment with the reference Risk Stats Consulting in the amount of R622 456.30. Mr Ramosebudi do you recall a payment to Risk Stats from Regiments Consulting on 4 May 2010 in the amount of R622 – R622 456.30?

MR RAMOSEBUDI: I humbly request Chairperson with your
10 permission that I might not be able to respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Chair if I can ask you to make the annotation there at page – that this corresponds to the invoice amount at page 91.

CHAIRPERSON: At page 891?

ADV CHASKALSON SC: No, no 91 – 91. Just 91 the bank is at 91 Chair.

CHAIRPERSON: The black 91. Okay. Yes sure thank you.

ADV CHASKALSON SC: And if I can ask you Mr
20 Ramosebudi then to go to red page 798?

MR RAMOSEBUDI: I am on the page.

ADV CHASKALSON SC: If you can go up a page the document appears to be an FNB bank statement for Risk Maths Solutions for the month ending 10 May 2010. Do you recognise this document?

MR RAMOSEBUDI: Again Chairperson may I not be able to respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Then Mr Ramosebudi I will – on the next page which is 708 there is an entry 4 May in the amount – with a credit of R622 456.30 with the reference Regiments Capital. I have already asked you whether you recall such a payment from Regiments Capital to Risk Maths in May 2010 and whether you recognise this document I will not ask those questions again. But can I ask you to go to
10 page 661.

MR RAMOSEBUDI: Red or black?

ADV CHASKALSON SC: Sorry red thank you. Red 661. That document appears – appears to be a bank statement of Regiments Capital – it is a bank statement of Regiments Capital that we have got – received from Nedbank for the month ending 31 July 2010. And there is an entry on 30 July 2010 for a payment to Risk Stats or payment reference Risk Stats in the amount of R456 00.00. Do you recall a payment to Risk Stats from Regiments Capital in late July or early
20 August 2010?

MR RAMOSEBUDI: Again Chairperson with your permission may I not be able to respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Chair for your note can you make a record that that corresponds to an invoice at page 92 – 92

and can we then move to red page 698.

CHAIRPERSON: Mr Chaskalson I hope that somebody has done the sums so that I – at the end of looking at all of these amounts I would like to have an idea about what the total is. Maybe if that has not been done somebody might do it while we are going on with it. I would like to have an idea how much appears to have been paid by Regiments into the entities that may be connected with the witness.

ADV CHASKALSON SC: Indeed Chair. I will ask Mr Zama
10 to do it I am sure he has them on a spread sheet.

CHAIRPERSON: Yes. Ja okay.

ADV CHASKALSON SC: And what – I think that there will be – we can do three columns Chair. We can do a column of invoice – invoices, a column of payments that reflect in statements linked to the Regiments Group and a statement and a column of statements that reflect in entities linked to the witness.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And an aggregate column because
20 there are some invoices without corresponding payments and some payments without corresponding invoices. Chair if we can then go to page 656? Red 656 – red 656. That is the Nedbank bank statement.

CHAIRPERSON: Well I was seeing Mr Chaskalson I was seeing a certain name on that page. I am not going to

mention it but it is of political grouping. But obviously that is not what we are traversing on.

ADV CHASKALSON SC: No, no not now Chair.

CHAIRPERSON: Ja. Ja.

ADV CHASKALSON SC: We – for now in fact our copies and the copies that the public will see are completely redacted.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But for the entry at 25 June 2010.

10 **CHAIRPERSON:** Ja 656 is the page you said we must go to?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Yes okay.

ADV CHASKALSON SC: So that is a bank statement of 30 – month ending 30 June 2010 for Regiments Capital. And there is an entry on the 25 June 2010 that reflects a payment in the amount of R467 476.86 with the reference Risk Stats Consulting Services. Do you recall a payment from Regiments Capital to Risk Stats in or around 25 June 2010

20 Mr Ramosebudi?

MR RAMOSEBUDI: With your permission Chairperson may I not be able to respond to this in case I incriminate myself.

ADV CHASKALSON SC: I will then move on Mr Ramosebudi to page – red 701. And sorry Chair just for your information this is – that last line item we have not linked to any

particular invoice.

CHAIRPERSON: Yes okay.

ADV CHASKALSON SC: Red 701 if we go up to red 700 this appears to be a bank statement for Risk Maths for the month to 10 November 2010. Mr Ramosebudi can you confirm that?

MR RAMOSEBUDI: Chairperson I am not going to confirm anything in case I incriminate myself on this matter.

ADV CHASKALSON SC: Thank you Mr Ramosebudi. Of-
the very first entry on page 701 at 11 October is a credit for
10 R460 099.43 with the reference Cash Flow Cash Regiments
Capital and I have already asked you whether you recall a
payment in this amount from Regiments Capital in October
2011 – sorry October 2010 have I? Well let me ask now. Do
you recall a payment...

CHAIRPERSON: Ja it is safer – it is safer that you ask him
and let him assert his privilege if he wants to assert it and let
it be on record.

ADV CHASKALSON SC: Can – do you recall a payment?

MR RAMOSEBUDI: Chairperson I have already indicated I
20 think Mr Chaskalson has asked a number of these invoices
and amounts and I said I am not able to respond to that in
case I incriminate myself Chairperson [00:24:06].

ADV CHASKALSON SC: And you have confirmed already
that you cannot answer whether this is the bank statement of
Risk Maths for the month ending 10 November 2010. So can

I then ask that we go to page 463 – red 463.

CHAIRPERSON: I see that at red ...

ADV CHASKALSON SC: 663 I beg your pardon. I slipped 200 pages. 663.

CHAIRPERSON: 663 okay. Yes.

ADV CHASKALSON SC: That is a – oh no Chair I am sorry I have gone backwards we have already dealt with this one.

CHAIRPERSON: Hm.

ADV CHASKALSON SC: Can I ask that we go to page 701?

10 **CHAIRPERSON:** Red 701?

ADV CHASKALSON SC: Red 701 sorry.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Chair I must apologise I am taking us backwards and forwards to the same documents.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Red 693 – 693. If we go up to 692 or 691 we have the cover page of what appears to be an FNB bank statement for Risk Maths Solutions for the month ending June 2010 – 10 June 2010 and Mr Ramosebudi can
20 you confirm that that is a bank statement for Risk Maths Solutions for the month ending June 2010 – 10 June 2010?

MR RAMOSEBUDI: Chairperson may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: If we then go down to 693 we see an entry for 1 June with the transaction reference Regiments

Capital and a credit of R456 00.00. Mr Ramosebudi do you recall a payment from Regiments Capital to Risk Maths in June 2010 in the amount of R456 000.00?

MR RAMOSEBUDI: To yourself Chairperson may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Chair if I might give a cross-reference in respect of this payment it is a link to the invoice on page 713 the corresponding amount of the invoice on page 713 and if we can then go to page 663? And that is the
10 corresponding bank account of – bank statement for Regiments Capital for the month of June 2010 and on...

CHAIRPERSON: Hang on. I am at 663.

ADV CHASKALSON SC: Red 663.

CHAIRPERSON: Red 663.

ADV CHASKALSON SC: Red 663.

CHAIRPERSON: Ja but I do not have any underlining that I made in – on this page but I see that we have been to the page.

ADV CHASKALSON SC: I am looking at – I may have taken
20 us here when I – I think I took us here earlier when I was struggling with the red numbers and the black numbers.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But if you – Chair if you go to 1 June 2010 on that page.

CHAIRPERSON: Oh yes I can see Risk Stats Consulting

there.

ADV CHASKALSON SC: There is the payment out of this account with the reference Risk Stats Consulting with the amount of R456 000.00.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And Mr Ramosebudi you have already confirmed that you cannot answer the question whether you recall such a payment to Risk Stats from Regiments on the 1 June 2010.

10 **CHAIRPERSON:** And does it correspond with an invoice somewhere or not really?

ADV CHASKALSON SC: It corresponds with the invoice at page 713 Chair.

CHAIRPERSON: At page 713.

ADV CHASKALSON SC: Indeed Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Can we then go down to red number 6 – or go up to red number 643? That is a bank statement for Regiments Capital for the month ending 30
20 October 2010 and if we go down to 9 October 2010, we see a payment of – the amount of R 337 896,00, referenced as Azana Capital Markets. Mr Ramosebudi, do you recall a payment from Regiments Capital to Azana Capital Markets in October 2010?

MR RAMOSEBUDI: Through myself Chairperson, may I not

respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Chair, if you can just put the reference that this payment corresponds to page 717, the invoice from 717?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And if you we can then go to page 685?

CHAIRPERSON: 685?

10 **ADV CHASKALSON SC:** Correct. 685 Chair,

CHAIRPERSON: H'm.

ADV CHASKALSON SC: And if we go. So we will see the heading of this document. This appears to be the FNB bank statement for Azana Capital Markets for the month ending 14 October 2010. Mr Ramosebudi, can you confirm that this is the Azana Capital Markets' bank statement for the month ending 14 October 2010?

MR RAMOSEBUDI: Through myself Chairperson, may I not respond to this one in case I incriminate myself?

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

ADV CHASKALSON SC: And then Mr Ramosebudi, if you can go down a page to 685? The entry, 9 October has a transaction reference, Regiments Capital and the amount is R 337 896 corresponding to the amount that we saw on the Regiments Capital's bank statement.

You have already confirmed that you cannot answer the question, whether you record a payment in this amount to Azana Capital Markets in October 2010.

MR RAMOSEBUDI: [No audible reply]

CHAIRPERSON: You say the amount at page 685 corresponds with the invoice at what page?

ADV CHASKALSON SC: It is also 717 Chair. So it corresponds with 717 and the Regiments' bank statement at 643. It is 643. Red 643.

10 **CHAIRPERSON:** Thank you.

ADV CHASKALSON SC: Then Chair, if we can go to red 610?

CHAIRPERSON: We have to remember Mr Chaskalson that, all those who will read the transcript, we said whenever we mean the red numbers, we will always say red.

ADV CHASKALSON SC: I did, in fact, say red.

CHAIRPERSON: So when we do not say red, they will think it is the black numbers.

ADV CHASKALSON SC: Indeed.

20 **CHAIRPERSON:** Okay, so ...[intervenes]

ADV CHASKALSON SC: This is red 610.

CHAIRPERSON: 601. Okay.

ADV CHASKALSON SC: That is an extract from Regiments Capital's bank statement for the month ending 30 April 2011. If you go down to 15 April 2011, there is an amount

referenced Ka Ditlou Health Services with the ...[intervenes]

CHAIRPERSON: Yes, I can ...[intervenes]

ADV CHASKALSON SC: ...an amount R 212 964.47.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: Mr Ramosebudi, do you recall a payment to Ka Ditlou Health Services in April 2011 in the amount of R 212 964.47?

MR RAMOSEBUDI: Chairperson, with your permission, may I not respond to this one in case I incriminate myself?

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

ADV CHASKALSON SC: Chair, for your reference. That corresponds to the invoice on page 721 and ...[intervenes]

CHAIRPERSON: Is that now the amount at page red 610?

ADV CHASKALSON SC: That is correct, Chair.

CHAIRPERSON: It corresponds... It corresponds with the amount at the invoice at what page?

ADV CHASKALSON SC: 721, Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Then Chair, if we can go to page
20 614 red?

CHAIRPERSON: Yes?

ADV CHASKALSON SC: And that again, is an extract from Regiments Capital's bank statement for the month ending 30 June 2011.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: At 2 June 2011, there is a transaction referenced Ka Ditou(sic) again. Oh, no. This is Ka Ditlou. They have got the folders done. Health Services. And the amount is R 224 934.47. Mr Ramosebudi, do you recall a payment from Regiments Capital to Ka Ditlou Health Services in June 2011 in the amount of R 224 934.47?

MR RAMOSEBUDI: With your permission Chairperson, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

10 **ADV CHASKALSON SC:** Chair, we do not have a corresponding invoice for this amount but if I can ask Chair to go to page red 675?

CHAIRPERSON: Yes?

ADV CHASKALSON SC: And there Chair, if one goes up to 673, one sees that although the reference was Ka Ditlou Health Services, the bank statement we are looking at is Risk Maths Solutions.

CHAIRPERSON: H'm?

ADV CHASKALSON SC: For the month ending
20 10 June 2011.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: Mr Ramosebudi, do you confirm that this is the bank statement for Risk Maths for the month ending 10 June 2011?

MR RAMOSEBUDI: Chairperson, may I not respond to this

one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: If we go down to page 675 against 2 June, we see a credit of R 224 934.47 with reference Regiments Capital. Mr Ramosebudi, I earlier asked you if you can recall a payment from Regiments to Ka Ditlou Health Services in June in this amount.

I must now ask you whether you can recall a payment from Regiments in June 2010 to Risk Maths in this amount of
10 R 224 934.47?

MR RAMOSEBUDI: Chairperson, through your permission, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: H'm.

ADV CHASKALSON SC: Can we then Chair go to page 620 red?

CHAIRPERSON: 620?

ADV CHASKALSON SC: Six, two, zero.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And this again is an extract from
20 Regiments Capital bank statement for the month ending 31 August 2011. If one goes right down to the bottom of the page, there is an entry on 19 August 2011 with the reference Risk Stats Consulting and the amount is R 289 074.85.

Mr Ramosebudi, do you recall a payment from Regiments on or around 19 August 2011 in the amount of

R 289 074.85?

MR RAMOSEBUDI: With your permission Chairperson, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Chair, if you can then go to page red 678?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And if we go up to red 677, we see that this is the FNB statement for Risk Maths Solutions
10 for the month ending 10 September 2011.

Mr Ramosebudi, can you confirm that this is the Risk Maths Solution statement from FNB for the month ending 10 September 2011?

MR RAMOSEBUDI: Chairperson, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: If we go down to 678 Chair, we see the corresponding entry on 19 August 2011 with the corresponding credit of R 289 074.85 in the account of Risk
20 Math Solutions with the reference Regiments Capital.

Mr Ramosebudi has also – has already claimed privileged in relation to whether he can recall a payment of this nature at that time.

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Can we then Chair go to page

629? Red 629.

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And Chair this is the Nedbank statement for Regiments Capital's account for the month ending 31 March 2012.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: If one goes down to 9 March 2012, one sees an entry with a reference Ka Ditlou Health Services and the payment amount is R 299 874.96.

10 Mr Ramosebudi, can you recall a payment of this amount, R 299 874.96 to Ka Ditlou Health Services from Regiments Capital in March 2012?

MR RAMOSEBUDI: With your permission Chairperson, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And Chair, if I can ask you then to go to red page 629?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Oh, sorry. We are at red 629.

20 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: We need to go to red 681.

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And if we go up to red 680. Mr Ramosebudi, can you confirm that this is the FNB bank statement for the Risk Math Solutions' account for the month

ending 20 March 2012?

MR RAMOSEBUDI: With your permission Chairperson, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And Chair, if we go down at to 681, we see on 9 March, there is a credit of R 299 874.96 corresponding to the credit that we see on the Regiments account with the reference Ka Ditlou but this reference is Regiment Capital and it is in a Risk Math's bank statement.

10 So Mr Ramosebudi, a pity I must ask you again. Do you recall a payment from Regiments Capital to Risk Maths in or around 9 March 2012 in the amount of R 299 874.96?

MR RAMOSEBUDI: With your permission Chairperson, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: But then Mr Ramosebudi, can we go to page 130? One, three, zero. Black one, three zero. We have not dealt with this invoice.

20 **CHAIRPERSON**: I am sorry. Please just repeat the page number?

ADV CHASKALSON SC: 130.

CHAIRPERSON: 130. And again, still red?

ADV CHASKALSON SC: No, no. This is a black number Chair of 130.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And Mr Ramosebudi, what we see on 130 is an email dated 29 October 2013. It is sent from your Rams cap(?) address, phetolo@ramscap.co.za to Eric Wood with the subject: Book 2.XLSX and an attachment of a spreadsheet called Book 2.XLSX.

Do you recall sending this email to Mr wood on the 29th of October 2013?

MR RAMOSEBUDI: With your permission Chairperson, may I not respond to this one in case I incriminate myself?

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

ADV CHASKALSON SC: if we go over the page to 131, we see an invoice from Rams Capital to Regiments Capital for Actuarial and Risk Management Consulting on behalf of Regiments Capital for Transnet.

The amount is R 375 606.00. There is no VAT raised on that amount. So the total amount of the invoice is R 375 606.00.

Mr Ramosebudi, did Rams Capital issue an invoice to Regiments Capital for the amount of R 375 606.00 towards
20 to the end of... Sorry. On or around 29 October 2013?

MR RAMOSEBUDI: Through yourself Chairperson, may I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Chair, can I ask that you flag this document because we are going to come back to it in due

course?

CHAIRPERSON: Okay.

ADV CHASKALSON SC: But for now, I would ask that you go to page 652?

CHAIRPERSON: And are we only into black numbers now or ...[intervenes]

ADV CHASKALSON SC: Sorry. Sorry, Chair. It is red 652.

CHAIRPERSON: Okay. Yes?

ADV CHASKALSON SC: And Chair, this is a Standard Bank
10 statement for Regiments Capital. It is dated
13 November 2013. And if you go down to the last
transaction on this statement, there is a transaction
described as Caps third party payment Rams Capital. It is at
eleven, 16:00.

The amount is R 375 606.00 and the date is 11/07.
Eleven referring to the month and the seven the day.

Mr Ramosebudi, can you confirm that Regiments Capital
paid Rams Capital an amount of R 375 606.00 on or around
7 November 2013?

20 **MR RAMOSEBUDI:** Chairperson, through yourself, may I
not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Chair, can I ask you – and this is
the amount corresponding to the invoice that we see on 131
Chair.

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And it will appear in the Rams...
Well, it will appear in another account at red page 690.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: And if you go up to red 689 Chair,
there is the cover page. Mr Ramosebudi, can you confirm
that this is the Risk Math Solution bank statement from FNB
for the month ending 9 November 2013?

MR RAMOSEBUDI: Again, Chairperson. May I not respond
10 to this question in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Chair, if you go down to red 690,
you will see that there is an entry, also 7 November with the
reference Regiments Capital and the same amount of
R 375 606.00 as a credit.

Mr Ramosebudi, I must ask you. My last question was in
relation to Rams Capital. So I must now ask you whether
you recall a payment from Regiments Capital to Risk Maths
in the amount of R 375 606.00 on or around
20 7 November 2013?

MR RAMOSEBUDI: Chairperson, may I not respond to this
question in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Then Chair, if I can ask you to go
to red 671?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: And then go up to the cover page on 670.

CHAIRPERSON: Yes?

ADV CHASKALSON SC: Mr Ramosebudi, can you confirm that we see on 670 is the bank statement for Risk Math Solutions for the month ending 10 January 2011?

MR RAMOSEBUDI: Chairperson, may I not respond to this question in case I incriminate myself?

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

ADV CHASKALSON SC: If we go down to page 671 red, we see an entry on 18 December which will be 18 December 2010 with the reference Regiments Capital and a payment amount of R 227 601.00 as a credit. A credit in the Risk Math's account from Regiments Capital.

Mr Ramosebudi, do you recall a payment from Regiments Capital to Risk Math in December 2010 in the amount of R 227 601.00?

MR RAMOSEBUDI: With your permission Chairperson, may
20 I not respond to this one in case I incriminate myself?

CHAIRPERSON: [No audible reply]

ADV CHASKALSON SC: Then Chair... We can finally move on to a new topic Chair. We have dealt with all of the invoices and all of the bank statements.

CHAIRPERSON: Okay. Do you know whether your team is

ready with the total of the amounts or not yet?

ADV CHASKALSON SC: We do have them Chair. If you can give me a minute. I will just...

CHAIRPERSON: Yes-no, that is fine.

ADV CHASKALSON SC: ...ask them to give it to me.

CHAIRPERSON: And if needs be, it can be done later if it is more convenient. I just want to, in the end, to have some idea.

ADV CHASKALSON SC: Chair, the total invoices issued to
10 Regiments Capital are R 9 132 490,39. And the total payments out of Regiments Capital accounts with references linked to one or more of – one or other of the entities that we have been describing is R 5 173 013.66.

CHAIRPERSON: Okay thank you.

ADV CHASKALSON SC: Chair, we started this trip through the bank statements while we were still discussing ACSA. There are one or two further issues in relation to ACSA that I would like to raise with Mr Ramosebudi.

Can I start by – when we get back to ACSA by asking
20 you, Mr Ramosebudi to go to black page 105 And henceforth Chair, I will just be referring to black page numbers.

CHAIRPERSON: Okay. 105?

ADV CHASKALSON SC: 105. And, Mr Ramosebudi, are you at black 105?

MR RAMOSEBUDI: Black 105.

ADV CHASKALSON SC: Can you go to the email at the – it is an email trial but can you go to the email, the last email that one sees at the bottom of that page. It is from Mario Vizzenza to Aubrey Maklabe(?) copied to yourself, William Clue, Solomon Gwaza(?) and Moss Brickman. Do you see that, 5 April 2011 at 12:07?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Do you see that email?

MR RAMOSEBUDI: I see the email.

10 **ADV CHASKALSON SC:** And he says:

“Hi Aubrey. Unwind valuations of the CPI swaps as at 31 March 2011 were as follows.”

And he lists the three swaps by trade number. And for the one it is minus R 93 423 295,00. For the other it is minus R 73 295 235. And for the last, it is minus R 45 481 153,00.

Now can I ask you, first of all, is – are these three CPI’s boxes referring to the three CPI’s box that we discussed earlier in your evidence?

20 **MR RAMOSEBUDI:** Chairperson, I am not sure which one that this was.

ADV CHASKALSON SC: Sorry?

MR RAMOSEBUDI: I am not sure which ...[indistinct] are these ones. That is probably one of those ...[indistinct]
[Speaker is not clear.]

ADV CHASKALSON SC: You will recall the spreadsheet that had the R 1.5 billion bar plus 2.6% which was then broken up into 2A, 2B and 2C. I can take you back to that if you would like. But my question is. Are these 2A, 2B and 2C?

MR RAMOSEBUDI: I cannot confirm Chairperson. I do not know.

ADV CHASKALSON SC: Okay. Can you then tell the Chair... Well, I mean, we have established whether they are
10 or not. But can you tell the Chair what unwind valuations are? Let us assume for present purposes they are to... Well, there are three swaps. What is unwind valuation means?

MR RAMOSEBUDI: In the simplest terms Chairperson, unwind means to cancel the transaction.

ADV CHASKALSON SC: So if ABSA wanted to cancel these three swaps, it would have to pay to Nedbank R 93 423 million on the first. R 73.295 million on the second and R 45.481 on the third. Is that correct?

20 **MR RAMOSEBUDI:** That is the indication on the email, yes.

ADV CHASKALSON SC: Yes. And if we go on a month or so. Actually, it is more than a month. If we go up to page 104, you will see another email from Mario to William Clue and you have copied yourself on 19 July 2011.

And now the unwind valuations have actually gotten

worse by ACSA.

“Hi, William. Unwind valuations as at 30 June 2011 were as follows.

First trade, R 126 360 000,00. Second trade, R 100 513 000,00. Last trade, R 65 834 000,00.”

So those are the amounts that ACSA would now have to pay Nedbank to get out of these swaps. Is that correct?

MR RAMOSEBUDI: True.

- 10 **ADV CHASKALSON SC**: Are you aware of any other swaps that ACSA had? Any other CPI swaps that ACSA had with Nedbank on or around – during 2011, other than those three that we have talked about, 2A, 2B and 2C?

MR RAMOSEBUDI: I cannot recall it now.

ADV CHASKALSON SC: You cannot recollect?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: I am talking specifically about CPI swaps.

MR RAMOSEBUDI: Ja, I cannot recall it.

- 20 **ADV CHASKALSON SC**: Okay.

MR RAMOSEBUDI: I know CPI bonds ...[indistinct]

[Speaker is not clear.]

ADV CHASKALSON SC: Sorry, you know?

MR RAMOSEBUDI: CPI bonds.

ADV CHASKALSON SC: I am sorry. Mr Ramosebudi, I

must apologise.

MR RAMOSEBUDI: CPI bonds. There was a CPI bond. I cannot recall any other swap.

ADV CHASKALSON SC: Yes. So, but I am not asking about a CPI bond. I am asking you about a CPI swap.

MR RAMOSEBUDI: I cannot recall.

ADV CHASKALSON SC: You cannot recall?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: But of course, we would be able to
10 establish whether we are talking about those three swaps if we look for – if we look for them by trade number, would we not? Well, it says Trade 9085799. That is a very specific transaction. It will be recorded somewhere.

MR RAMOSEBUDI: For the settlement of the agreement.

ADV CHASKALSON SC: Yes.

MR RAMOSEBUDI: And the ...[indistinct]

[Speaker is not clear.]

ADV CHASKALSON SC: Yes.

MR RAMOSEBUDI: Yes.

20 **ADV CHASKALSON SC**: So we will follow that up. But whatever these transactions were as at 30 June 2011 for ACSA to escape them, it would have cost ACSA in the region of R 290 million. Is that correct?

MR RAMOSEBUDI: Can you repeat that?

ADV CHASKALSON SC: So as at 30 June 2011, if ACSA

wanted to avoid these transactions, get out them, it was going to cost ACSA R 290 million. More than R 290 million, these three transactions. Is that correct?

MR RAMOSEBUDI: If those numbers add up to two hundred plus.

ADV CHASKALSON SC: Yes. Well, they go a little bit beyond R 290 million. They are beyond R 292 million. Can we then go down to page 113?

MR RAMOSEBUDI: [No audible reply]

10 **CHAIRPERSON**: Did you say one, one, three?

ADV CHASKALSON SC: One, one, three Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: You do not need to go back but I do want to ask another question, just from the top that we have just left. Mr Ramosebudi, I said that for ACSA to escape those transactions, it would have cost ACSA R 292 million. Do you recall? Yes?

MR RAMOSEBUDI: I trust your calculation, yes.

20 **ADV CHASKALSON SC**: Yes. You earlier said that on the date that the transaction is entered into, it should have a null value.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: So if ACSA wanted day one it should have cost ACSA almost nothing, is that correct?

MR RAMOSEBUDI: If you compare the schedule, yes, it

should be zero.

ADV CHASKALSON SC: Alright, so that swap has gone against ACSA to the tune of about 292 million by June 2011, is that correct?

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: Can we then – so now we are at page 113. Towards the bottom of the page there is an email from Tebogo Labalo to Mario Visinenza(?) and copied to Eric Wood.

10 “Dear Mario, please send me the cash flow schedule for Regiments Capital detailed the amounts and the expected timing of the cash flows.”

And signed by Tebogo Labalo. Do you know who Tebogo Labalo is or was at the time?

MR RAMOSEBUDI: Ja, I think he is one of the guys who used to work at Regiments.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: One of the guys?

20 **MR RAMOSEBUDI:** He used to work for Regiments.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: And then if we go – that was 7 December and we go up to 8 December 2015. If we go to 1112, page 1112. Do you have 1112?

MR RAMOSEBUDI: The black numbers?

ADV CHASKALSON SC: Black page, going forward it is just black pages.

MR RAMOSEBUDI: Okay, 1112 I see is an email.

ADV CHASKALSON SC: That is correct. It is an email from Eric Wood to Boitumelo Mapasa forwarding a cash flow schedule which says Regiments summary of payments – it is an cash flow schedule with an attachment Regiments summary of payments but the forwarding email is lower down on the chain and that email is from Mario
10 Visinenza again to Tebogo Labalo on 8 December 2015, it is the response to Tebogo's request give us the cash flow schedules and it says:

“Please see attached summary spreadsheet.”

If we go up to page 411 we see the attachment that was with that email and you will see that what that spreadsheet has on it is a whole series of amounts in respect of ACSA in the first instance and then the City of Tswane three separate transactions there but I am just going to ask you about ACSA and ...[intervenes]

20 **CHAIRPERSON:** I am sorry, Mr Chaskalson, did you say we must go to page 411?

ADV CHASKALSON SC: Sorry, 111.

CHAIRPERSON: 111.

ADV CHASKALSON SC: Volume – bundle 4, 4-111, sorry.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: I want to ask you about these ACSA flows. Would these be the fees that Nedbank is going to pay Regiments in terms of the swaps that Nedbank brokered between ACSA and Nedbank? Does that look to you what they are describing?

MR RAMOSEBUDI: I do not know what they are describing, these numbers are [indistinct – dropping voice]

ADV CHASKALSON SC: Okay, well I want to put it to you that these are the fees that – well, there will be evidence
10 to show that these are the fees on that swap that Nedbank would be paying Regiments and recovering from ACSA on the – I think it was 10 basis points. So the initial payment of 9.460 million, a payment a year later of 1 179 000, a payment in 2012, 1 253 000, a payment in 2013, 1 323 000, a payment in 2014 of 1 416 000, payment in 2015, 1 515 000 and then payments going on into the future projected because remember this document is only written in December 2015, projected payments going through in 2016, 2017, 2018 and 2019. And maybe if I can
20 take you back, just to illustrate some of these – illustrate my point. If you go to page 108, black 108. Are you on 108?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: And you will see 108 is Regiments invoice to Nedbank 28 March 2013, the amount

is the 1.3 million that we see on that spreadsheet and again it refers to origination and facilitation of 1.5 billion interest rate swap transactions between Nedbank Capital and ACSA and that 1.5 billion transaction was the one with 2A, 2B and 2C. If you go over the page you will see 31 March 2014, Nedbank's invoice, the next year. Sorry, Regiments' invoice to Nedbank the next year, goes to Mr Brickman in the amount of 1 416 424, again the same description, origination and facilitation of 1.5 billion
10 interest rate swap transactions between Nedbank and ACSA. Over the page to 110, 31 March 2015. This time Nedbank paid – or Regiments invoiced Nedbank 1.5 million, origination and facilitation of 1.5 billion interest rate swap transactions between Nedbank and ACSA and if you go back to page 111 now, will you accept when I put it to you that these are Nedbank's recordings of what it will be paying Regiments in relation to the ACSA swap?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: You do, thank you. And just to
20 confirm to the Chair, each one of these payments Nedbank will in due course recover from ACSA through that 10 basis point increase on the spread of the swap, is that correct?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: So these amounts are really being paid to Regiments by ACSA not by Nedbank.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Thank you. I think that concludes ACSA. Can we move now to SAA and can we start on page 115? And my first question to you is can you just refresh our memory, when did you become Treasurer at SAA?

MR RAMOSEBUDI: Through yourself, Chairperson, it could be November 2011 or December 2011, I cannot recall that properly.

10 **ADV CHASKALSON SC:** Towards the end of 2011?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: You were certainly Treasurer at SAA by 14 October 2013.

MR RAMOSEBUDI: Yes I was in Treasury.

ADV CHASKALSON SC: Can I ask you, if one goes to page 115, there is an email, it is addressed from your Rams Capital address, email address to Eric Wood, subject is Forward Working Capital Scope of Work and an attachment is working capital scope of work.doc, so it is a
20 MS word file, working capital scope of work and if one goes a little bit lower down one sees that that message originated in a message that you sent from your SAA address, Phetolo Ramosebudi at FlySAA.com to your Rams Capital address, Phetolo@ramscapital.co.za. So first of all can I ask you do you recall sending this message or a

message with that attachment from your SAA address to your Rams Cap address?

MR RAMOSEBUDI: Chairperson, I am here to assist, you know, the Chairperson and the Commission to investigate any malfeasance in the public sector and any other state organs. Unfortunately, there are certain things I cannot assist you on and in particular this particular transaction I cannot assist. Unfortunately, I cannot answer any questions related to this in case I incriminate myself.

10 **ADV CHASKALSON SC:** I appreciate that, Mr Ramosebudi, but I am afraid I have to put the questions to you nonetheless, so we can maybe move quite quickly through here but I do need to put the questions to you and some of them you may well – some of them you may find are not – you are capable of answering.

The first question was - you could not answer my question about whether you forwarded that document to your – from your SAA address to your Rams Cap address. The second question is, do you recall then sending that
20 document from your Rams Cap address to Eric Wood on and around 14 October 2013?

MR RAMOSEBUDI: Again through yourself, Chairperson, may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: The document, that is the attachment, starts at page 116. Can you go to page 116?

What it looks like, consistent with how it is described in the email, is the draft scope of work for a tender at SAA. Can I ask – and it is called working capital management scope of work. Can I ask whether you recall this document, whether you can identify it?

MR RAMOSEBUDI: Chairperson, I humbly request that I do not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Can I then take you to page 119
10 and the – again there is an email chain that originates with an email from your SAA address on 24 October to your Rams Cap address and is then forwarded from your Rams Cap address to Eric Wood and the document attached is called the valuation criteria. Can I ask you first whether you recall sending that email from your FlySAA address to your Rams Cap address?

MR RAMOSEBUDI: Chairperson, you will excuse me, you know, for not responding to this question, I am unable to respond to that in case they incriminate me.

20 **ADV CHASKALSON SC:** And then, Mr Ramosebudi, there is the email that comes from your Rams Cap to Eric Wood that says:

“Please review and comment.”

Do you recall sending that to Mr Wood on 24 October 2013?

MR RAMOSEBUDI: I will want to request again, Chairperson, not to respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Well, the document that the email apparently is asking Mr Wood to review and comment appears at page 120 and it is called Revised Evaluation Criteria and if one reads through it, it appears to be the evaluation criteria for that working capital scope of work tender that appears to have been forwarded from your
10 email address to Mr Wood on 14 October. Do you recognise this document called revised evaluation, with the adding Revised Evaluation Criteria?

MR RAMOSEBUDI: Through yourself, Chairperson, I might not be able to respond to this in case it incriminate me.

ADV CHASKALSON SC: Can I then take you to page 123? Now we see an email from Mr Wood to you on 28 October 2013 with an attachment Evaluation Criteria SAA.docx and that appears to be – sorry, it is forward
20 Evaluation Criteria SAA.docx and if one goes down the string, one sees what is being forwarded is an email from someone called Inderan Pillay to Eric Wood and copied to Tewodros Gebreselasie. Can I first ask you, do you know who Inderan Pillay is?

MR RAMOSEBUDI: I think he is one of those guys who

work for Regiments.

ADV CHASKALSON SC: It is not Niven Pillay, it is a different person but we are led to believe it is Niven Pillay's brother, do you know that?

MR RAMOSEBUDI: I would not know.

ADV CHASKALSON SC: But it is certainly not Niven Pillay. Do you know that it is not Niven Pillay?

MR RAMOSEBUDI: Ja, from the names it is not Niven Pillay.

10 **ADV CHASKALSON SC:** Yes, different person. Do you know Tewodros Gebreselasie?

MR RAMOSEBUDI: Yes, I know.

ADV CHASKALSON SC: And who is he or who was he at the time?

MR RAMOSEBUDI: He worked for Regiments Capital.

ADV CHASKALSON SC: And we have already established who Mr Wood is. Do you recall receiving this email from Mr Wood on 28 October 2013 which forwarded a document called the evaluation criteria SAA?

20 **MR RAMOSEBUDI:** Chairperson, may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: So then I must take you to the document that was attached to that email, it is at 124 and it is a document which looks a lot like the document that was attached to your email to Mr Wood with evaluation

criteria on 24 August but four days later there had been some material changes to the document and to see what those changes are I would ask you to go to page 127 where the Commission has generated a document which shows what the changes between the two documents were. So can you just read – quickly look through pages 127 and 128 and 129 and then I am going to ask you a couple of questions.

CHAIRPERSON: You want him to read silently or aloud?

10 **ADV CHASKALSON SC:** No, no, I do not think it is necessary to read into the record.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I just want Mr Ramosebudi to see ...[intervenes]

CHAIRPERSON: Yes, to familiarise himself with it.

ADV CHASKALSON SC: Indeed.

MR RAMOSEBUDI: I see it, Chairperson.

ADV CHASKALSON SC: Thank you, Mr Ramosebudi. So you would not obviously have seen that document at any
20 time prior to coming to the Commission because the Commission generated it but I have to ask you, the document that starts at page 124, have you seen that document before?

MR RAMOSEBUDI: Through yourself, Chairperson, I am going to respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Thank you, Mr Ramosebudi.

Can we then go to the document at page 127 where the track changes are flagged and can I ask you would you agree with me that these are not insignificant changes that have been made to evaluation criteria but what one sees here is some material changes, someone who has presided over tenders in the public sector before. Do these changes look insignificant or do they materially change the evaluation process?

10 **MR RAMOSEBUDI:** With your permission, may I not respond to this question in case I incriminate myself.

CHAIRPERSON: Just make sure all the time, Mr Ramosebudi that you articulate your reason audibly for wishing not to answer. So I am just saying just make sure you articulate your reason audibly.

MR RAMOSEBUDI: Okay, okay.

CHAIRPERSON: For wishing not to answer the question, it is important for the record.

MR RAMOSEBUDI: Okay.

20 **ADV CHASKALSON SC:** Can I – I maybe asked that question too generally. If one goes to the bottom of the page 127, one sees that the evaluation criterion in relation to functional requirements and weightings – these are going to be scores on the tender. Sorry, can I ask that question? Functional requirements and weightings, are

those going to be the scores on the tender that will determine who wins the tender?

MR RAMOSEBUDI: With your permission, Chairperson, may I not respond to this in case I incriminate myself.

ADV CHASKALSON SC: Well, let us ...[intervenes]

CHAIRPERSON: Maybe you can ask it generally. Maybe you could ask it at a general level, would that help? If he does not relation to these but just in general.

ADV CHASKALSON SC: Indeed, indeed, thank you,
10 Chair. So, Mr Ramosebudi, when one – forget about this tender in particular, but as a general principle when one evaluates public sector tenders and there is a phase two of the tender, phase one is about functional compatibility and anyone who does not qualify in phase one is automatically disqualified but people who get through to phase 2 and then have qualified and are being assessed, if there is a category called functional requirements and weightings for phase two, would that really be the marks that are given to those people who have qualified and the person – and the
20 entity with the highest marks will win.

CHAIRPERSON: In general.

ADV CHASKALSON SC: In general, without referring to this specific tender.

CHAIRPERSON: According to your knowledge.

MR RAMOSEBUDI: Of course when I read through this on

page 127 it says:

“Bidders that fail to meet the critical criteria will be eliminated.”

So it means those are eliminated, they will not go further, it will be, you know, evaluated on a functional basis. So then move to the second phase., then they are going to be evaluated on a functional basis. So therefore the weight probably is what is attached to a particular element or description of a measure that is used. I guess that is what
10 it should be.

CHAIRPERSON: So would that answer – would your answer mean that in general when you come to that phase those various features are how – or are the features that get scored. I am talking generally now.

MR RAMOSEBUDI: Ja, generally when I look at the first element or the first phase, it is a yes or no.

CHAIRPERSON: Ja.

MR RAMOSEBUDI: So if it is yes or no, if you are no, no, no, that means that you will be eliminated. And then the
20 second phase, now you have got to be weighted in terms of what your competencies are. That is what I read from these documents now.

CHAIRPERSON: Yes, okay. Mr Chaskalson?

ADV CHASKALSON SC: And whoever gets the highest weighted score is presumably the preferred bidder.

MR RAMOSEBUDI: Chairperson, may I not further respond to this one, in case I incriminate myself.

ADV CHASKALSON SC: Chair, then maybe I should just read into the record some of these changes. One sees in relation to the weightings that the measure of demonstrate working capital management methodology and approach adopted in previous projects or as proposed from SAA – proposed for SAA, has increased from 20% to 30%.

CHAIRPERSON: Yes.

10 **MR RAMOSEBUDI:** The evaluation of the scope of work and benefits realised in relation to the relevance of what is required for SAA has – it used to say three group references for 15 marks, two group level references and one small group reference would give you 10 marks and two small group references and one big group reference would give you five marks and the kinds of references that are now being asked have all been eliminated, so it is just three references, 15 marks, two references is 10 and one reference is 5. There used to be a requirement that said:

20 : "Tenderer demonstrates the ability to conduct global research and benchmarking based on the team structure and expertise employed as well as display of the relevant network that the tenderer can access to support research."

It was going to be 10% of that total mark but that has now

been eliminated. Then there is a line item:

“Demonstrate experience of working at senior management level and rediscovering working capital capabilities by outlining methodology and approach utilised in similar projects as well as proposal for SAA, tenderer must show good grasp of the sensitivities associated with the rediscovering of working capital and competency requirements.”

That used to be 10%, it is now 15%. There was a line
10 item:

“Demonstrate unbundling of working capital capability by outlining methodology and approach adopted in previous projects or as proposed for SAA. This should indicated in terms of the various elements that will be addressed in working capital unbundling management as well as how this will be developed for SAA.”

That used to be 10%, it has now gone. And there is:

“Years of experience in working capital
20 management...”

To which has been added

“...and balance sheet optimization.”

A one year used to be 3 points, two years used to be –
sorry, one year used to be 2 points, it is now 3 points. Two
years used to be 4 points, it is now 6 points. Three years

used to be 6 points, it is now 9, four years used to be 8 points, it is now 12 and 5 years used to be 10 points and it now 15. So the total weighing has gone up from 10 to 15. Then over the page there is a new entry which is called:

“Knowledge transfer framework to SAA during and after the project. Tenderer must outline their framework to be utilised in ensuring knowledge transfer happens with key internal stakeholders.”

That new entry gets 10% and – I beg your pardon, Chair,
10 that new entry is not in fact a new entry, it used to be there at the bottom, but it has now been deleted at the bottom and pushed further up the list.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Then we get to a document that we have already addressed, it is at page 130 but it now appears in its proper chronology. That is the email addressed from you to Mr Wood on 29 October 2013, we have already asked if you can identify that and you have already claimed privilege. I just want to refresh our
20 memories that this is an email attaching an invoice to Regiments Capital from Rams Capital in the amount of R375 606. We then at page 132 have a document which was an extract from the Commission’s electronic transaction records showing that payment from Regiments Capital to Rams Capital on 7 November 2013 of 375 606.

Chair, if you can just, on this document, make an annotation that the bank statements, the relevant hard copy bank statements are at page 652, red, and 690 red, both sides of that transaction.

CHAIRPERSON: Just one second, red page?

ADV CHASKALSON SC: It is 652 red.

CHAIRPERSON: 652, thank you.

ADV CHASKALSON SC: And 690 red.

CHAIRPERSON: 690, the last page number?

10 **ADV CHASKALSON SC:** 690, indeed.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: So that is the one, the Regiments Capital statement and the Rams Capital statement.

CHAIRPERSON: Okay, okay.

ADV CHASKALSON SC: We then come to a document on page 133 and that is an email from Niven Pillay to Andile Nyonya, Eric Wood, Inderan Pillay and Mohamed Bobat and the subject is:

20 "Forwarding GSMO 85/13 RFP for the appointment of a consultant to assist the SAA Group with the unlocking of working capital"

And there is an attachment RFP working capital NN.doc. The email that is being forwarded is from Reinette Slabbert. Do you know who Reinette Slabbert is, Mr

Ramosebudi?

MR RAMOSEBUDI: Ja, I recollect the name.

ADV CHASKALSON SC: Can you tell the Chair who she is?

MR RAMOSEBUDI: She has worked in the procurement at SAA.

ADV CHASKALSON SC: And the date is 19 November 2013, this document is sent – or this email is sent to everyone and it – or not to everyone, to a large number of
10 people and it says:

“Dear Bidders, good afternoon, everybody, attached herewith please find the following documents, RFP 085/13 NDA related to the RFP. There is confidential financial information available that will be submitted but it will only be submitted once the NDA agreement has been signed and emailed back. Please take note of the funding point that forms part of the scope of work, part 3 of the RFP document. All correspondence needs to be via
20 email and we will respond as soon as possible to all questions, thanks.”

So would I be correct in saying that the email from Reinette Slabbert is an email that goes out to people who – to bidders who are invited to bid for this bid, GSMO 85/13, the RFP for the appointment of a consultant to assist SAA

with the unlocking of working capital. Is that correct?

MR RAMOSEBUDI: Chairperson, may I be excused not to respond to this question in case I incriminate myself?

ADV CHASKALSON SC: Can I then take you to the document that is attached to that email. It is a document that appears on page 136, its heading is:

10 “Request for proposal for the appointment of a consultant to assist the South African Airways Group with the unlocking of working capital, bid number RFP 085/13.”

And then it goes on. Maybe before we ask a question then maybe I can flag a couple of issues in this document. Page 137 there is an issue date of 19 November 2013, there is a closing date for RFP, 4 December 2013 and can I ask in general terms, when an invitation to bid has an issue date would that be the date on which bidders are given the tender document which describes the scope of work and the evaluation criteria and the like, in general terms, in procurement? Sorry, Mr Ramosebudi?

20 **MR RAMOSEBUDI:** I hear you, Mr Chaskalson. It might mean a lot of thing, you know, issued late. It might be a date that is issued but in a ...[indistinct] to go out not to the bidders. Or it can be an issue date that goes to the bidders. So an issue date can be, can mean a lot of things. So I, I don't want to apply a general knowledge

here.

ADV CHASKALSON SC: Okay. Or can I ask the question differently? Have you come across tenders where bidders get a bid invitation document officially before the issue date?

MR RAMOSEBUDI: I think Mr Chairperson I may not be able to respond to this question sir, in case I implicate myself.

ADV CHASKALSON SC: The closing date, if we can ask
10 in general terms when a bid invitation document has a closing date would that mean that subject to variations which are made applicable to everyone, any bid that comes after that closing date is not considered?

MR RAMOSEBUDI: From general perspective I don't have much knowledge on ...[indistinct] issues. I've been in treasury most of my life and ...

ADV CHASKALSON SC: Okay, well I mean there has been quite a lot of evidence at a general level around procurement. Can I ask if you can identify this particular
20 document, it is the bid document that was actually issued in respect of the SAA tender for the appointment of a consultant to assist in South African Airways Group with the unlocking and working capital? Can you identify this document as the bid document that was officially issued?

MR RAMOSEBUDI: Chairperson can I reserve my rights

to respond to this question in case I implicate myself?

ADV CHASKALSON SC: Then maybe just for the record Chair I would like to note that the issue date here is 19 November 2013, with the closing date of 4 December 2013, which is roughly two weeks after issue. But if we go back to page 113, we see a draft of the scope of work in this tender which corresponds very closely to the draft in the final document being emailed to Mr Wood at Regiments on the 14th of October.

10 A month, more than a month before the issue date of the tender that has roughly a two week period between issue and close. The second point that I would make just for the record is if one compares the evaluation criteria, that one sees on page 153, black 153.

CHAIRPERSON: I can't hear you, 130?

ADV CHASKALSON SC: I beg your pardon Chair. Just for the record ...

CHAIRPERSON: Yes.

ADV CHASKALSON SC: The date of 14 October and the
20 email of 14 October was black 115. Not, not 113. 113 Like I gave the wrong reference.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: I am indebted to my learned friend for that.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: If one goes to the evaluation criteria in the bid document which are at page 153 and one compares those evaluation criteria to the evaluation criteria that came back from Mr Wood, on 28 October, that is page 124 – sorry it is not page 124.

Yes it is page 124. Mr Wood sent back evaluation criteria on page – on 28 October 2013 and those evaluation criteria one sees from page 124 and one sees a fairly close correlation between those evaluation criteria
10 and the evaluation criteria that ultimately get released in the bid, which one can see at page 153.

And maybe the best place to do the comparison is with that track changes version of the document at page 127. But maybe let's move on in the chronology, after I have made those observations and I want to take you to page 202.

And on page 202 there is an email under cover of which a bid is attached. And that bid starts on page 203. And the signature page on that bid is – lost my reference.

20 **CHAIRPERSON:** Are you still at 202 Mr Chaskalson?

ADV CHASKALSON SC: I am at, I'm at 202. I just want to indentify the parties that signed off on this bid. You'll see that – maybe the best place to do it from is 202. The email on 202 is from someone called davidfine@McKinsey.com to Eric Wood.

And the what is attached is a completed bid. And if one, and there's some emails who were forwarded and the people who were, whose emails are forwarded are all McKinsey addresses. But this particular document is addressed to Mr Wood. And if one goes down to page 214, one will see three signatures, including Mr Fine of McKinsey, Nomfanelo Magwentshu at McKinsey and Christina Planet of McKinsey.

And in there is a space for Mr Wood to sign. Can I
10 ask if this, if you can identify this document as the bid document that was submitted jointly by McKinsey and Regiments?

MR RAMOSEBUDI: True yourself Chairperson, I am here assist you know the Chairperson and the Commission. However on this particular one I might not be able to respond to it in case I implicate myself.

ADV CHASKALSON SC: Well maybe I can just read then into the record the paragraph which is the second last paragraph before the signatures, on page 214:

20 "We fully appreciate the ..."

This is the bidder speaking:

"We fully appreciate the importance to as have achieving better management of its working capital and are confident that McKinsey and Regiments can offer distinctive and rapid bought routed in our deep

understanding of SAA and our extensive experience of supporting many airlines across the world facing comparable challenges. The suggested risk and upside sharing arrangements in our fee proposal reflect our belief and the value that is at stake and in our ability to deliver significant value for SAA.”

Can we then go down or before we go down to page 204, can I ask you a general question? Under the system of delegations at SAA at the time, what was the limit in
10 monitory terms of the value of a tender that could be awarded by the Bid Adjudication Committee without going to the Board for independent decision?

MR RAMOSEBUDI: From a general perspective it depends on the board delegation to the management. So on this particular one, I can’t give you an answer on it as I have already stated that I don’t want to implicate myself. And from a general perspective the maximum level depends on what the board has delegated management of.

ADV CHASKALSON SC: But does, does the system of
20 delegations not work according to value? So that the Bid Adjudication Committee – or let me put this question to you very specifically. Did the Bid Adjudication Committee have authority to make awards in amounts greater than 100 million rands?

MR RAMOSEBUDI: May I not respond to this one

Chairperson, in case I ...

ADV CHASKALSON SC: Okay, can we then go to page 228. And you will see there is a an email that is sent from you or from your - ...[indistinct] ramscap.coza address to – on 24 January 2014 to Eric Wood and to what was Gebre Selassie(?).

We have remembered who they are. And it says working capital BAC final recommendation. Can I ask you on 24 January 2014, had the award in respect of this
10 tender been made yet or was the tender still pending?

MR RAMOSEBUDI: May I not respond to this question
Chairperson, in case I implicate myself?

ADV CHASKALSON SC: Can I then ask do you recall forwarding or sending this email on 24 January 2014 to Eric Wood and toward Gebra Selassie, both whom worked at Regiments at the time?

MR RAMOSEBUDI: Again Chairperson, may I humbly request to not to respond to this question in case I implicate myself?

20 **ADV CHASKALSON SC:** Or let me then take you to the email that was forwarded. Well let's start with an anterior question. Again one sees what's forwarded is a chain that you've, that is first forwarded from the – your flysaa.com address to your ramscap address on 24 January 2014 at 10:44. Do you recall forwarding that email chain from your

SAA address to your ramscap address on 24 January?

MR RAMOSEBUDI: Chairperson I have been advised not to respond to this question in case I implicate myself.

ADV CHASKALSON SC: Well let's go then down to the chain itself. It starts with an email from yourself, 24 January 2014 at 10:43AM. It's addressed to Reinette Slabbert, you have told us she worked in procurement at SAA. Viwe Soga. Who is Viwe Soga?

MR RAMOSEBUDI: I can't recall exactly.

10 **CHAIRPERSON:** Just for the transcribers, Soga will be S-O-G-A. Is that correct sir?

ADV CHASKALSON SC: That is correct.

CHAIRPERSON: And Viwe, V-I-W-E, that should be easy. Okay, alright.

ADV CHASKALSON SC: And Nthabiseng and Ntshali? Do you remember who that person was?

MR RAMOSEBUDI: I recall.

ADV CHASKALSON SC: And who is she, who was she?

MR RAMOSEBUDI: She used to work for SAA.

20 **ADV CHASKALSON SC:** And in what department?

MR RAMOSEBUDI: I think it's risk. Risk.

ADV CHASKALSON SC: Risk. So she worked in risk at SAA. And Lindsey Olitzki, do you remember who Lindsey Olitzki – sorry and Nthabiseng is N-T-H-A-B-I-S-E-N-G. And Charlie Charlie is N-T-S-H-A-L-I N-T-S-H-A-L-I.

Lindsey Olitzki, O-L-I-T-Z-K-I. Do you recall who she was?

MR RAMOSEBUDI: Yes I recall.

ADV CHASKALSON SC: And who was she?

MR RAMOSEBUDI: She used to work in finance.

ADV CHASKALSON SC: She used to work?

MR RAMOSEBUDI: In finance.

ADV CHASKALSON SC: At S - in finance and at SAA?

MR RAMOSEBUDI: Yes, yes.

ADV CHASKALSON SC: Did she work at SAA?

10 **MR RAMOSEBUDI:** SAA finance.

ADV CHASKALSON SC: SAA finance. And Shireen Subroyen. SHIREEN and SUBROYEN.

MR RAMOSEBUDI: I think she worked, she worked for SAA.

ADV CHASKALSON SC: She worked for SAA. And would it be correct to say that Reinette Slabbert, Viwe Soga and Nthabiseng and Ntshali Ntshali, Lindsey Olitzki and Shireen Subroyen were all involved in work relating to SAA's processing of this tender?

20 **MR RAMOSEBUDI:** I can't recall whether they were members of the CFST or not, I can't recall.

ADV CHASKALSON SC: Sorry, you said whether they were members of the?

MR RAMOSEBUDI: Whether they were working on this transaction.

ADV CHASKALSON SC: You can't recall. Well your email may refresh you, or the email may refresh your memory. It says:

"Colleagues submission has been referred for rework."

CHAIRPERSON: This is on page 228 Mr Chaskalson?

ADV CHASKALSON SC: Foot of 228 Chair.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: "We need to discuss the pricing
10 with respect to delegation of authority. If McKinsey is approved as is, I will have to go to board and timing will be an issue. So that is the correct approach? To still recommend to McKinsey without breaching the procurement process? Would McKinsey reducing the cap level be the appropriate way to do? Or should we go back to or for BAFO, that would be best and final offer with the limited below board approval."

And can I or let's read on.

20 "Don't forget Boston was 14 million with 30 variables, IQ is 5,5 million with percentage savings but no cap. And McKinsey is zero fixed, but eight percent on savings with a 120 million which is above CEO delegation. Let's quickly reflect on this, we need to go for round robin early next week."

Can I ask, I framed my earlier question wrongly? When I – this email says 120 million is above CEO delegation. Does that mean that the CEO of SAA does not have authority to conclude a contract at 120 million and that such a contract has to go to the board?

MR RAMOSEBUDI: Chairperson may I not respond to this question, in case I implicate myself?

ADV CHASKALSON SC: Can I alright. Let's then proceed and we see at 235, sorry – yes page 235, there is
10 another email. It's also sent from your ramscap address on 24 January 2014. This time at 16:22. It is also sent, addressed to Eric Wood and the subject is the name of this tender, GSMOD80 085/13 RAP for the appointment of a consultant to assist the SAA Group with the unlocking of working capital.

And again it forwards an email that was forwarded from your flysaa address to your ramscap address. And can I ask you do you recall sending this email from your ramscap address to Eric Wood on the 24th of January 2014?

20 **MR RAMOSEBUDI:** Through yourself Chairperson may I not respond to this question in case I implicate myself?

ADV CHASKALSON SC: Again can I ask do you recall sending the email from your flysaa address to your ramscap address on 24 January?

MR RAMOSEBUDI: Chairperson I humbly request not to

respond to this question as I may implicate myself.

ADV CHASKALSON SC: Can I then get to the content of what was actually forwarded on this string and you will see at the last part of the string on page 235, it says, from Reinette Slabbert sent 16 January 2014 to Phetolo Ramosebudi, Nthabiseng, Ntshali Ntshali, Viwe Soga, Shireen Subroyen, Lindsey Olitzki. The subject is the same name of the tender that we have quoted repeatedly. It says:

10 “Dear team, good afternoon all. I have done the clarification of the rates with each of the short listed bidders, attached herewith please find the response from Boston Group Banks, Reinette Slabbert.”

Do you recall receiving this email from Reinette Slabbert on 16 January 2014?

MR RAMOSEBUDI: Through Mr Chairperson may I not respond to this question in case I implicate, implicate myself?

20 **ADV CHASKALSON SC:** And if you go down the chain further, you will see that at below Reinette, what Reinette Slabbert emailed forward is an email from someone called W-U-E-S-T, wuestmartin sent to Reinette Slabbert on 16 January 2014, copied to Shireen Subroyen, and someone called Urmias, U-R-M-I-AS, AS and Tenbite. T-E-N-B-I-T-E.

Can I ask if you are able to identify Urmias? U-R-M-I-A-S?

MR RAMOSEBUDI: On page 237?

ADV CHASKALSON SC: It is 236. 236. So it is the fourth line on page 236. E-R-M-I-A-S. Ermias. Does that ring a bell?

MR RAMOSEBUDI: No it does not ring a bell.

ADV CHASKALSON SC: And Tenbite or Tenbite, does that ring a bell?

MR RAMOSEBUDI: Which one is that?

10 **ADV CHASKALSON SC:** After Ermias.

MR RAMOSEBUDI: That is precisely why I said Chairperson may I request your permission not to respond to this question, because I might implicate myself by ...[indistinct].

ADV CHASKALSON SC: So, so that's in response to a question do you know, can you identify Tenbite?

MR RAMOSEBUDI: I don't want to respond to this question.

ADV CHASKALSON SC: Okay.

20 **MR RAMOSEBUDI:** I might implicate myself.

ADV CHASKALSON SC: And it says:

“Dear Reinette, I trust you have been well.

Response to your question as follows: Variable component in option 1, 70 percent refers to the fixed P proposed to this option, 70 percent of the

proposed fees are variable depending on your satisfaction with the project. And 2 at your targets achieved, how your gains achieved, evaluation in terms of both 1 and 2 above to be jointly agreed with you at the beginning of the project. Variable component in option 2, 60 percent refers to the fixed P, 60 percent to the proposed P's variable depending on your satisfaction at the end of the project, evaluation in terms to be jointly agreed with you at the beginning of the project. Should you require any further information do not hesitate to get in touch with me."

Would it be correct that this document is a document sent by Mr Vurst(?) on behalf of the Boston Consulting Group to Ms Slabbert who is assisting with the administration of the tender, setting out the terms of the or setting out material terms of the Boston bid? Is that correct?

MR RAMOSEBUDI: Again ...[indistinct] Chairperson may I not respond to these questions?

CHAIRPERSON: What ...

MR RAMOSEBUDI: I might implicate myself.

CHAIRPERSON: What I maybe should have said much earlier Mr Ramosebudi, but your lawyers would have advised you, but I just want to make sure you know about

it. Namely that when you don't answer questions, when there appears to be evidence pointing in a certain direction, which may include that the evidence may be pointing that there was some wrong doing on your part or that you may have been involved in some criminal activity or other wrong doing, when you don't answer questions relating to that, what it does mean is that I don't have evidence from you saying that evidence is not true.

That there is an explanation of what may seem to
10 be wrong doing on my part. This is the explanation, what it means is that when I write my report, I will have evidence that may be one sided and it doesn't mean that findings can't be made against you because of the evidence that has not been challenged. So I am sure your lawyers explained it, but I just want to make sure that you understand. You understand that?

MR RAMOSEBUDI: I, I do understand that Chairperson.

CHAIRPERSON: Yes, okay.

MR RAMOSEBUDI: Thanks so much.

20 **CHAIRPERSON:** Okay, alright.

ADV CHASKALSON SC: Mr Ramosebudi can we go to page 248?

CHAIRPERSON: Did you say 248?

ADV CHASKALSON SC: 248 Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And ...

CHAIRPERSON: And maybe before you proceed Mr Chaskalson, I see we are at one or two minutes past four. Let's talk about the way forward. I did agree to an evening session for myself, so a day session and even session for today, with regard to I think is the Denel work stream, but I am just mentioning that.

In terms of your own assessment, how much more time do we need with him and whether we would,
10 ...[indistinct] would finish with him tomorrow or you had in mind that we got, go into the evening? It's just that I am not sure whether the information may have been checked with you. I may have shared information about my evening session or not.

ADV CHASKALSON SC: Sorry Chair, today's taken considerably longer than I thought.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: The ...

CHAIRPERSON: But the bottom line is we will need to
20 deal with the evidence which are ...[indistinct].

ADV CHASKALSON SC: Indeed Chair.

CHAIRPERSON: How to go about it in terms of, of time.

ADV CHASKALSON SC: Chair, my sense is that we probably need another hour on SAA.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And another two to three hours on Transnet.

CHAIRPERSON: On Transnet. If we do an hour on SAA that would take us to about five o'clock. And one accepts that these things don't always go according to one's assessment. That would take us to about five o'clock. And then you said about what? Three hours on Transnet.

ADV CHASKALSON SC: Indeed Chair.

CHAIRPERSON: Yes. If we did SAA and finished today,
10 this, this afternoon that we were left with – with SAA, three hours of SAA, if one combines that, those three hours of SAA evidence with tomorrow's witness would we be able to finish tomorrow with him and the tomorrow's witness or not really?

ADV CHASKALSON SC: I suspect not.

CHAIRPERSON: [Indistinct].

ADV CHASKALSON SC: Because I think tomorrow's witness is Mr Makhubo.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** But my worry – Mr Makhubo's legal team have, have been concerned about time.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So we – it may be that we can, that it would suit them to do a little bit of Mr Makhubo tomorrow and on the issues where they need greater

preparation which may in part relate to the evidence of Mr Powell yesterday. I think from what they were saying to me, it may suit them to deal with issues relating to Mr Powell at a later date so that they have greater time to prepare.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So we certainly won't finish Mr Ramosebudi and Mr Powell. Oh and Mr Makhubo tomorrow.

10 **CHAIRPERSON:** Tomorrow. Okay. No that's fine. So it seems to me that maybe we should go on with this witness, at least finish SAA.

ADV CHASKALSON SC: That would, I think that would be ...

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Conceptually ...

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Would make sense Chair.

CHAIRPERSON: And, and, and then he could come back
20 tomorrow and we finish Transnet. And then start with Mr Makhubo in regard to those matters where they have concerns of not being, of not having had enough time. And then if he, Mr Makhubo must come back on another day to finish then maybe we could do that. What do you think?

ADV CHASKALSON SC: Subject to Mr Ramosebudi's

position.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I think that that from the Commission's perspective I think that would make much sense.

CHAIRPERSON: That would work.

ADV CHASKALSON SC: I don't know if Mr Ramosebudi is available.

CHAIRPERSON: Mr Ramosebudi how, how does that
10 sound to you? How is your situation about tomorrow if we,
if we stopped your evidence at 17:00 today and then
continue tomorrow morning? Mr Chaskalson's assessment
is that tomorrow we might need about three hours of your
time. And I will check with your lawyer what their situation
is, but I just want to hear from your side first. [Indistinct].

MR RAMOSEBUDI: Ja, excellent Chairperson, but I am
here to assist the Chair, you know the Chairperson, the
Commission.

CHAIRPERSON: Yes.

20 **MR RAMOSEBUDI:** What is the time it suits finishing it is
fine.

CHAIRPERSON: Yes, okay. Alright. Counsel for Mister,
how is your situation for tomorrow?

ADV MPOFU: Thank you Chair. Chair I am available
tomorrow, if I could just ask an indulgence?

CHAIRPERSON: Yes.

ADV MPOFU REPRESENTATIVE: I have an appearance from 10:00. It shouldn't be too long, so if we can maybe start and then stand the matter down to after 12:00 and then I would be able to come, because Mr Mpofu is not here. So we can come tomorrow, but if you can agree on a time. I understand there is another witness, so I am not sure if you want to start with that witness and then ...

CHAIRPERSON: Yes, it would have been better to
10 continue with him from today.

ADV MPOFU REPRESENTATIVE: Yes.

CHAIRPERSON: And up to when he finishes before we start the other witness, but it's that is not to say we can't start with Mr Makhubo tomorrow if we are going to finish with him at a certain time. And then this witness comes in, but preferably it would have been better the other way around. Mr Chaskalson what do you say?

ADV CHASKALSON SC: Chair I am in your hands entirely. I mean we do have the quite unique situation that
20 Mr Makhubo works in this building, so it may be possible for him to come.

CHAIRPERSON: Ja, ja.

ADV CHASKALSON SC: At 10:00 and then to come back later without much inconvenience.

CHAIRPERSON: Ja. And, and if need be, what is your

assessment of the time you might need with Mr Makhubo if there is that portion relating to ...[indistinct] that might have to be done on another day?

ADV CHASKALSON SC: Chair I think I would end up using most of tomorrow for finishing Mr Ramosebudi and dealing with material with Mr Makhubo that doesn't directly traverse Mr Powell's evidence.

CHAIRPERSON: Yes what I am trying to look at is whether if we start with Mr Makhubo and subject to his
10 availability if he was told ten o'clock he might have other things to do by nine o'clock, but if we could even start a little earlier whether it is nine or half past nine, that would give us some time. What I was having in mind is that we don't want a situation where he waits, this witness waits but we end up taking up the whole day with Mr Makhubo anyway and then he has to come back another time.

So I am trying to ...[intervenes]

ADV CHASKALSON SC: Chair we would certainly finish with Mr Ramosebudi if we started after lunch with Mr
20 Ramosebudi tomorrow and I could finish the non-Powell related issues with Mr Makhubo before lunch tomorrow.

CHAIRPERSON: Oh, if we start with Mr Makhubo tomorrow and we finish by lunch time ...[intervenes]

ADV CHASKALSON SC: Indeed, and we ...[intervenes]

CHAIRPERSON: You will finish by lunch time?

ADV CHASKALSON SC: I would finish the issues that don't deal with the material that Mr Powell addressed by lunch time, and then Mr Ramesebudi could possibly come back at two.

CHAIRPERSON: Okay then I think let's do it that way, I think therefore that would accommodate Counsel for Mr Ramesebudi so I think we should take a break now of ten/fifteen minutes and then we will come back, we do about an hour, at least we finish the SAA evidence with
10 this witness and then we adjourn his evidence until tomorrow after lunch.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Ja, that is right.

ADV CHASKALSON SC: Yes thank you Chair.

CHAIRPERSON: Okay, alright, you understand Mr Ramosebudi?

MR RAMOSEBUDI: Yes I do.

CHAIRPERSON: Okay, thank you for your cooperation; okay let's take an adjournment now. It is twelve minutes
20 past four, let's resume at twenty five past four.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV CHASKALSON SC: Thank you Chair. If we could continue from page 248 Chair, Mr Ramosebudi can I ask you to go to 248.

MR RAMOSEBUDI: I am on page 248.

ADV CHASKALSON SC: And at the top of that page you will see an email from Ramscap address sent on 24 January 2014 at 16:22 to Eric Wood, the subject is the tender description – the tender description we know quite
10 well now and again it is forwarding an email that has been forwarded from your SAA address to your Ramscap address which in turn has a string behind can we take it one step at a time, do you recall...[intervenes].

CHAIRPERSON: Are you looking at the top or the middle email at 248, Mr Chaskalson?

ADV CHASKALSON SC: So the top email at 248 is Phetolo@ramscap to Eric Wood at 16:22 on 24 January, it forwards an email below it, from PhetoloRamosebudi@flysaa.com, sent on the same day at
20 12:21 to Phetolo@ramscap.co.za and that, in turn, forwards a chain that ends with Reinette Slabbert or forwards and email from Reinette Slabbert on 16 January 2014.

CHAIRPERSON: Okay, alright.

ADV CHASKALSON SC: We'll take them one at a time.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Mr Ramosebudi, do you recall sending that email on 24 January 2014 at 16:22, to Eric Wood?

MR RAMOSEBUDI: Through myself Chairperson, may I not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Then, Mr Ramosebudi, do you recall forwarding, from your SAA address that email at 24 January 2014 at 12:21 to your Ramscap address?

10 **MR RAMOSEBUDI:** Through myself Chairperson, may I not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Can we then go down to that email from Reinette Slabbert, of 16 January 2014, it's addressed to yourself, to ...[indistinct 2.37], to Viywe [?] Sogo [?], Lindsay Alitski [?], Shereen Sobrian, it has the subject line that they all have and it says:

“Dear Team,

Attached herewith please find the response from the IQ Group relating to the question of IQ Group Rael Consulting and the Hackard [?] Group”,

20

Can I ask you first, were the IQ Group Rael Consulting and the Hackard [?] Group a consortium that had bidden – that had put in a bid for this tender?

MR RAMOSEBUDI: Again, Chairperson, may I not respond to this question, in case I incriminate myself.

ADV CHASKALSON SC: If we can go over the page and to page 249, we see – sorry can we go back, I’m just trying to see, I think there is a - yes, right at the bottom of 248 we see an email from Jonas Schoefer right at the bottom of 248, Jonas Schoefer dated 16 January 2014 and it’s – if we go over to 249 we see that it is addressed to Reinette Slabbert, it says:

“Dear Reinette,

Apologies the confirmed fixed fee for phase one is
10 4.9million ZAR plus VAT, Kind Regards Jonas
Schoefer”,

And can I ask you, is this an email which sets out material terms of the bid that was put in by the IQ Group and Hackard, that consortium?

MR RAMOSEBUDI: Again, through myself, Chairperson, I may not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Can I ask, then, that we go to page 232 and there, again, it’s a similar sort of chain at
20 the top there is an email from your Ramscap address at 18:35 to Eric Wood on 24 January 2014, subject line that they all have. It forwards below, an email that has been forwarded from your flysaa.com address to your Ramscap address and below that is an email from Reinette Slabbert on 16 January 2014, can we take them one at a time. Do

you recall sending this email to Eric Wood on 24 January 2014 at 18:35?

MR RAMOSEBUDI: Through myself, Chairperson, may I not respond to this one in case in incriminate myself.

ADV CHASKALSON SC: And can we then go a little further down to that Ramscap – the second email in the string, do you recall sending that from your flysaa address to your Ramscap address on 24 January at 12:21?

MR RAMOSEBUDI: With your permission, Chairperson,
10 may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: And then, if we go to the Reinette Slabbert email of 16 January 2014, it's addressed to yourself to Ntabiseng [indistinct], to Lindsay Alitski [?], to Viywe [?] Sogo [?] and Shereen Sobrien, it's got the heading that all of these emails have, it says:

“Dear Team,

Attached herewith please find the response from Mckinsey, thanks”

And below it, is forwarded a email from Christina
20 Planert of Mckinsey to Reinette Slabbert on 16 January 2014, and that email says:

“Hello Reinette,

Thank you very much for your email, I wanted to confirm your understanding of our pricing proposal, in the event that no savings are identified we will

charge no fees. This is in spirit of 100% aligned incentives between SAA and ourselves, thank you very much, please let me know should you have further questions, Christina”.

Can I ask you, first do you recall receiving that email from Reinette Slabbert on 16 January 2014 at 5:04pm?

MR RAMOSEBUDI: With your permission, Chairperson, may I not respond to this one in case I incriminate myself.

10 **ADV CHASKALSON SC:** And then if I can go down to the Christina Planert that is forwarded by Reinette Slabbert to, what appears to be your SAA address and that of others, would it be fair to say that Christina Planert email sets out the material term of the Mckinsey bid in a consortium with Regiments?

MR RAMOSEBUDI: I would like to humbly request, Chairperson, not to respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Then, Mr Ramosebudi, can we
20 go a little bit further down to page 255. There you will see an email that appears to have been sent from Reinette Slabbert to you on 28 January 2014, it’s addressed to you, to Lindsey Alitski, Shereen Sobrien, Viywe Sogo and Ntsabiseng Nchalechali [?], that – can I first ask you, that list of addressees, is there anyone on that list who wasn’t

working at SAA at the time?

MR RAMOSEBUDI: May I not respond to this one Chairperson, in case I incriminate myself.

ADV CHASKALSON SC: Okay, well let's read the email:

“Dear Team,

10 Please refer to the clarification from McKinsey regarding the capped amount. I suggest the following to bring the bidders in line with the McKinsey pricing. Boston Group and IQ Group to submit their complete pricing based on the unlocking of R1.2billion savings, please confirm urgently if you're all in agreement with my suggestion”,

And underneath that, which – that email, there is the forwarded email which comes from Christina Planert of McKinsey addressed to Reinette Slabbert on 28 January 2014 and copied to a series of other people, all of them who are, either at McKinsey or SAA people, Shereen Sobrian is the SAA person and it says,

20 “Hello Reinette, thanks as per the below the capped amount will reduce to 70 to 80.5million, assuming we unlock savings of one to 1.2billion, thanks Christina”,

You have declined to answer whether you received the email from Christina Slabbert but can I ask you,

whether you recall that in the course of this tender process, McKinsey confirmed that, if they unlocked savings of one to 1.2billion their capped amount would reduce to 80.5 – between 70 and 80.5million?

MR RAMOSEBUDI: Again, Chairperson, with your permission, may I not respond to this one in case I incriminate myself.

ADV CHASKALSON SC: Can I ask a follow-up question, if McKinsey's capped amount had been reduced to a
10 maximum cap of 80.5million, would the CEO have had authority to award this contact or to sign this – conclude this contract or would it have had to go to the Board?

MR RAMOSEBUDI: Chairperson, with your permission, may I not respond to this one, in case I incriminate myself.

ADV CHASKALSON SC: Can we then, go back to the Reinette Slabbert, same page, start of that string on 255, the suggestion from Reinette Slabbert is:

“I suggest the following to bring the bidders in line with the McKinsey pricing. Boston Group and IQ
20 Group to submit their complete pricing based on the unlocking of R1.2billion savings”,

Would it be fair to say that, what Christina Slabbert was suggesting was, McKinsey had now told us what our cap is, if they realise savings of R1.2billion, let us go back to Boston and IQ Group to see what their pricing will be if

they realise savings of R1.2billion, is that what she was suggesting?

MR RAMOSEBUDI: Thank you Chairperson, may I be given the opportunity to not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Can I then take you to the following – to page 261, sorry it's actually the bottom of 260, you'll see the last email on the page, Reinette Slabbert, Wednesday 29 January 2014 7:56am, I ask that
10 you make a note of that time, it's addressed to yourself, Ntabisent Ntalichali, Lindsay Alitski, Shereen Sobrien and Vuyiwe Sogo, it's got that same subject line, it says,

“Dear Team,

Attached herewith, please find the response from BCG, which would be Boston Consulting Group, should there be an amount of R1.2billion to be unlocked, thanks, Reinette Slabbert”,

And below that, what is forwarded is an email from Martin Wurst who we've met already as a representative of
20 Boston Consulting, it's 28 January 2014 to Reinette Slabbert at 11:21pm to Reinette Slabbert, copied to Shereen Sobrien...[indistinct 14.15] and Thembite [?], same subject line,

“Dear Reinette,

Thank you for your enquiry clarification, we propose

two options in the proposal for SAA to consider so I'll provide feedback on your question for each of the options. Option one, benchmarking, opportunity identification, SAA enablement, priority initiative implementation, phases one benchmarking and top down target setting, two, target validation setting aside ...[indistinct 14.47], three, roll out of initiatives for prioritised ...[indistinct 14.50] enablement up skilling of SAA variable component.

10 Seventy percent of the fees are variable, based on your satisfaction at the end of the project and target being realised in priority initiative implementation, the valuation terms to be jointly agreed with you at the beginning of the project. If we assume that Boston Consulting Group identifies and unlocks capital to the value of R1.2billion as part of the prioritised project roll out, then the maximum cost to SAA would be R14million. Note it could be less depending on the exact evaluation terms that are

20 agreed with you before commencement.

Option two, benchmarking opportunity identification SAA enablement monitor initiative implementation, phase one, benchmarking and top down target setting, two target validation settings size of the prize, three, monitoring roll out of initiatives by SAA

for enablement up skilling of SAA variable component, 60% of these are variable based on your satisfaction at the end of the project, the evaluation terms to be jointly agreed with you at the beginning of the project. If we assume that BCG identifies and monitors the roll out of the initiative by SAA to unlock capital to the value of R1.2billion then the maximum cost to SAA would be R10.2million, note it could be less depending on the exact evaluation terms that are agreed with you before commencement. I hope this provides clarity, please do not hesitate to get in touch should you require more information”,

Would it be fair to say that what has happened now, is that, Reinette Slabbert, who had suggested earlier that she should go to Boston and IQ to find out what their pricing would be on an unlocking of savings at R1.2billion has done that without any instruction to do that from the Committee or from anyone else, can I ask that question first?

MR RAMOSEBUDI: Through myself Chairperson, may I be permitted not to respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Okay, and the second part of my proposition to you is that, in response to Reinette Slabbert,

Boston have come back with two options for unlocking of savings of R1.2billion which would cost a maximum to SAA of R14million on one and R10million on the other, is that what the Boston response means?

MR RAMOSEBUDI: Again, Chairperson, may I permitted not to respond to this question, in case I incriminate myself.

ADV CHASKALSON SC: Can I remind you that we have looked earlier, at the McKinsey response and I forget the
10 exact number but it was in the region of R80million, let me just find that, if one goes to 232, that's where that chain begins and the – no it's not 232, I apologise, let me just take you there again. It is at the bottom part of page 255 where Christina Planert wrote the email on 28 January,

“Hello Reinette,

Thanks, as per below the capped amount will reduce to 70 to 80.5million, assuming we unlock savings of one to 1.2billion”.

So, the McKinsey cap would be at 80.5, the Boston
20 cap would be, either 10 or 14. Can I then take you to – and when I say McKinsey, it is, of course a joint bid of McKinsey and Regiments, can I take you to page 260.

MR RAMOSEBUDI: I'm here.

ADV CHASKALSON SC: If you see in the middle of the page there is an email that you send on 29 January 2014

at 8:41am to Reinette Slabbert and to Ntabiseng Ntalichali, Lindsay Alitski, Shereen Sobrien, Viywe Sogo, the usual subject line and the text of the email reads,

“Colleagues, I’m seriously very unhappy the way this tender is run. Reinette seems to be biased and we cannot ...[indistinct 19.42] best and final offer after ...[indistinct 19.45] because someone didn’t price the way Reinette expected”,

Do you recall sending that email to Reinette
10 Slabbert, Ntabiseng Ntalichali, Lindsay Alitski, Shereen Sobrien and Viywe Sogo?

MR RAMOSEBUDI: Chairperson, may I not respond to this question in case I incriminate myself.

CHAIRPERSON: Thank you, Mr Chaskalson, I didn’t hear the page so?

ADV CHASKALSON SC: Chair, it’s 260.

CHAIRPERSON: Oh, I am on that page, I think I just didn’t see...[intervenes].

MR CHASKALSON SC: It’s the middle email, it says from
20 Phetolo Ramosebudi, 29 January 2014, 8:41am.

CHAIRPERSON: Ja, now I see it ja.

ADV CHASKALSON SC: And if we go up the page to the top of the page we see a response from Reinette Slabbert on page – at the top of page 460, Wednesday 29 January 2014 at 8:50, it’s addressed to you, to Ntabiseng

Ntalichali, Lindsay Alitski, Shereen Sobrien and Viywe Sogo,

“Dear Team,

This is not the case being brought this was just trying to get an understanding of what the costing would be, thanks, Reinette”.

Do you recall getting that email from Reinette Slabbert on 29 January 2014 at 8:50?

MR RAMOSEBUDI: Through myself Chairperson, may I
10 not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Can I ask a separate question, was there any attempt, after this exchange of emails to measure the price of the McKinsey/Regiments joint bid against the price of the Boston bid on the assumption of an unlocking of R1.2billion capital?

MR RAMOSEBUDI: With permission, Chairperson, may I not respond to this question, in case I incriminate myself.

ADV CHASKALSON SC: Can I then take you to page 275, it's an email from Christina Planert to Reinette Slabbert
20 copying yourself, Nomfulelo [?] Magwensu [?] at external McKinsey.com and copying somebody else called Marlene Voster at McKinsey.com, the usual subject line, an attachment is a document 20/14/02/05 appointment letter, SAA signed, Mackay,

“Dear Reinette,

Thank you very much again for the appointment and trust in our partnership. Find attached the signed appointment letter. I know we're trying to connect to find a suitable slot for the meeting next week. Ahead of this meeting would you be able to give us an indication as to when SAA would like to start the work i.e. for when should we try to have a full time team on the ground, thank you very much, Christina".

10 Can I ask you first, did you get this email from Christina Planert on 6 February 2014?

MR RAMOSEBUDI: With permission, Chairperson, may I not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Can I ask you then, were McKinsey appointed – wee McKinsey, ultimately appointed to this bid, do you recall?

MR RAMOSEBUDI: With your permission, again, Chairperson, may I not respond to this question, in case I incriminate myself.

20 **ADV CHASKALSON SC:** Well Mr Ramosebudi, I think it – the Commission will bring evidence to show that the McKinsey/Regiments consortium was successful in relation to this bid and, in fact, performed the contract. Can I take you, last to a document which you may not have seen previously, it's – if I can ask you to go to page 597 – sorry

not 597, if you can start at page 590. This document is a spreadsheet produced internally by Regiments, it had the subject line, advisory invoices tracking. It had a number of tabs, there are – and what it reflected is the revenue generated by the McKinsey advisory unit and the payments that, that unit had to make in respect of each contract or each invoice to what it called business development partners which were usually shelf companies set up by Salim Essa. Can I take you to page 594?

10 **MR RAMOSEBUDI:** Page what?

ADV CHASKALSON SC: 594.

MR RAMOSEBUDI: 594?

ADV CHASKALSON SC: We see, for instance here, the page dealing with Transnet and I'll show you how the systems works before we get to your page.

MR RAMOSEBUDI: I can see it...[inaudible mic off].

ADV CHASKALSON SC: You can't read what appears on 594?

CHAIRPERSON: Ja it's very difficult...[intervenes].

20 **ADV CHASKALSON SC:** Well we'll have to get you a better copy of this, the – what one sees on 594, if I might...[intervenes].

CHAIRPERSON: On mine, Mr Chaskalson it's not the – it's not that the copy is a poor one but that the words are very small on mine, it seems that it's just the size of the

words...[intervenes].

ADV CHASKALSON SC: Of the font?

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Maybe we should get this document produced in A3, I have one very simple question relating to it at a later stage. The – what we see on 594, an it's the format of a lot of these spreadsheets is, the first column is the client who's been invoiced by Regiments, the second column is the date, is the month of the work, third
10 column is the date of the invoice, the fourth column is the invoice number the fifth column is the project, the sixth column is the amount and then what one sees in the seventh column is amounts that have had to be paid out to these companies like on page 594 the companies that get paid out are Travito and Homix. Travito and Homix, Homix, Travito, Homix and the last company is called For Sure and on the right of For Sure is another one of these shell companies called House Stuff. Evidence, will, in due course be led that these were shell companies that were
20 used to channel a substantial proportion, usually 50% of the revenue from organs of State to entities nominated by Salim Essa and Ashok Narayan from which they were laundered on. I am interested in page 596, which has – is hopefully a little bit bigger, I'm not sure if 596 is legible to you.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Can you see that the last heading on 596 is SAA?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: And can you see under month, it says March '15?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Date invoice 31/03/2015?

MR RAMOSEBUDI: Yes.

10 **ADV CHASKALSON SC:** And invoice number MK/SAA1001?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Project, working capital optimisation project, March to October 2014?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Amount 6 241 500, can I stop there, can I ask – this is inclusive of VAT, can I ask if you're aware whether the fee paid to Regiments by SAA on this contract was R6 241 500?

20 **MR RAMOSEBUDI:** Again, through myself Chairperson, may I not respond to this question, in case I incriminate myself.

MR CHASKALSON SC: And the next column, which is the column that relates to the entity that is usually the shell entity designated by Salim Essa or Ashok Narayan to take

a cut, you'll see on the top it says Homix, there's an amount of 2 496 600 in there, are you aware whether any of the amounts paid by SAA to Regiments on this contract were paid on to a shell company designated by Salim Essa or Ashok Narayan?

MR RAMOSEBUDI: Again, Chairperson, with your permission may in not respond to this question in case I incriminate myself.

ADV CHASKALSON SC: Chair, what we – this is a
10 document that the – that exists in very many different iterations because it's constantly updated and the flow of funds team will be referring to various copies of it from time to time but we'll make sure that it comes back in an A3 format, so that the individual line items can be identified.

CHAIRPERSON: Yes, that's fine.

ADV CHASKALSON SC: And Chair that concludes my questions in relation to SAA, as I mentioned earlier we will have more questions in relation to Transnet.

20 **CHAIRPERSON:** Yes. Okay, Mr Ramosebudi we are – I am going to excuse you but ask you to come back tomorrow as arranged. Mr Chaskalson should we say two o'clock should be fine?

ADV CHASKALSON SC: Two o'clock will be fine Chair.

CHAIRPERSON: Ja, your counsel obviously hears the

times so – but thank you very much for coming to give evidence and assist the Commission as much as you can, you are now excused. Your team is excused too, your legal team.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Thank you. I will then excuse you Mr Chaskalson and your team, I will take a short break and then after about fifteen minutes I will start my evening shift.

- 10 **ADV CHASKALSON SC:** Thank you Chair, might I ask from my side I certainly don't expect that I will need more than the three hours from ten to one to deal with material with Mr Makhubo that does not embrace anything that Mr Powell addressed yester.

CHAIRPERSON: Oh, so we don't need to start early tomorrow?

ADV CHASKALSON SC: Can we start at ten tomorrow?

CHAIRPERSON: Then we can start at ten tomorrow.

ADV CHASKALSON SC: Thank you Chair.

- 20 **CHAIRPERSON:** Okay, alright, I will take a fifteen minute break, then at quarter past five we will start the evening session with the Denel Group. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Kennedy, good afternoon everybody.

ADV KENNEDY SC: Good afternoon Chair.

CHAIRPERSON: I know that we probably are all on the evening session having done our day sessions and different places.

ADV KENNEDY SC: Yes. Are you ready?

ADV KENNEDY SC: We are thank you Chair.

CHAIRPERSON: Yes.

10 **ADV KENNEDY SC:** Chair – so this is a resumption of the hearing of evidence in the Denel stream. You will recall that a long time back Mr Riaz Saloojee the former Group Chief Executive Officer of Denel gave evidence.

CHAIRPERSON: Yes.

ADV KENNEDY SC: End of 2018 beginning of 2019.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And he has been asked to come and give further evidence arising from certain allegations made that relate to him by other witnesses that you have already
20 heard.

CHAIRPERSON: Yes. Yes.

ADV KENNEDY SC: Chair may I ask before we deal with where you can find the affidavits and so forth that he can be sworn in?

CHAIRPERSON: Yes please administer the oath or

affirmation. Welcome back Mr Saloojee. Thank you.

REGISTRAR: Please state your full names for the record.

MR SALOOJEE: Riaz Saloojee.

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

MR SALOOJEE: No.

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

MR SALOOJEE: Yes.

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

MR SALOOJEE: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you; you may be seated. Yes Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Chair the affidavit and annexures that came before you previously when you
20 heard the original evidence of Mr Saloojee are to be found in Exhibit W4.1. So I beg your pardon W4A and B. What you should have had placed before you now is Bundle 10 Denel Bundle 10 which includes the supplementary affidavit and you will find the supplementary affidavit Chair from page 799 in Bundle Denel 10.

CHAIRPERSON: Page 7?

ADV KENNEDY SC: 99.

CHAIRPERSON: Okay. Yes.

ADV KENNEDY SC: It hopefully has been flagged like ours as Exhibit W4.1.

CHAIRPERSON: Yes it has.

ADV KENNEDY SC: And if I may ask the witness the usual questions just to get confirmation that he has signed in fact I see it is – Mr Saloojee if I could ask you please to turn to
10 page 799? Is this the first page of the affidavit or statement that you have prepared at the request of the commission? Is that correct Mr Saloojee?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And if I can ask you please to turn to page 806 in fact sorry at the foot of 805?

MR SALOOJEE: Yes.

ADV KENNEDY SC: There is a signature near the foot of the page, is that your signature?

MR SALOOJEE: Yes.

20 **ADV KENNEDY SC:** And is it correct that you...

CHAIRPERSON: You will have to speak up please Mr Saloojee.

MR SALOOJEE: Thank you Chair. Yes.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Thank you. And is it correct that you

signed this affidavit before a Commissioner of Oaths?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Right. Now as your affidavit indicates you were asked to provide additional information in a form of responses to particular points raised by other witnesses. And we are going to take you through the particular topics in that regard.

I am going to come back to the – later to the first few issues that you deal with in your affidavit and those...

10 **CHAIRPERSON:** Are there two statements? I think there seems to be another one or is it a duplication at page 807 Mr Kennedy?

ADV KENNEDY SC: Yes in fact there is a second one on...

CHAIRPERSON: That one is a statement – the first one is an affidavit.

ADV KENNEDY SC: That is what was confusing me earlier. Yes page 807 may I just ask Mr Saloojee is that a further supplementary statement that you have given? Very recently on the 24 November.

20 **MR SALOOJEE:** Yes Chair.

ADV KENNEDY SC: And is that your signature on the – on page 816?

MR SALOOJEE: Yes Chair.

ADV KENNEDY SC: Is there any reason why that has not been signed in front of a Commissioner of Oaths? I am not

trying to catch you out I am just interested?

MR SALOOJEE: Chair I am not sure. We can rectify that.

ADV KENNEDY SC: If you would please.

MR SALOOJEE: Yes.

ADV KENNEDY SC: If we can trouble you to have that resigned in front of a Commissioner of Oaths and if you would please then forward that to the legal team so that it can be placed before the Chairperson of this commission.

MR SALOOJEE: Yes Chair.

10 **ADV KENNEDY SC:** Right. Now Mr Saloojee for both of these affidavits/statements you confirm that you have been through them and that you confirm the correctness of their contents?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: I am sorry Mr Kennedy. Maybe – maybe it is going to cause confusion if he is going to sign the same document before a Commissioner of Oaths on the date after today. Maybe as long as he confirms under oath that what – that the contents are true and correct to the best of his
20 knowledge and belief then effectively becomes an affidavit.

ADV KENNEDY SC: Indeed Chair.

CHAIRPERSON: So as to avoid any confusion.

ADV KENNEDY SC: Yes thank you.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Mr Saloojee so it seems it is not

necessary for you to go through that formality but can I just confirm you – just remind you that you have just taken an oath before the Judge the learned Judge's Registrar and before the Chairperson of the commission do you confirm under oath that the contents of this statement that has not previously been sworn to before a Commissioner of Oaths is in fact in all respects true and correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Right thank you. You can actually –
10 yes. Can I just pass on a message from the technical people? Can you just switch on your microphone and you can leave it on.

MR SALOOJEE: I leave it on.

ADV KENNEDY SC: Yes just leave it on throughout your evidence.

MR SALOOJEE: Okay.

ADV KENNEDY SC: Until you are excused from the witness box. It is going to be easier for you I am sure and also for the technical people. Chair may we then ask that the
20 affidavit that appears from page 799 be formally admitted as Denel Exhibit 4. – sorry W4.1.

CHAIRPERSON: We will leave out Denel. Denel will be fine for the bundle. We just say Exhibit whatever – whatever.

ADV KENNEDY SC: I am sorry I did not get that Chair.

CHAIRPERSON: Okay. I am saying for purposes of what

exhibit we will call it we will leave out the word Denel.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Ja.

ADV KENNEDY SC: So it will be W4.1.

CHAIRPERSON: The affidavit of Mr Riaz Saloojee starting at page 799 is admitted as Exhibit W4?

ADV KENNEDY SC: .1

CHAIRPERSON: 4.1 Okay alright.

ADV KENNEDY SC: Thank you Chair. And may we ask that
10 the statement/affidavit from page 807 be admitted as W4.2?

CHAIRPERSON: The statement by Mr Riaz Saloojee starting at page 807 is admitted as Exhibit W4.2.

ADV KENNEDY SC: Thank you Chair. Chair I propose to be as brief as I can be with this witness.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Particularly because he has already given detailed evidence led by the previous Denel team.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Admittedly some time ago but the
20 evidence is transcribed and it is available to you.

CHAIRPERSON: Yes. Okay.

ADV KENNEDY SC: What I am going to focus if I may is just on specifics aspects that have arisen from other witnesses testimony that – that call for comment by Mr Saloojee or that he has taken the trouble to deal with by way of comment in

his affidavits that have now been admitted.

Mr Saloojee may I please take you in Bundle 10 to page 801? Yes I think you have it in front of you.

MR SALOOJEE: This one?

ADV KENNEDY SC: I think it is that one yes just look for page 801. And remember it is the top left hand.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Black printed numbers.

MR SALOOJEE: Yes.

10 **ADV KENNEDY SC:** 801. At the foot of the page do you see there is a heading Award of the Platform Hulls Contract to VR Laser Services?

MR SALOOJEE: Yes.

ADV KENNEDY SC: During October 2014. Now Mr Saloojee you have adamantly denied an allegation that was made by Mr Stephan Burger that you instructed Mr Ntshepe to work with and trust Mr Essa. Just explain to the Chair please what in fact you may have given by way of instructions to Mr Ntshepe?

20 **MR SALOOJEE:** Thank you Chair. Firstly I have never instructed Mr Ntshepe to work with Mr Essa. As I have indicated in my previous testimony before yourself that I had introduced Mr Ntshepe as head of Business Development and Marketing to Mr Essa as we have done with many other clients and customers that we should manage that

relationship. There was never an instruction for him to work with Mr Essa.

CHAIRPERSON: Well it might depend what meaning one attaches to the phrase work with Mr Essa. Certainly what on your own evidence you had done as I recall your evidence last year was to say to Mr Essa I think Mr Ntshepe was going to be the contact person or the person who would deal with him at Denel in regard to whatever Mr Essa was wanting to deal with with Denel. And I think you said you had said the
10 same thing to Mr Ntshepe to say from now on you attend to him or some – or some – or words to that effect, is that right?

MR SALOOJEE: That is correct Chair.

CHAIRPERSON: And obviously that meant that there would be interaction between the two of them.

MR SALOOJEE: That is correct Chair.

CHAIRPERSON: Whether you call that working with Mr Essa or not that might be so but you had instructed him or asked him to be the person to attend to Mr Essa whenever Mr Essa
20 wanted to deal with Denel on whatever the matters were.

MR SALOOJEE: That is correct Chair.

CHAIRPERSON: Ja okay.

ADV KENNEDY SC: Chair just to pause for a moment. My attention has just been drawn to the fact that Mr Saloojee has a legal representative present.

CHAIRPERSON: Oh.

ADV KENNEDY SC: Who is apparently a – who is apparently a candidate attorney Ms Gahle and I apologise to her for not having raised it before.

CHAIRPERSON: Ja but I do not think a candidate attorney can – has a right of appearance here.

ADV KENNEDY SC: Perhaps not but just so that you that he – he is accompanied by somebody from his attorneys.

CHAIRPERSON: Well she can sit as an observer but I do
10 not think she has a right of appearance here.

ADV KENNEDY SC: As you please Chair.

CHAIRPERSON: Let us continue.

ADV KENNEDY SC: Now Mr Burger has – has given evidence that – that you were pressuring him to appoint VR Laser for the hulls contract and your evidence has been the contrary that you have been pressured by Mr Burger and perhaps others within the organisation to appoint VR Laser for the hulls contract. Now do you persist with your version?

MR SALOOJEE: Yes Chair absolutely. I never gave any
20 instruction to Mr Burger to work with VR Laser.

ADV KENNEDY SC: Now you were – you told me earlier you were able to listen to at least part of Mr Burger's evidence last week, is that right?

MR SALOOJEE: Yes Chair.

ADV KENNEDY SC: Yes. Did you hear his evidence in

relation to this aspect?

MR SALOOJEE: Part of it Chair.

ADV KENNEDY SC: I beg your pardon.

MR SALOOJEE: Part of it.

ADV KENNEDY SC: Part of it I see.

CHAIRPERSON: You can just lower the microphone so that you do not have to stretch yourself. Ja okay.

ADV KENNEDY SC: Now Mr Saloojee it just seems rather odd that where we have two senior experienced business
10 people both with a wealth of experience, both in your case and in the case of Mr Burger – of course you were senior but both of you had huge amounts of experience. It just seems odd that you are both so adamant on versions that are completely contrary and it does not seem the sort of thing that would slip ones' mind and that one cannot remember all the detail this sounds at least to me as an outsider to be quite a fundamental issue. And so one has to wonder why is there a difference – this fundamental difference in opinion or version rather. Do you have any comment on that?

20 **MR SALOOJEE**: Chair if I may? The fact of the matter is that Mr Burger alleged that I had given him an instruction. I have never given him an instruction to work with VR Laser.

If events or how events have unfolded over time dictates that we determine how did this process be initiated. Of course there is going to be some level of culpability in

terms of where did this idea emanate from and I think that is what I am responding to. That there was never a discussion between myself and Mr Burger where I explicitly giving him an instruction to work with VR Laser.

ADV KENNEDY SC: Could it have been implicit? Could it have been a subtle hint? Could you have done that?

MR SALOOJEE: Chair I would be very clear about whether it was explicit or implicit.

ADV KENNEDY SC: Par of his version is that you
10 specifically raised this by way of a proposal and then an instruction on the basis that VR Laser should be given this contract because of their political clout.

MR SALOOJEE: With respect to Mr Burger that would be political suicide if I had made a comment like that. I mean how would I make a comment to give people work because they have got political clout? It is just not in my nature in my own understanding of who I am to behave in that manner.

ADV KENNEDY SC: We dealing with a situation in 2014 is that correct? That is when VR Laser was contracted.

20 **MR SALOOJEE:** 2014.

ADV KENNEDY SC: By DLS to do the platform hulls.

MR SALOOJEE: That is correct Chair.

ADV KENNEDY SC: Right. At that stage you must have been aware of the true ownership of VR Laser not so?

MR SALOOJEE: Yes Chair that was publicised in the media

and elsewhere.

ADV KENNEDY SC: Yes. And was that before or after you gave approval for this contract?

MR SALOOJEE: Before Chair.

ADV KENNEDY SC: Yes. And did it raise any alarm bells when it was being proposed to you by management that you should approve the award of a very major lucrative contract to a company that had connections with business people who were the subject of enormous media controversy?

10 **MR SALOOJEE:** Chair at that point there were no legal processes that I was aware of that were being taken against VR Laser itself or the owners of VR Laser. It would have been remiss of me to not allow anybody a due process in terms of wanting to do business with Denel. And that is the view that I had taken at that point.

ADV KENNEDY SC: What seems to have happened though Mr Saloojee is not that they were just given an equal chance to compete with the rest of the market in a competitive bid process either an open publicly advertised tender or a closed
20 restricted bid process, is that not right?

MR SALOOJEE: Sorry Advocate can you just repeat that?

ADV KENNEDY SC: Well there was not an open tender process here, was there?

MR SALOOJEE: There was a closed tender in my understanding.

ADV KENNEDY SC: There was a closed tender.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Three bids were solicited one from VR Laser, one from LMT the in-house group – group entity, correct? Is that right?

MR SALOOJEE: Yes that is correct.

ADV KENNEDY SC: And then a company if I recall its acronym was DND?

MR SALOOJEE: DCD.

10 **ADV KENNEDY SC:** DCD I beg your pardon you quite correct. Yes. And do you know how it came about that VR Laser was selected as one of the lucky three to put in their bids?

MR SALOOJEE: That proposal came from the division in Denel called Denel Land Systems which Mr Stephan Burger was the CEO.

ADV KENNEDY SC: Yes. Of course Mr Burger's version is not only that you instructed him to give a contract to VR Laser because of their political clout it is that he happened
20 to be very happy with that – receiving that sort of instruction because he believed that VR Laser was really the best entity to be able to do this sort of contract. Were you aware of that support that he had for their technical or production characteristics?

MR SALOOJEE: Chair of course I was aware of the fact that

there was a company called VR Laser that was very capable in this industry and he made no bones about that. Why would I then instruct an individual to work with them when he had already indicated that that is the company that had preferred? It does not make sense.

ADV KENNEDY SC: Now were you....

CHAIRPERSON: Before – before Mr Kennedy continues can I just ask this question? You said it was a closed tender process that was followed here. Was there a provision in the
10 Procurement Policy of Denel for a closed – for what you call a closed tender process?

MR SALOOJEE: Chair historically for critical capabilities historically even before I got there there has always been a process where you could have a closed tender for critical strategic capabilities.

CHAIRPERSON: No I understand the – I understand the historical part but that says there was a practice so I am asking whether that practice was something that was based on some provisions of the policy or was it a practice that was
20 outside of the policy of the company?

MR SALOOJEE: Chair this – there was a policy pre-dates me but that was the norm in the organisation.

CHAIRPERSON: But you – you – are you or are you not aware whether in the company policy there was a provision for this so called closed tender policy – process?

MR SALOOJEE: Chair I am not sure.

CHAIRPERSON: You are not sure?

MR SALOOJEE: No.

CHAIRPERSON: Okay but you say in terms of practice that had been done over a long period of time and I think that is what Mr Burger was also saying. I think he too if I am not mistaken could not point to anything in the policy that may have dealt with that. I may be mistaken.

MR SALOOJEE: Yes.

10 **ADV KENNEDY SC:** I just wanted to check that.

CHAIRPERSON: Yes Chair.

CHAIRPERSON: Okay. Mr Kennedy what is your recollection Mr Kennedy on this point?

ADV KENNEDY SC: Chair the issue of whether it should have been an open tender or opposed to a closed bid tender was not a matter of concern raised by either Ms Malahlela or by Mr Mlambo. Their concern though was the way in which it was – in which it was carried out and whether the other procedures had been followed. So it was not that that there
20 was not an openly advertised tender.

CHAIRPERSON: Yes but you see Mr Saloojee says yes there was no open tender.

ADV KENNEDY SC: Yes.

CHAIRPERSON: But there was a closed tender process.

ADV KENNEDY SC: Yes.

CHAIRPERSON: And obviously the next question is was a closed tender process a lawful process within the company? So that is why I asked the question.

ADV KENNEDY SC: Yes.

CHAIRPERSON: So my – my question is whether you are aware or whether there is something in the provisions of the policy of the company that governed or talked about a closed tender process or is that something that we have not paid attention to because the – nobody has raised it?

10 **ADV KENNEDY SC:** We have not firstly because nobody has raised it.

CHAIRPERSON: Yes.

ADV KENNEDY SC: But secondly we have not raised it as a legal team.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Because it appears that the Supply Chain Policy is rather vague in that regard.

CHAIRPERSON: Yes.

20 **ADV KENNEDY SC:** That does not mean to say that it permits it.

CHAIRPERSON: Yes.

ADV KENNEDY SC: But I have not proposed to go into any detailed questioning of any witnesses such as Mr Saloojee or the previous ones because that was not the most glaringly obvious breaches of the policy which appears to be

incontrovertible.

CHAIRPERSON: Yes. Yes I would like you to have a look at it.

ADV KENNEDY SC: Yes.

CHAIRPERSON: And – and in due course you can share with me what you find.

ADV KENNEDY SC: We will do so.

CHAIRPERSON: With your legal team because I – if the question is if as a matter of fact a closed – what Mr Saloojee
10 calls a closed tender process was followed.

ADV KENNEDY SC: Yes.

CHAIRPERSON: I cannot say the process was unlawful unless I know whether in terms of the policy it is permitted or not.

ADV KENNEDY SC: Indeed. Indeed.

CHAIRPERSON: So – so if they did not follow an open tender policy I cannot jump to say that was unlawful without knowing whether the process that he says was followed was permitted or not. So – so I think that is the importance of it.

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

CHAIRPERSON: Ja. Ja.

ADV KENNEDY SC: The situation is also complicated by the fact that there was a change in the SCM policy.

CHAIRPERSON: Yes.

ADV KENNEDY SC: There was one version which was very,

very vague about this sort of thing.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And then the other that was brought in as I recall the tail end of 2014.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Very late in 2014.

CHAIRPERSON: Yes.

ADV KENNEDY SC: As I recall after this contract had been awarded.

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: But before the Single Source Supply contract was awarded.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And things changed there.

CHAIRPERSON: Yes.

ADV KENNEDY SC: So it is fairly complicated but we will address to you.

CHAIRPERSON: Yes.

ADV KENNEDY SC: In appropriate legal submissions.

20 **CHAIRPERSON:** Okay alright.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KENNEDY SC: Mr Saloojee were you made aware of the fact that when the three bids were received there was a vast difference in price between LMT and VR Laser? Just

leave of account DCD at the moment they were fairly – they were fairly sort of middle of the road. But were you aware that there was a huge difference in price between the amount tendered or bid by LMT as opposed to VR Laser?

MR SALOOJEE: Chair I was aware of the fact that there was a discrepancy in terms of the amounts that were competitive. I was not sure the amounts - the exact amounts and when I read through the documents what I do pick up is that LMT was significantly cheaper. The other two
10 were more or less in the same ball park but I was aware and more so after the documentation came to me.

ADV KENNEDY SC: Now were you made aware at that time or at any time while you were GCEO that Mr Burger had spoken to VR Laser and indicated according to his evidence a serious concern that their price was so high and that had resulted in them bringing down their price substantially?

MR SALOOJEE: Chair I think that came to light after he had had the discussion.

CHAIRPERSON: Okay just before Mr Kennedy asks the
20 question let me go back to the closed tender process just to make sure that I understand what you – what the elements or features of what you are call a closed tender process. Can you tell me what is supposed to happen if it is a closed tender process?

MR SALOOJEE: Chair so what will happen is that it will first

of all be defined as a strategic project. That is the first thing there. I mean it has to be – it has to be critical and it has to be with suppliers that are probably the only ones who are capable of performing at that level.

So you would identify who those are in the country and then you would approach them and ask them for bids – for quotations. That is what Mr Kennedy is referring to.

That there were three bids that were submitted based on the criteria that those were three companies identified
10 who could perform the job according to the specifications that was required.

CHAIRPERSON: So first the job to be done or services to be provided must be strategic?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: And who is supposed to make up the determination whether anything is strategic?

MR SALOOJEE: It will – it will come from the division that is responsible. In this instance Denel Land Systems.

CHAIRPERSON: Okay alright. So once – once it is a
20 strategic job or service product that is required then it – once it satisfies that requirement then the process is you must identify the service providers who can provide that kind of job or those services. And out of them you must – out of all of those there may be many I assume you must identify three or is there no limit as to how many you identify?

MR SALOOJEE: It depends how many companies are capable of performing that particular aspect of the work.

CHAIRPERSON: So you – if they are ten are you supposed to invite all ten or?

MR SALOOJEE: Chair let me put it this way. You could either invite all ten or take the top three or the top five.

CHAIRPERSON: Oh as you see – as you see [talking over one another].

MR SALOOJEE: Yes in terms of the priority with where you
10 see the real capability lies.

CHAIRPERSON: Yes – oh okay, okay. And all of that is driven by the division concerned?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: Okay alright. Then you ask them for quotes that is what you do – for quotations?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: Ja and then you decide on that?

MR SALOOJEE: Well then they will go through an evaluation process.

20 **CHAIRPERSON:** Yes.

MR SALOOJEE: There will be certain criteria that they have to through.

CHAIRPERSON: Yes.

MR SALOOJEE: It will go through the Executive Committee, it will go through the technical people. To go through a

whole range of committees before a decision is made.

CHAIRPERSON: Is the position that the process for a closed tender process, the process is the same as an open tender system other than – the only difference is that, with an open tender, you invite the whole world, as it were but with a closed process, you invite a few.

MR SALOOJEE: Chair, it should be the same.

CHAIRPERSON: The process should be the same?

MR SALOOJEE: The process should be ...[intervenes]

10 **CHAIRPERSON:** Except for who you invite.

MR SALOOJEE: Yes, Chair.

CHAIRPERSON: Okay alright. Thank you. Mr Kennedy.

ADV KENNEDY SC: Now going back to the question that I have asked you earlier about Mr Burger raising with VR Laser concerned that their price was so much higher than LMT.

Were you aware that he was concerned, firstly, that the price was so much higher? And secondly, were you aware that he raised his concern with VR Laser?

20 **MR SALOOJEE:** Chair, I think it was either Mr Mhlontlo or Mr Wessels. They have mentioned it in passing to me that there was an issue around the pricing and that the divisions, in this instance Mr Burger is attending to it.

ADV KENNEDY SC: Were you aware that only VR Laser was asked to revised its price and the same opportunity was

not afforded to LMT or DCD?

MR SALOOJEE: Chair, I have become aware of that now after having gone through the documents.

ADV KENNEDY SC: Do you have any comments on what you have now discovered?

MR SALOOJEE: Well, Chair either there was an informal decision that had already been made or that DLS was set on that particular supplier and that is the reason they did not see fit to go to the other two suppliers. I can only speculate
10 that that was the reason.

ADV KENNEDY SC: Now you received a motivation to grant your approval and that, in fact, reflected the scoring of the three bidders. And it, in fact, reflected the fact that there was an absolutely marginal difference in scoring between LMT and VR Laser. In fact, approximately 0.6%. Less than one percent difference in scoring. Do you recall that?

MR SALOOJEE: Yes, Chair I do.

ADV KENNEDY SC: And were you not then concerned that they were so close? There was no – there was really a
20 negligible difference. Would you not agree? Zero point six percent is negligible, not so?

MR SALOOJEE: Chair, I do agree it is negligible.

ADV KENNEDY SC: Yes. Were you not concern then when you were asked to approve the awards to VR Laser, that where you have two rival bidders, one of whom is an outside

company, VR Laser whose ownership rests in people with controversial connections, and on the other, an in-house Denel Divisional Group called – a group entity called LMT?

Were you not concerned that you are being asked by way of a recommendation to favour the outside company rather than the internal division where there was nothing, really, material between them in scoring and where the one would – had first tendered a price of more than – approximately a hundred million rand more than the internal
10 divisional entity, LMT and where even when VR Laser was persuaded or induced to reduce its price, it was still going to be approximately R 30 million more to place the business with VR Laser?

Did that not concern you?

MR SALOOJEE: Chair, of course it concerned me but there are two issues here that we need to be cognisant of, is that, when they went through the evaluation process, and according to my understanding, they went through a proper process for single – within that division.

20 They came up with a score however minimal it was in terms of the difference but that it had gone through a process and that that process is what they had said should determine who should get the contract.

But in addition to that, and I think when we go through the documents and that, you will look at the volumes and the

amount of reasons that were given as to why that should be the preferred bidder from a technical one, to a risk one, to a financial risk one, to an operationally critical success one, to meet the milestones.

They were convinced that, notwithstanding that it was such a small margin between the two – between the companies that that was the right thing to do.

ADV KENNEDY SC: But it was you who had to make the final decision. You were the person vested with approval –
10 the approval power, not so?

MR SALOOJEE: Chair, notwithstanding the fact that the final decision had to come to me. The fact is that you cannot overrule a process that has gone on, from my understanding, in the very in-depth way over months and having been signed off by the senior executives in that division and by the COO and the CFO, Group CFO.

When it comes to me, for me as an individual to override a decision like that would have been very problematic.

CHAIRPERSON: Well, Mr Saloojee. If you are the final
20 decision maker and other people recommended to you. Whatever decision you take, whether you go along with their recommendation or you reject their recommendation, should, I would imagine, depend on whether you feel that you can defend your decision either way.

And that you cannot take a decision that you cannot

defend just because you think other people can defend their position, is it not.

You have to ...[intervenes]

MR SALOOJEE: Chair ...[intervenes]

CHAIRPERSON: ...be able to defend the decision.

MR SALOOJEE: Chair, you are correct.

CHAIRPERSON: Yes.

MR SALOOJEE: Okay. But at the point at which this was finally brought to me.

10 **CHAIRPERSON:** H'm?

MR SALOOJEE: I was convinced by all the other people that this was the right thing to do.

CHAIRPERSON: Yes. Well, what once you say that, then Mr Kennedy can then ask you questions based on the fact that you are saying, you believe it was the right decision. So the fact that other people recommended it or not is, you came to the conclusion that it was the right decision. Then he can ask you question on that, is it not?

20 **MR SALOOJEE:** Chair, if I recall that even in that submission, there was a very clear undertaking that work share would be given to LMT.

CHAIRPERSON: H'm. Ja, but the point I am making is. If it is your decision, you must be able to defend it. You – if you – you should not take it if you are – you do not think you can defend it. I think that is the point. And I think you would

agree with that, is it not?

MR SALOOJEE: I do agree with that Chair.

CHAIRPERSON: Yes. Okay Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. In fact, your affidavit – if I can take you to page 802, paragraph 19? This is what you say:

10 “Mr Burger was adamant that VR Laser Services should be awarded the contract as all DLS’ internal processes, technical reports and the view of the originally equipment manufacturers supported this view.

In addition, he cited performance and contractual criticisms of LMT with regard to existing contracts and that there were serious defects in the manufacturing process on the quality of their output.”

I can just stop at that stage. Did he discuss that with you or was it apparent from the Memorandum of Recommendations that you referred to?

20 **MR SALOOJEE:** I am not sure at what point these comments were made but this was conveyed to me by the COO and the CFO.

ADV KENNEDY SC: That is Mr Wessels.

MR SALOOJEE: Yes.

ADV KENNEDY SC: And Mr Mhlontlo.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Respectively.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. Now we are going to get in a moment to the work share that you referred to in the rest of this paragraph and you have mentioned in passing, a moment ago.

But you were persuaded at the time that the recommendation was a sound one and that, therefore, it
10 should be approved.

As you sit now in the witness box some years later, having learnt of a whole lot of further information that you may not have been aware of at the time.

Do you feel with the benefit of hindsight that it was in fact a wise decision made in the interest of Denel and the state that owns it?

MR SALOOJEE: Chair, at that point, as I have indicated, from all the arguments that were put before me and all the critical issues that were going to impact on that programme.

20 At that point, I thought that it was the right thing. Not necessarily the correct thing but the right thing. So in that instance, yes.

With hindsight...[intervenes]

CHAIRPERSON: Hmm.

MR SALOOJEE: Yes?

CHAIRPERSON: Yes, just continue.

MR SALOOJEE: With hindsight, it may have been viewed in a different way but at that point, that was the reality.

CHAIRPERSON: You said it was the right thing, not the correct thing. What is the difference? [laughs]

MR SALOOJEE: ...[intervenes]

CHAIRPERSON: I do not know what the difference is. I want to make sure I understand what it means.

MR SALOOJEE: Chair, I think that the right thing was that,
10 having gone through all those processes and the technical reports and all the other arguments that they have put forward in terms of the delay in the programme in terms of the contractual obligations, in terms of the quality issues that was a key thing for them.

It was, from a process perspective, and the investigations that they did, the right thing to do. As Mr Kennedy has indicated. Because of the slim margin, maybe the correct thing would have been to go back to revisit it.

20 **CHAIRPERSON:** Now what is the difference between the correct thing and the right thing? That is what I want.

MR SALOOJEE: Chair, it could be a moral observation.

CHAIRPERSON: And which one would be – would have a moral – a more moral support between the right thing and the correct thing?

MR SALOOJEE: [No audible reply]

CHAIRPERSON: In terms of what you intend conveying to me when you say it was the right thing to do but not maybe not the correct thing. I just want to understand that. That is why I am asking you these questions.

MR SALOOJEE: Well, Mr Kennedy has said with hindsight.

CHAIRPERSON: Ja.

MR SALOOJEE: Okay.

CHAIRPERSON: Yes.

10 **MR SALOOJEE:** The right thing at that point was the - of the experts from the division.

CHAIRPERSON: H'm?

MR SALOOJEE: Now, if I reflect back on it and all the history that has gone on and water that has flown under the bridge. Maybe the correct thing would have been to have revisited it.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. Mr Burger was adamant, according to your evidence, that VR Laser should
20 get it and that LMT should not get it. LMT should not get it, he argued because of its poor track record.

Of course, LMT had been assessed and scored in the evaluation and the adjudication process and had not done particularly badly.

It had not been, for example, disqualified as not having

the capacity or the technical ability or huge quality problems that disqualified it. You are aware of that?

MR SALOOJEE: Yes, Chair.

ADV KENNEDY SC: Yes. Now, you would recall. We had a consultation on a life platform, Zoom platform a few weeks back.

MR SALOOJEE: Yes.

ADV KENNEDY SC: And you recall telling me that you know feel that there was an attempt by Mr Burger to cast LMT in a
10 bad light which was contrived.

MR SALOOJEE: Yes, Chair that is correct.

ADV KENNEDY SC: And just explain to the Chair please why you told us that?

MR SALOOJEE: Chair, if I recall and having read, for example, the testimony of Mr Jan Wessels who was the COO. When he was appointed by me as the COO, Chief Operating Officer, one of the first responsibilities I had given him was to go and see what the issue was between LMT and Denel Land Systems, and more specifically, between the two
20 CEO's. That is Dr Nel and Mr Burger.

Because there was obviously some issue between the two individuals with regard to the manner in which they saw how they approached the work and the professionalism with which they thought each company performed.

And that was the real issue that we had to contend with.

When the issue of VR Laser and LMT came up, my own view was that there was a very clear view from Mr Burger that his mind was made up that this was going to be – what was going to happen.

And that he used every single argument to negate the efficiency of the capability that resided within LMT. Now, notwithstanding what I have just said.

There were definitely problems at LMT. I was also made aware of the fact that the local client, the National Defence
10 Force and specifically the South African Medical Health Services, were extremely unhappy with the performance of LMT with regard to some of the ambulances that they had manufactured for them.

So that was a critical issue and it became quite an important issue then. I am also aware of the fact that for example they had a problem with the United Nations in terms of the house cracking but that is a technical discussion that...

I am not a vehicle expert. I am a generalist. I look after
20 the organisation across the different domains. And Mr Burger and his team were adamant that in terms of capacity constraints, in terms of performance, in terms of quality, the lack of an engineer that was there.

That they were of the firm opinion that it would have been a huge contractual risk if they had approved it going to

LMT as opposed to VR Laser. And that is all well-documented in the documents that they had sent.

ADV KENNEDY SC: Do you feel, again with the benefit of hindsight, that you were misled by Mr Burger?

MR SALOOJEE: I would not say he misled me. I would say he was economical with what he was telling me. So in his arguments, I think he was very persuasive in terms of the inability of LMT to perform.

My own view was that – and I had then actually asked
10 the COO at that point, if I recall properly ...[intervenes]

ADV KENNEDY SC: Mr Wessels.

MR SALOOJEE: Mr Wessels.

ADV KENNEDY SC: Yes.

MR SALOOJEE: To go and investigate whether this was actually true or not. And again, if I recall, because it is not documented anywhere. I think he was giving a verbal feedback. Was that yes, there were issues that needed to be sorted out at LMT. There were capacity issues.

And if they had won another big contract, it would have
20 meant huge capacity constraints. So if they had won this particular contract and they had won – and they were bidding for some other big contracts in, for example, Saudi Arabia, if I am not mistaken, that it would have just been unattainable for them to manage that volume of activity.

And that is I am aware of the fact but I am also aware of

the fact that Mr Burger himself was very clear in his mind that LMT did not have the capacity or the quality at that point to execute the project.

ADV KENNEDY SC: Now if I can take you back in your affidavit to page 802? The very same paragraph 19 that I read out earlier but for the last four lines. I would like to read those four lines that I omitted last time. I said I would come back to them and I do so now.

You say the fourth line from the bottom:

10 “However, it was agreed...”

Do you see that?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes.

“However, it was agreed that LMT should still be part of the work share and as such, I tasked Ms(sic) Mhlonthlo..”

Presumable, it is Mr Mhlonthlo, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes.

20 “...and Jan Wessels, the COO, to try to find the middle ground between DLS and LMT.

The aforementioned scenario did not materialise as there was no meeting of the minds between the two parties.”

The scenario, are you there referring to the intention to

try and find the middle ground so that LMT would at least get part of the work?

MR SALOOJEE: I have said to them that they must find a business model that would be a win-win situation for both organisations.

ADV KENNEDY SC: Yes. But that was not, ultimately, achieved.

MR SALOOJEE: Ultimately, it was not achieved, but in terms of the work share that went to LMT.

10 **ADV KENNEDY SC**: I am sorry? In terms of...?

MR SALOOJEE: The work share.

ADV KENNEDY SC: Yes?

MR SALOOJEE: That should have gone to LMT.

ADV KENNEDY SC: Should have, but it did not.

MR SALOOJEE: No, I am saying. I had indicated to them Chair that they must a resolution that is amicable to both parties, given the capabilities of both organisations. And that Jan Wessels and Mr Mhlonthlo who were assign the responsibility to then find a compromised solution.

20 Obviously, as things eventually turned out, they could not. There was not a meeting of minds and they could not come to a compromised solution.

One of the issues was, obviously, the fact that there were certain components that LMT could have produced, for example, the back doors and some of the internal

components. And I had that indicated to Mr Wessels and they were all in agreement that if it was possible that that work share should go to LMT.

ADV KENNEDY SC: But ultimately it did not.

MR SALOOJEE: Ultimately, it did not go.

ADV KENNEDY SC: Yes.

MR SALOOJEE: That is my understanding of it.

ADV KENNEDY SC: Yes.

MR SALOOJEE: Yes.

10 **ADV KENNEDY SC:** And presumable, one of the concerns that you had was not simply for an amicable resolution to be made between the two rivals, LMT and VR Laser, but one of your concerns as Group Chief Executive Officer was to ensure that LMT's interest as one of your subsidiary companies should be advanced, not so?

MR SALOOJEE: Chair, if I did not take into consideration that I had to look after internal organisations within the Denel stable, I would not have said that. I would not have asked them to go and find a solution that would have
20 benefited both parties. I would have just left it at the recommendation of DLS.

And I was genuinely committed to seeing whether we could give a portion or an element of the work share to LMT in order to fulfil our own responsibilities.

ADV KENNEDY SC: And presumable if LMT did have, as

many witnesses have indicated, they had had some problems with quality and capacity output ability to produce what was required on time, presumable if it was not a completely hopeless cause, if it should be made to try and support it as an in-house company, not so?

MR SALOOJEE: Yes, Chair. I mean, we would have obviously, naturally would want them to succeed.

ADV KENNEDY SC: Yes. But why was it then left to try to find a solution that would be an amicable one where both VR
10 Laser and LMT would both be happy? Surely, VR Laser is looking after its commercial interest?

It seems to me, perhaps to be a bit naïve to be saying: Well, would it not have been nice if there can be some sort of peace and harmony and happiness between the two rival entities?

Surely, you should have been saying: Before I approve this deal, I need to be satisfied that LMT cannot do it. Because otherwise, they are going to have to pay a hundred million or perhaps forty million more from a company who
20 has said to be technically superior.

But LMT is in-house and is going to charge us far less. So should we not be building up the capacity and solving it that way?

MR SALOOJEE: So Chair, there are a few issues here. The one issue is that, the recommendation from Denel Land

Systems and Mr Burger, specifically with his team, was that the quality and capacity for MT to build the actual – to fabricate the hulls themselves, they did not have the ability to do that.

And that was the contentious issue, the building of the hulls, the fabrication of the hulls itself. Where Jan Wessels, the COO, advised was that they had the capacity to build the backdoor and some of the internal components.

And if I read his testimony correctly, that it was not an
10 insubstantial amount, the value of that particular work share that would have gone to LMT.

ADV KENNEDY SC: Yes. Now, to go back to your point earlier that Mr Burger was so adamant that he may have contrived the extent to which LMT was inadequate or unreliable.

Other witnesses have expressed similar concerns before this Commission. Were you aware that there was, apart from Mr Burger's adamant view that LMT was pretty useless in its ability to perform under this contract.

20 Were you aware that others were a bit more cautious and were saying: Should we not investigate that? For example, Mr Mlambo.

MR SALOOJEE: I would imagine that that would have been the case Chair.

ADV KENNEDY SC: Yes.

CHAIRPERSON: At the time you gave your approval had VR Laser reduced its price from what it originally was?

MR SALOOJEE: Chair, if you look at the memorandum that was submitted, he has, according to his own evidence here, and the evidence that I have read of other witnesses here, which I was not aware to what extent he had negotiated that price but he had by then negotiated a new price with them.

CHAIRPERSON: Yes, but nevertheless, VR Laser's price was about what? R 30 million or whatever. More than LMT's
10 price, is that right?

MR SALOOJEE: Yes, Chair that is correct.

CHAIRPERSON: Yes. Bearing in mind that those who, in terms of the company's internal processes, were tasked with the task of conducting the technical evaluation of the two, had ultimately given a score that, for all intense and purposes, really, meant that the two were more or less the same.

Because if you accept that a difference in score of zero comma something really is negligible. Bearing in that mind
20 and bearing in mind that that job had been done by people that in terms of the company's processes, are deemed to be the right people to make a judgment call on those things.

Why was this difference of about R 30 million or whatever the difference was, why was it not enough for you to say: No, really. If we are going to pay so much more, if

we give the job to VR Laser than if we give it to LMT.

We should give it to LMT because this difference in price is enough to make up for the zero comma whatever that exists as a difference between the two in terms of scores?

MR SALOOJEE: Thank you, Chair. Having – if you look at the rationale behind the DLS motivation. There was, obviously, the technical issue. There was the quality issue. There was the issue of it being missioned critical in terms of contractual obligations that they thought, if LMT ran into
10 problems, there would be huge penalties contractually.

But they also have another argument and that was a financial argument. And if you look at the documentation, they, with the original equipment manufacturer, Patria, came to the view that based on – and I am not trying to be sexist but man-hours, that it would take to construct a particular one unit that it costs X amount.

And that the price that LMT had given in was completely unrealistic and way below what it should have cost to produce that unit. And that was their argument.

20 **CHAIRPERSON**: But were these arguments that they were advancing, arguments that they were advancing outside of the process, namely, there was a forum where that – those arguments had to be taken to account by those who were scoring?

Now were they advancing those arguments outside of

that forum and outside of those processes? In other words, somebody comes into your office and say: You know, CEO. We cannot give this job to LMT. This is the problem. This is the problem. This is the problem. Which is outside the process.

Whereas opposed to going to the forum, if they have a right to go to the forum and saying here are the problems with LMT.

And then allowing LMT in the right forum to address
10 those and then the people who are given the task of giving scores, evaluating all of these and giving scores, give those scores and everyone else accepts that those are the scores given

MR SALOOJEE: So Chair, if I have created the impression that this was coming to me. None of this was coming to me.

CHAIRPERSON: Yes.

MR SALOOJEE: This was being discussed internally through their own Exco, through their own committees, through their own technical people, their own financial
20 people.

CHAIRPERSON: Yes.

MR SALOOJEE: It is only after they had gone through that process ...[intervenes]

CHAIRPERSON: Yes.

MR SALOOJEE: ...that they have brought this.

CHAIRPERSON: Yes. But you see, you referred to their arguments when I asked you the question why this difference of millions of rands between LMT's price and VR Laser's price. VR Laser's price being millions of rands more than LMT's price.

I asked the question why that was not a good enough reason to award the job to LMT on the basis that the two were compared by the people who were supposed to score the two, the difference was negligible between the two of
10 them and then you said these were the strong arguments advanced by DLS and so I was asking the question were they advancing these arguments outside of the forum or the processes because I am looking at why you, being the final decision-maker, did not think this difference, in terms of millions, was not enough to say – to justify saying look, you people, I do not understand why you are saying we should give this job to VR Laser when it is going to cost us so much more because the difference in the price as not negligible but the difference in the score was negligible.
20 That was my question. How did those arguments come to you if those arguments were part of what convinced you or persuaded you to go with VR Laser?

MR SALOOJEE: Chair, that discussion went through all the normal forums internally within the division. I would imagine that it was not outside of their formal processes.

CHAIRPERSON: So, in other words, in whatever documentation was placed before you in order to help you make a decision, those arguments were there?

MR SALOOJEE: Yes, Chair.

CHAIRPERSON: Okay, alright and the forum that had given the scores, had had the benefit of those arguments as well.

MR SALOOJEE: Yes, Chair.

CHAIRPERSON: Yes. Well, I guess still it remains if the
10 forum that was mandated to give the score had considered those arguments because they had been presented to them and nevertheless they had scored – the difference in the score as so negligible, still I have the question, but the difference in millions is big, it is not negligible.

MR SALOOJEE: Chair, I mean, all I can say is that that process was led by DLS and its CEO.

CHAIRPERSON: Yes, yes, okay. Thank you, Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. Mr Saloojee you
20 took issue in your affidavit that we have just been looking at with an allegation made by Mr Burger that you approved the transaction which was the transaction for the manufacture of the hulls elements, the platform hulls by VR Laser and your affidavit say you did not approve the transaction, you instead gave Mr Burger and his divisional

colleagues the mandate to award the contract. Do you confirm that evidence and does it particularly matter in your view?

MR SALOOJEE: Well, in my view, first of all, Chair, and Advocate, in that memorandum that was sent, there was a very clear item, line item in there, which said that LMT should be contracted in this process because for the hulls, as I have explained, the back door and the internal conference, that was an element of it and if you look at in
10 – I had signed because of the fact that I had said I will give you the mandate to do that but if you look at the document itself and it is very clear up there it says approve or reject and it is not there because I had said that they must go and look at how they can implement this with a compromised solution between the two and I have said I have given you a mandate to go and initiate this process.

ADV KENNEDY SC: Now we know that that condition that you attached to the mandate was in fact not fulfilled, that
20 in fact LMT got nothing out of this, there was no work share ultimately achieved because, as you put it earlier, they could not agree between themselves, correct?

MR SALOOJEE: My understanding is that that did not happen, Chair.

ADV KENNEDY SC: Yes but my question remains, if you

gave a mandate subject to a condition, you said yes, I will give you the mandate to award this contract to VR Laser but on this specific condition, you may do so only if you give some of the work to LMT for the back door, etcetera. If they did not satisfy that condition, they did not comply with the mandate, not so? They went beyond the conditional nature of the mandate that you gave, correct?

MR SALOOJEE: That is correct, Chair, yes.

ADV KENNEDY SC: Yes. In fact was your approval not
10 rather than just a mandate required under the delegation of authority? This was a contract above 50 million and less than 200 million where the delegation of authority requires you to take the decision to approve the transaction, not to delegate it somebody lower. Should you not have approved the transaction?

MR SALOOJEE: I should have approved the transaction if the condition was fulfilled.

ADV KENNEDY SC: Yes. Yes, but you were never approached for that approval.

20 **MR SALOOJEE:** So I was never approached for that approval.

ADV KENNEDY SC: Would it not have better, again with the benefit of hindsight and obviously I am speaking as an outsider, but the Commission has to look at whether things were done correctly and properly and prudently bearing in

mind that this is taxpayers' money that is at stake here? Would it not have been appropriate for you to say I will consider giving my approval, I am not going to give you a mandate to go and do anything, I am going to say try and achieve certain things but I will consider giving approval if you achieve what is concerning me which is that there should be a work share, LMT should get something out of it.

Now whether that would have been permissible in
 10 terms of the supply chain management policy to give a bit to this and give a bit to that is another debate which I am not engaging with you but if you were so concerned that it be done the right way would it not have been better for you to have said well, I am not giving you a mandate, I am not giving you approval, I am saying see if you can achieve the work share agreement because that seems to me to be sensible and to be favouring our internal company LMT and come back to me and if you achieve that then I will consider giving you approval but until I get satisfied on
 20 that, I am not going to approve it. Instead you say go ahead, provide that you do this, nobody comes back to you and says well, actually we have not achieved it and then they carry on with the contract. Was that not a bit reckless on your part, Mr Saloojee?

MR SALOOJEE: Chair, I do not think it was reckless in

the sense that once that mandate was given – I mean, I am running the entire company, it is huge numbers of people, seven different divisions, I then expected the division and of course the Chief Operating Officer who manages the operations in the business to see that things have been done accordingly, that they would have done that. But I do take the point that you are making, Advocate.

ADV KENNEDY SC: Right. Did Mr Wessels, as COO, or did Mr – at the group level – or did Mr Burger as CEO at
10 the DLS divisional level, did either or both of them come back to you and say Mr Saloojee, you gave us a conditional mandate, unfortunately we have not achieved the condition, we have not fulfilled the condition.

MR SALOOJEE: No, Chair.

ADV KENNEDY SC: So you were left in the dark?

MR SALOOJEE: Yes, Chair.

ADV KENNEDY SC: Should they have come back to you and told you that?

MR SALOOJEE: I would imagine that they should have.

20 **ADV KENNEDY SC:** Yes. Do you know why they did not?

MR SALOOJEE: I can speculate about that, Chair.

ADV KENNEDY SC: Okay. Now once thing puzzles me and if you have an explanation that might help the Commission because perhaps the Commission's Chairperson is wondering about this as well and that is

this. Mr Burger was adamant that LMT was not up to the job so it should not get the contract even though it came within a whisker, 0.6% in scoring and even though its price was massively better from a Denel point of view and Mr Burger gave evidence that he thought well, they were just trying their luck.

On the BEE side DLS – I am sorry, LMT had been given I think a zero percentage initially because its certificate was out of date, this despite the fact that it was
 10 not a private sector company, it was an in-house state owned division, not so? Correct?

MR SALOOJEE: Yes, Chair, but it was not a wholly-owned subsidiary of Denel.

ADV KENNEDY SC: That is true, it was I think 51% owned by Denel.

MR SALOOJEE: Yes, Chair.

ADV KENNEDY SC: Correct. So BEE still had an element of significance. I accept the point. But what puzzles me, let me get to the nub of my question. What puzzles me is
 20 this, DLS at divisional level decided who to ask in terms of the closed tender RFO, request for orders or RFQ, request for quotes process, not so?

MR SALOOJEE: Yes, Chair..

ADV KENNEDY SC: And you left them to make that sort of decision because that was an operational decision.

MR SALOOJEE: Yes, Chair.

ADV KENNEDY SC: Yes and in answer to a question from the learned Chair a moment ago you said well, we would not ask 10 people necessarily, we might only ask three people because they are the three people that we would rank the best that we feel in the market. What puzzles me is this, DLS goes out on an RFO process and asks LMT as one of only three bidders to submit a bid. If LMT was genuinely such a useless supplier and unreliable supplier
10 as Mr Burger seems to have persuaded you ultimately, why on earth was there a request for them to make a bid in the first place? It just seems to me to be suspicious that it looks as if it was contrived, the whole RFO process.

Let us ask LMT, we know that they are not going to get it because they are useless but let us ask them to go through a pretence of some sort of competitive process in which only VR Laser and LMT and DCD are going to compete. We know that LMT is just not going to get it ultimately – not clear exactly how DCD may have featured
20 in all of this but it just seems to have been an inevitability in the mind of Mr Burger.

In fact that seemed to be suggested in his evidence previously that only VR Laser was up to this contract, that is why we had to have them and he seems to have persuaded you in relation to that. Did it ever strike you as

odd, as it strikes me as odd, that LMT was invited to put a bid in the first place if ultimately, even though their price was going to be far, far less, they then get eliminated because well, you cannot consider them because they are useless. You understand the anomaly?

MR SALOOJEE: Chair, can you imagine if DLS and Mr Burger had excluded LMT, which is a subsidiary of Denel, which had some capability albeit with issues that they had to deal with. If they had not included LMT in that bidding
10 process it would have spoken volumes for their lack of commitment to ensuring that Denel organisations, whether they are wholly-owned or partially owned would get some of the work it would have been an embarrassment for Mr Burger if he had done that.

ADV KENNEDY SC: Well, that may be so but then still LMT ultimately was excluded. They were turned down even for part of the work ostensibly because while their price was so much better, their quality was so much worse.

MR SALOOJEE: Chair, Advocate, I mean, I think, you
20 know, if you look at Mr Burger's testimony right from the onset, he knew that this was the right decision.

ADV KENNEDY SC: Yes.

MR SALOOJEE: To go with VR Laser. He says, you know...

CHAIRPERSON: Then he was just going through the

motions if that is correct, was he not?

MR SALOOJEE: With hindsight now if I listen to what he was saying, if ...[intervenes]

CHAIRPERSON: I mean, if you know even before you begin the process that you are going to take this supplier and not anyone of the other two is that not going through the motions?

MR SALOOJEE: Chair, I agree with you because, I mean, if I listened to Mr Burger when he was here the other day,
10 he said it was absolutely the right decision then and he still thinks today it was the right decision.

CHAIRPERSON: Yes, yes. Mr Kennedy?

ADV KENNEDY SC: Thank you.

CHAIRPERSON: I might have interrupted your question.

ADV KENNEDY SC: I am sorry, Chair?

CHAIRPERSON: I may have interrupted your question.

ADV KENNEDY SC: No, thank you, Chair, that is your prerogative, of course. Chair, may I move away slightly from the business reason and whether who was the better
20 supplier and the reason for eliminating LMT and now to look at a slightly different but related aspect of this transaction. Now here I am going to ask you please to just put aside – just close that file for a moment. You have got file 10, I think, is that right? Just put that aside and can you please find – and somebody can help you if you cannot

find file 1, bundle 1. Do you have that?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Now this contains a number of other witnesses' affidavits and their annexures and I would like you please to turn in this bundle to page 785.

MR SALOOJEE: Sorry, is it with the red?

ADV KENNEDY SC: Sorry? No, not the red number, the black number on the top left, it says Denel-01-785, I am going to use the only the last three digits of the number.

10 **MR SALOOJEE:** So which is the page you are referring to?

ADV KENNEDY SC: 785. Now just to check that we are looking at the same page and the same bundle.

MR SALOOJEE: Yes, yes, we are.

ADV KENNEDY SC: It is - the top document is an email dated the 4 September from Dennis Mlambo to Stephan Burger, is that correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And it is copied to Celia Mahlalela.
20 Now she was the head of supply chain management in the division of DLS, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And Mr Mlambo was the head of supply chain management at group head office level, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And he reported to Mr Mhlontlo.

MR SALOOJEE: Yes.

ADV KENNEDY SC: CFO at the time.

MR SALOOJEE: That is correct, Chair.

ADV KENNEDY SC: And the CFO reported to you.

MR SALOOJEE: That is correct.

ADV KENNEDY SC: So Mr Mlambo did not report directly to you.

10 **MR SALOOJEE:** Yes, Chair.

ADV KENNEDY SC: He was nonetheless the head of supply chain management for the whole group.

MR SALOOJEE: He was the supply chain manager, yes.

ADV KENNEDY SC: Manager?

MR SALOOJEE: Yes.

ADV KENNEDY SC: I see in some of the documents even your own – even the company's own delegation of authority referred to him a supply chain executive.

MR SALOOJEE: Executive.

20 **ADV KENNEDY SC:** But nothing particularly seems to turn on that, not so? He was still a very senior official whose word presumably should have been considered carefully, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Right. Now to go back to Mr

Mhlontlo, he is one of those referred to as receiving a copy of this, as is Jan Wessels, as is Reenen Teubes and then yourself as well. Now just to put this in context, Mr Mlambo has given evidence - were you able to hear his evidence?

MR SALOOJEE: Again, some of it.

ADV KENNEDY SC: Some of it, I see. And he referred to this correspondence as relating to the difficulties that he specifically raised in his capacity as group supply chain
10 manager with his colleagues, including yourself, relating to the platform hulls contract.

Now to give it its context, perhaps we should start because this is an email of the 4 September, the email correspondence seems to have started without you being included in the list of people who were copied. If you look at page 788, there is an email from Dennis Mlambo to Celia/Reenen, do you see that? The 2 September 2014.

MR SALOOJEE: So it is 788?

ADV KENNEDY SC: 788, yes, it is halfway down the
20 page.

MR SALOOJEE: Yes.

ADV KENNEDY SC: On 2 September 2014 at 18.38. Do you see that?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And is an email from Dennis Mlambo

to Celia and Reenen, both officials within the DLS division, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And then he is raising an issue about LMT in fact having a valid BBEE certificate and then he says:

“I will request details from Stefan Nel about the pricing and proof of shareholding of VR Laser as discussed.”

- 10 So clearly there had been some discussion between Mr Mlambo at group level with his divisional colleagues at supply chain and executive level in the form of Mr Teubes and Ms Mahlalela , correct?

MR SALOOJEE: Yes, Advocate, this indicates that there was a discussion going on.

ADV KENNEDY SC: There was a discussion, indeed.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Were you made aware of that at the time or did you find out about that later or not?

- 20 **MR SALOOJEE:** Chair, I found that out later.

ADV KENNEDY SC: Okay. Now at the foot of the previous page you will see another email that come this time, the second last line on page 787 from Reenen Teubes and that goes back to Mr Mlambo and here he copies not only Celia Mahlalela but also Mr Mhlontlo and Mr Wessels

and Mr Burger, not yourself, we see. You were not copied in at that stage and he, Mr Teubes, is responding to Mr Mlambo about the BBEE aspect as well as the shareholding. Again you were not made aware of this immediately at that stage, is that right?

MR SALOOJEE: Yes, Chair.

ADV KENNEDY SC: Okay. Now the top of page 787 is a far more detailed email from Mr Mlambo, that is now dated the 3 September 2014, do you see it?

10 **MR SALOOJEE:** On page 787?

ADV KENNEDY SC: Yes, the top email.

MR SALOOJEE: Yes, yes.

ADV KENNEDY SC: And it is from Mr Mlambo to Mr Teubes copied again to Ms Mahlalela, Mr Mhlontlo, Mr Wessels and Mr Burger, again not yourself, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: He raises a whole lot of serious concerns, at least they appear on the face of it to be serious. He says, for example, in relation to paragraph 1:

20 “The capability assessment of the three tenderers,. . .
LMT is the only one of the three tenderers that has
manufactured the same hulls under contract from
Patria but it obtained the lowest score.”

So he seems to be querying how that could come about and then he refers to the price difference being almost 100

million, that is the price different between VR Laser and LMT of 100 – almost 100 million. That is what we discussed earlier, not so, Mr Saloojee?

MR SALOOJEE: Yes.

ADV KENNEDY SC: This is obviously a matter that was of concern to Mr Mlambo. Would you accept that he was entitled, in fact perhaps expected, to be raising this sort of question? There might have answers to the questions but it was – he was doing his job in good faith to try and ask
10 these questions. Would you accept that?

MR SALOOJEE: That is right, Chair.

ADV KENNEDY SC: Right. And then he says:

“In my investigation I was informed by Stefan that the LMT quote was based on factual figures since LMT has manufactured the hull before.”

He gave evidence that the Stefan there is Stefan Nel of LMT rather than Stephan Burger.

“If Stefan is right...”

He says.

20 “...it would not make business sense to pay so much more.”

In other words, R100 million more on top of a 156-odd that LMT was quoting, in other words, another two thirds of we have to pay what VR Laser is quoting. Then he says:

“Since LMT is a sister company I believe someone

at DLS should have demanded the supporting evidence before assuming that LMT under quoted. I believe this anomaly warrants further investigation and validation.”

And in fact Mr Burger later gave evidence before this Commission to say in fact the distortion appears to have been on VR Laser’s side. VR Laser was way above the rest of the market and that is what I told him, I think you are being cheeky, how can you – and immediately they
10 reduced their price by something like 60 million. Now then Mr Mlambo says in paragraph 3:

“LMT was given a zero score on transformation due to its expired certificate. The two elements of transformation, namely ownership and EE, employment equity, could have been assessed without a valid BBBEE certificate. Such date should be readily available from the HR department.”

Now that is because presumably the HR department of
20 Denel knows these things because LMT is majority owned by Denel, correct? Right. I see you are nodding, just bear in mind ...[intervenes]

MR SALOOJEE: Sorry, yes, yes.

ADV KENNEDY SC: I know it is a bit tedious but just bear in mind it has to be recorded.

MR SALOOJEE: No, yes, that...

ADV KENNEDY SC: And possibly transcribed. And then paragraph 4:

“According to my records LMT participated in the clarification meeting on the 26 June 2014. It was given two weeks to submit its BBBEE certificate and the certificate was submitted on the 9 July 2014.

This paints a picture of being unduly harsh on LMT.”

Again, would you accept that Mr Mlambo was doing his job
10 in good faith to raise this sort of concern?

MR SALOOJEE: Yes, Chair.

ADV KENNEDY SC: And his concern here was – apart from this is going to cost us a great deal more where there does not seem to be an explanation, on top of it he is saying there appears to be an unfairness being perpetrated against LMT because what has been held against it is its lack of BBBEE credentials but low and behold, LMT is part of our group structure because it is partly owned by Denel. Surely we should know, we could easily find out what its
20 BBBEE credentials. He seems to be suggesting here, not so, that there is something funny going on or even if it is not deliberately sinister motive that is behind this, this thing is not being done according to the book, correct?

MR SALOOJEE: Yes, Chair, I would agree with that.

ADV KENNEDY SC: Yes.

MR SALOOJEE: But – can I make a comment, Advocate Kennedy?

ADV KENNEDY SC: Yes, please do.

MR SALOOJEE: But I think obviously from a DLS perspective they were doing the right thing. If you look at the arguments and the logic of Burger's reasoning, that what they did going through the processes and it countered everything that Mr Mlambo was saying and we can come back to that, Advocate.

10 **ADV KENNEDY SC:** Yes, but let us look for example at the BBBEE certificate. What he seems to be suggesting is guys, really you are being so technical, you did not actually need a current BEE certificate. Now I am not going to go in a debate as to whether Mr Mlambo was right or wrong in terms of his interpretation of the SCM policy, but his intention is clear. He is saying we must not be too formalistic about this sort of thing, the information is available, it is an in-house company, all we have to do is go down the passage and ask HR if there is any doubt
20 about their BBBEE credentials. Why are we being so tough on LMT in relation to BBBEE certificate and yet so relaxed about giving a contract to VR Laser when it is going to cost us, at that stage, almost R100 million more?

Now again he seems to be suggesting you guys are really being so formalistic, in other words that the process

of procurement is not being done truly in a fair and transparent and accountable way perhaps as some sort of sham going through the motions, that is what seems to be the undercurrent of what he is suggesting here, was that your impression too?

MR SALOOJEE: You mean my impression after having read...?

ADV KENNEDY SC: Of the concerns that he raised.

MR SALOOJEE: That he raised about it?

10 **ADV KENNEDY SC:** Yes, that is really the thrust of what he was conveying.

MR SALOOJEE: Chair, they were valid.

ADV KENNEDY SC: Yes. So not only was he raising these but they were valid concerns, okay. Then he says in paragraph 5:

20 “The documents submitted by VR Laser on the ownership raise suspicions as they do not specify the individual shareholders in person. The names Elgasolve and Craysure Investments are silent about the identities of the real shareholders of the company. There were no other documents to authenticate. I trust the above details also clarify my reasons for not supporting the recommendation to appoint VR Laser to manufacture the hulls. Alternatively, the entire process must be revisited

and conducted in a fair and subjective fashion.”

So he is saying that is why I have not approved this. Now do you accept that Mr Mlambo should have at least been consulted to certify his being satisfied that the procurement policy had been properly complied with?

MR SALOOJEE: Yes, Chair, he should have been consulted and there should have been an ongoing discussion between DLS and himself.

ADV KENNEDY SC: Yes.

10 **MR SALOOJEE:** And I am not sure if DLS actually responded to this because I was not privy to this.

ADV KENNEDY SC: We are going to look at that in a moment.

MR SALOOJEE: Yes.

ADV KENNEDY SC: And I will help you with the documents on that. But it is clear that he is against the award of the contract, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And his recommendation is that the
20 entire process has to be restarted and that it must then be conducted in a fair and objective fashion. In other words, he was saying this has not complied with our supply chain management policy, it is not in the interests of Denel, it is not fair and objective. That is my understanding of the email. Would you accept that understanding on his part?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And on the basis in fact that you believe that his concerns were valid. Right, now he did indeed engage in further discussions with DLS ...[intervenes]

CHAIRPERSON: I am sorry, I think you were asking a question but I did not hear an answer, I think you moved onto the next one.

ADV KENNEDY SC: I am sorry, Chair.

10 **CHAIRPERSON:** Yes. Do you want to go back to your question because I did not hear an answer but I saw you were moving to another question.

ADV KENNEDY SC: Oh, I am sorry, I thought I got the answer. I am not sure which question you...

CHAIRPERSON: The one immediately before the one that you were in the middle of.

ADV KENNEDY SC: Well, perhaps I can just revisit everything that I deal with in the last minute or so. So he was raising his concerns, those were valid concerns,
20 correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And he was raising a conclusion, in his view, that was to this effect. The procurement process was not fair and objective, correct?

MR SALOOJEE: That is what he is indicating.

ADV KENNEDY SC: Yes and not in compliance with the supply chain management policy's requirements, correct?

MR SALOOJEE: That is what he is saying.

ADV KENNEDY SC: And he was saying you need my approval and I am not giving it for these reasons. You should restart the process from scratch. Correct?

MR SALOOJEE: That is what he is saying here, Chair.

ADV KENNEDY SC: Right. Now we then get to the point that you raised earlier. You assumed that he raised these
10 concerns with DLS and addressed them further with them.

MR SALOOJEE: Yes.

CHAIRPERSON: Before you proceed Mr Kennedy, you earlier on Mr Saloojee said that Mr Mlambo's concerns were valid, I take it you are referring to these concerns?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: When you say they were valid must I take it that you agreed with the points, the concerns he was raising or is the position that you are saying you are not necessarily saying you agreed with him but you think
20 they were legitimate to raise without necessarily that you are agreeing with them?

MR SALOOJEE: Chair at that point I wasn't aware of this conversation.

CHAIRPERSON: At that point.

MR SALOOJEE: I wasn't aware of this conversation going

on.

CHAIRPERSON: But right now you say you think they are valid?

MR SALOOJEE: So what I am saying is that he was correct in bringing to their attention the concerns that he had.

CHAIRPERSON: Yes. You are not saying anything, you are not expressing an opinion on their merits?

MR SALOOJEE: No Chair I am saying he was correct to
10 raise these issues.

CHAIRPERSON: Ja.

MR SALOOJEE: If he was concerned about that.

CHAIRPERSON: Okay, alright. Mr Kennedy?

ADV KENNEDY SC: Thank you Chair. Now there is then a response from Mr Burger to Mr Mlambo and we see that email, the heading to it appears right at the foot of page 785 and the next of the email appears on page 786, do you see that?

MR SALOOJEE: Yes.

20 **ADV KENNEDY SC:** The heading indicates it was sent by Mr Burger on the 4th of September at 1:57pm, it is 4th September 2014, it is addressed to Dennis Mlambo and copied this time again to Celia Malahlela, Mr Mhlontlo, Mr Wessels and again to Mr Reenen Teubes, but significantly also yourself, your name is indicated as the email being

sent by way of a copy to you. Do you recall if you received this email?

MR SALOOJEE: Yes Chair I am sure I have seen this email.

ADV KENNEDY SC: Yes, now Mr Burger in an entire page on page 786 gives a very detailed response to some of the issues raised by Mr Mlambo and he says that he believes that the process was absolutely correct and fair and stringent in evaluation etcetera, and then after the – sorry
10 after the numbered paragraphs ,do you see paragraphs 1, 2, 3 and 4?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Below that an unnumbered paragraph follows, it says:

“Nevertheless I am convinced that VR Laser is technically best equipped to execute this programme. I also believe given the recent contract performance of LNT it will be irresponsible to place a contract of such criticality on them also taking
20 into account the effect the KSA order will have on them.”

Now so he was attempting to address at least some of the concerns of Mr Mlambo, because Mr Mlambo in his evidence has criticised Mr Burger for not actually dealing with the heart of the concerns that he had raised and you

have already acknowledged that those were raised validly.

Now at the top of page 785 there is then a response from Mr Mlambo to Mr Burger and he again copies in the same people, including yourself, you recall if you received this?

MR SALOOJEE: I must have seen that.

ADV KENNEDY SC: Yes. Now may I read it, at least the relevant passages into the record. He says:

“Dear Stephan,.

10 We are clearly not aligned in terms of the analysis of the data and information that I saw for the first time on Tuesday at the meeting I had with Reenen and Celia. I certainly think we should not exchange any more emails on the issue in question as the resolution may be easier to find around the table. However the following issues have definitely not been addressed by your response:

20 1. The huge price differential in the offers made by LNT and VR Laser. Stephan Nel of LNT is adamant that having produced the hull before makes his quote a lot more realistic. On the other hand VR Laser’s quote is not based on past performance. Needless to say that prototypes are typically a lot more expensive than production related products. I am also informed

that the price capacity and capability concerns were never raised during the clarification meeting.

- 10 2. The mere fact that VR Laser refuted any conflict of interest through the submission of said document does not confirm the validity of the ownership, the adjudication team evaluated. Where is the document which should have been asked for, that details the individual shareholders of Alger Solve and Craysure Investments. Even the documents that list the directors of the two companies are not valid CIPC documents. I cannot understand why they were accepted.
3. You've also not explained why the capability or technical rating of LNT is the lowest despite the fact that the other two companies if they were successful would be making this type of hull for the first time.
- 20 4. I have received evidence that the two week grace period for the submission of the BBEE certificate by LNT was met and yet you claim that could not be considered as it was after the deadline. It is standard practice that a supplier that is being verified for BBEE level cannot be penalised for that especially if the critical data

used in the assessment is readily available.

What makes this even more unacceptable is the fact that we have unhindered access to data and information as LNT.”

So again Mr Saloojee do you accept that what Mr Burger had replied in the email below that to Mr Mlambo, in Mr Mlambo’s professional and good faith view did not properly answer his questions?

MR SALOOJEE: That is what is reflected here.

10 **ADV KENNEDY SC:** Yes. And then he says after the numbered paragraph 4, the final unnumbered paragraph, he says my contention, this is Mr Mlambo still speaking

“is that despite being convinced of a fair and objective process that was followed by the adjudication team ...”

that appears to be a reference to Mr Burger saying that it was indeed fair and objective –

20 “let us appoint an independent assessor to corroborate your claim. It is also worth mentioning that you flouted the delegation of authority by not presenting the file for review to me before engaging Fikile ...”

and Fikile of course is Mr Mahlantlo, CFO, and Mr Wessels, COO,

“any transaction above R20million must go through

my office first. I am beginning to have doubts that this was an oversight.”

What seems to emerge from this email is the first point that you have already acknowledged, that these were *bona fide* concerns that Mr Mlambo believed had not been properly addressed, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Secondly he makes it clear that in his view there had been a serious flouting of the delegation of
10 authority because they haven’t approached Mr Mlambo’s office at an early stage, correct, that is what he ...[intervenes]

MR SALOOJEE: That is what he is saying

ADV KENNEDY SC: Yes, and thirdly he is questioning the *bona fides* of Mr Burger, he is saying I am having real doubts about why this happened. How did it come about that you didn’t come to me Mr Burger, I am having serious doubts about whether this is a genuine oversight. In other words I am accusing you Mr Burger of actually acting in an
20 underhand and deliberately deceitful manner. That is what he is saying, not so?

MR SALOOJEE: That is what he is saying yes.

ADV KENNEDY SC: Now what I found interesting with your evidence earlier was that you felt well a measure of deference must be – and I am using words that you didn’t

use but giving my understanding, you seem to be saying earlier that it wouldn't be right simply to ride roughshod over a division such as DLS that has for strong reason motivated the appointment of VR Laser and you assumed that if Mr Mlambo would have problems he would go back to DLS. Now am I understanding your evidence correctly?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Right, and we know now from these emails that that in fact happened, Mr Mlambo did continue
10 the debate with DLS, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: As you would have expected him to do, as he should have done, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: But we also know that he doesn't get joy from the division in the sense that he asks a whole lot of questions, he gets some answers, but he says I am not persuaded that those answers are good answers at all, I still have serious doubt about things like price, why we are
20 paying so much for this, about why we are not giving it to LNT that is going to give it to us as such a price, a better price, where the technical capacity has not been properly motivated and explained and thirdly there are other issues such as BBBEE certificate having been dealt with in a way which is over formalistic and inappropriate, and finally Mr

Mlambo actually gets to the point where he says now I am beginning to think that you are trying to pull the wool over my eyes.

Now what I suggest to you Mr Saloojee is that the very fact that Mr Burger himself copied you in, he was the first person to copy you in on this correspondence not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes, and then Mr Mlambo continued that course by copying you in, this presumably must have, 10 if you had read it and you say you must have read it, it must have raised or rung some serious alarm bells. He must have realised now that there is a serious issue, that Mr Mlambo who is the head whether one calls him the manager or an executive he is the head within the group of Supply Chain Management, of course accountable to Mr Mhlontlo who was accountable to you but there is now an impasse between group level supply chain management in the form of Mr Mlambo and DLS Divisional Management, not so?

20 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: Now presumably this would have been a serious alarm bell, this is something serious because it is not well you haven't attached an annexure to your motivation please don't send me some – it was nothing of that sort of technical nature or a point of minor

detail. Mr Mlambo is effectively saying really the process you have followed is extremely irregular and in fact may be tainted by bad motive.

Now did you not realise at the time that you must have read these emails that there was in fact a serious problem of this nature?

MR SALOOJEE: Chair if I may, I am familiar with the contents of these documents, and it was discussed with me by Mr Mhlontlo and by Mr Jan Wessels. Again I must admit
10 that I have been – I am running an organisation to get involved at that level was just not at that moment possible, and I had given Mr Wessels and Mr Mhlontlo a directive that they need to go and investigate what is going on here.

ADV KENNEDY SC: Did they ever report back to you that they have [a] investigated and [b] come up with a resolution?

MR SALOOJEE: The only feedback that I got was that there was issues between Dennis and there was a difference of between Mr Mlambo and DLS and both of the
20 view that they have been doing the right thing, so that DLS had indicated Chair that they have gone through the proper processes, they do not agree with what Dennis is saying, they have justified why the price is what it is, they have justified why the BEE scoring was done the way it was an that is the conclusion that they had come to, that was my

understanding of how it was.

ADV KENNEDY SC: I understand your understanding, but may I question you about whether it is valid that understanding. You have here as the Group CEO two different entities within the group, the one is Head Office, your supply chain manager Mr Mlambo, you have on the other DLS which is a division, you are aware that they are now at loggerheads and in terms of that situation Mr Mlambo is saying you have seriously messed up the
10 procurement process, correct, that's what he was saying.

MR SALOOJEE: That is what he is saying Chair.

ADV KENNEDY SC: Yes, it just seems a bit strange to me as an outsider, and perhaps I am being naive but it seems to me to be a bit strange that your approach is well guys chat amongst each other and then you get the message back well DLS are sure that they have done it all correctly and that is where the matter ends. Of course DLS would think that they have done it correctly, that is why Mr Burger keeps writing letters, emails at great length to Mr Mlambo
20 but Mr Mlambo is saying well I have heard you out but you haven't actually even properly answered my questions, so how could you remotely have been satisfied with news coming back to you, busy as you no doubt were, satisfied well if DLS say that they have complied that is good enough for me, isn't the whole point that DLS say that they

have complied but Mr Mlambo says they haven't complied and he is even accusing them of going through a sham process of having bad motives and he lists in great detail the points that they haven't addressed which are non-compliance with the procurement policy.

Why do you leave it to the one party in this dispute, namely DLS, to basically say we have done it all fine, trust us. Do you see the problem?

MR SALOOJEE: Mr Kennedy I understand what you are
 10 saying. Chair the issue is I did not leave it to DLS to say that everything is fine, the fact is that I had then given a directive to Mr Mhlontlo and Mr Wessels to go and investigate whether these issues that Mr Mlambo was raising were valid or not and that is the process that they had gone through, and the response when they came back to me was that there is a fundamental difference of opinion.

There are two schools of thought, the one school of thought is the supply chain process within DLS, the
 20 technical evaluations, the BEE evaluations and everything, they stand by what their view is and they disagree fundamentally with what Mr Mlambo is saying and from my understanding they were saying that Mr Mlambo is deliberately trying to derail this process. That is the response that I got.

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

CHAIRPERSON: Yes but the fundamental question is once you got those – once you understood that they could not reach agreement Mr Mlambo and DLS, somebody had to take, to resolve that impasse. When I say resolve it I don't necessarily mean go and get them to agree but somebody had to make a decision and that person was you, was it not, who had to make a decision as to which decision would be correct, bearing in mind these
10 fundamental differences.

MR SALOOJEE: Chair you are correct but at the end of the day as we have gone through the whole process and the submission was eventually made as to why they believed that this was a critical issue that needed to be resolved with appointing VRL as Mr Burger has given evidence, as all the paper trail has indicated as to why they justified having taken the view that they did, that was the view that prevailed with Mr Wessels, with Mr Mhlontlo which they brought to me.

20 **CHAIRPERSON:** Mmm, I take it that what you mean is that despite the fact that you say understood Mr Mlambo's concerns you are saying that you came to the conclusion that his concerns when weighed against the views expressed by the DLS side were not justified, or were not correct on a balance on the scale.

MR SALOOJEE: Chair to tell you the truth my own view is that I thought that they had come to some resolution about these issues.

ADV KENNEDY SC: And what was the basis for that view that they had come to some resolution?

MR SALOOJEE: Because after all of this correspondence was done nobody, not Mr Mhlontlo, not Mr Wessels came to me to say that there was still an issue outstanding here.

CHAIRPERSON: But you had asked to speak, to speak to
10 each other or something, to talk and try and find a resolution isn't it?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: And therefore you were supposed to find out what the outcome of that process was, before making your own decision isn't it? In other words if you said I want you to go and talk to each other to try and find each other before I make a decision you would – one would expect that you would say come back, tell me, what's the outcome of that process because now I must make a
20 decision.

MR SALOOJEE: Well Chair that's what I am saying, I mean I think when Mr Mhlontlo and Mr Wessels came back to me and they indicated that they have addressed this issue I thought that there was no other intervention that was required at that point.

CHAIRPERSON: Well I am not sure if I follow, I thought that what you said a few minutes ago was they didn't come back to you to tell you what the outcome of that process was and because they didn't come back to you to tell you what the outcome of their talking together to each other, because they didn't come back you assumed that the issue had been resolved, I thought that's what you were saying, as I understand you?

MR SALOOJEE: I think if I remember correctly Chair they
10 confirmed ...[indistinct] said to me that these issues were addressed.

CHAIRPERSON: And what was the outcome of addressing them?

MR SALOOJEE: There wasn't any formal paperwork or anything which addressed this particular issue.

CHAIRPERSON: Even if there was no paperwork if he said to you this issue has been addressed obviously you would want to know what was the outcome, what do you mean you have addressed, have you now ...[intervenes –
20 cross-talking] common cause.

MR SALOOJEE: Now, now, now when I look at Mlambo's testimony and I look at what he has said and Mr Burger's view on what the differences are obviously the issues were not resolved.

CHAIRPERSON: Yes, but what I am going back to that

time, if Mr Mhlontlo said they had been addressed I am saying you must have asked what do you mean, have you agreed, have you not agreed, did you ask that?

MR SALOOJEE: I take your point Chair.

CHAIRPERSON: Yes, you didn't ask that question?

MR SALOOJEE: Yes.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. There was a further communication that came from Mr Mlambo to yourself, if I can ask you to turn to page 791, the earlier email was dated the 4th of September 2014 that we looked at where he was simply copied in although it was an email addressed to Mr Burger, this time it is an email from Mlambo to yourself, it is addressed to Mr Saloojee and Mr Mhlontlo and Mr Wessels, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And he says:

“Gentlemen, I have managed to review DLS's submission pertaining to the abovementioned subject. The following issues paint an unacceptable picture from a process, fairness and objective point of view .

1. The tender documents were not sent to all the bidders simultaneously as per the normal tender process;

2. Prior to the adjudication process there were still engagements or clarification sessions with individual bidders. The process that such engagements be held with all bidders at the same time. Information that is requested by one of the bidders must be sent to others even if they did not ask for it;
3. Despite the fact that LMT BBEE's status was disregarded on grounds that it was still being verified and the deadline was the 25th of June 2014 the VR Laser certificate was accepted and rated on the 27th of June 2014, two days after the closing date;
4. 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 he offered to come and present the facts to demonstrate that it is based on realistic quotes. Furthermore he claimed LMT had made the hull before under Patrios contract;
5. In my meeting with Stephan Burger yesterday he indicated that VR Laser had offered to reduce the quote from around R262.4million to

R195.0million! Doesn't that 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 before going out on tender.

Goodnight,

Dennis"

10 Clearly he is a bit upset, not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And serious, correct? Correct, he is serious?

MR SALOOJEE: Yes.

CHAIRPERSON: And he is writing this at about quarter to eleven in the night isn't it?

ADV KENNEDY SC: Yes.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And addressing it primarily to yourself
20 as Group CEO, this seems to me to be firstly an attempt by Mr Mlambo to escalate it to the Group CEO level, secondly to make it clear that he believes in his professional view that there are extremely serious irregularities under a lawful and proper fair procurement process and further it seems to me to be a cry for help from your most senior

supply chain manager to you as Group CEO to intervene and to stop a process which he is effectively warning you is unlawful and unfair and should be stopped, is that correct?

MR SALOOJEE: That is what he is indicating yes.

ADV KENNEDY SC: Yes. Now you were aware as CEO presumably – just forgive me for not knowing all of your background, do you have any professional background?

MR SALOOJEE: Not legal.

10 **ADV KENNEDY SC:** Not legal, and have you ever been a supply chain management executive or anything of that nature?

MR SALOOJEE: No I haven't.

ADV KENNEDY SC: Okay so the law on the supply management processes are not your area of particular expertise.

MR SALOOJEE: No they are not.

ADV KENNEDY SC: To be fair to you, right, but you were the Group CEO at the time of a major State entity, correct?

20 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: Dependant on firstly doing a good job in the market and trying to be profitable and secondly accountable to the State and where there were financial shortfalls you would be looking to the State for bailouts as it were, not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes, you also know of course presumably as a responsible Group CEO, but particularly in the current era, at least in 2014, our Public Procurement Laws, both from the Constitution and laws such as the PFMA, you had heard about the PFMA presumably.

MR SALOOJEE: Absolutely.

ADV KENNEDY SC: Of course, and that National Treasury lays down regulations and supply chain
10 management processes and rules that were binding, not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And that Denel had to have its own system of supply chain management in terms of its own policies correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And you had exactly such policies, correct?

MR SALOOJEE: Yes.

20 **ADV KENNEDY SC:** And you knew, because you employed him, that you had somebody called Mr Mlambo at Head Office level who was deeply familiar with this type of issue, not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: He was employed based on his

expertise, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Just as Ms Malahlela was employed for her expertise in the same field at DLS Divisional level, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. Now here you have been told, not for the first time, but at least here in an absolutely direct and very specific manner that there are some
10 extremely serious irregularities that Mr Mlambo has picked up. Now again did you leave this on the basis that you thought it was all going to be sorted out?

MR SALOOJEE: Chair I mean this is what I was referring to earlier, because I had specifically asked Mr Wessels and Mr Mhlontlo, specifically Mhlontlo to go and address these issues.

CHAIRPERSON: Well this was before you took the decision was it not, this was before you gave the approval?

MR SALOOJEE: Yes Chair.

20 **CHAIRPERSON:** Yes. It is – I am just wondering how you could not when told by Mr Mhlontlo that the issue has been addressed how you could not have said I want to know how they have been addressed when you were aware that the issues that Mr Mlambo had raised were so serious, in other words that you could go ahead and make your decision

without knowing how they were addressed if somebody said they were addressed, because you accept these are quite serious issues he is raising?

MR SALOOJEE: Chair maybe I should just sketch a different view on this thing, okay. The issues that Mr Mlambo is raising I said are correct, he should have been concerned about this, okay. The feedback that I got eventually on each one where Mr Mlambo is talking about price for example there is an explanation from ...[indistinct]
 10 as to why the price is what it is. Where Mr Mlambo is talking about the BBBEE certificate there is an explanation from DLS Executive Committee why they took the decision that they took. Where Mr Mlambo is talking about the difference, sorry the issue around quality and ability of LMT to perform or not there was a response by – and Mr Burger was here saying exactly that, he countered all of these things and that was the explanations that were put forward, that they did not agree with what he was saying.

CHAIRPERSON: But are you saying to me it is not as if
 20 when Mr Mhlontlo said these issues that Mr Mlambo has raised have been addressed it is not as if you left that issue there, you did ask him how have they been addressed and he told you exactly how they were addressed, is that what you are saying?

MR SALOOJEE: Chair if I recall correctly, I mean it is a

long time ago, okay, and you say there it was I will be back in my office Mr Mlambo is saying, I do recall that there was a discussion that took place in the office with Mr Burger and Mr Wessels and I think Mr Mlambo was there as well, where these, all of these issues were being explained by Mr Burger in order to counteract what Mr Mlambo was saying.

CHAIRPERSON: Yes, but did you call Mr Mlambo, put to him what Mr Burger and them were saying?

10 **MR SALOOJEE:** I think Chair if I recall at that meeting he was not at work that day.

CHAIRPERSON: Yes but before you made the decision did you call him to say Mr Mlambo you raised these issues which I thought you were right to raise them if they were concerns to you.

MR SALOOJEE: No Chair we did not.

CHAIRPERSON: But this is what I have been told. I want to hear what you have to say about this. You did not do that?

MR SALOOJEE: No we did not do that Chair.

20 **CHAIRPERSON:** Why not?

MR SALOOJEE: Because between Mr Mhlontlo, Mr Wessels and Burger's explanations and time was going on rapidly okay that I thought that they had adequately addressed those issues.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Do you accept now that they had not?

MR SALOOJEE: I cannot say that they – I mean in terms – sorry Mr Kennedy had not addressed.

ADV KENNEDY SC: But they had not resolved these issues – there was a disagreement. There still is today.

MR SALOOJEE: A disagreement?

ADV KENNEDY SC: Yes. Mr Mlambo is absolutely adamant that his criticisms were absolutely correct and in fact to an
10 extent Mr Burger has conceded at least some of those.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Far with – with hindsight retrospect I now realise he was right and I was wrong.

MR SALOOJEE: I heard that what Mr Burger was saying you know.

ADV KENNEDY SC: Yes. But may I just ask from a level of – at the level of accountability of a Group CEO of a state owned entity I understand that you were busy but surely one of your most important duties as the Group CEO is to ensure
20 that your – that you carry out what is expected of you by the constitution and by the PFMA, correct?

MR SALOOJEE: That is correct.

ADV KENNEDY SC: And here you having loud rings of an alarm bell from your most senior Supply Chain Management person saying this has not been done properly it should be

revisited. At one stage as we saw in one of the emails he says why do we not get an independent assessor to test whether your claims Mr Burger are correct or not? In other words I cannot just simply accept your say so that you have done it all correctly because I believe you have not done it correctly.

Why did you not for example not bring in somebody for example an attorney or a senior counsel or somebody to say, I give an opinion that this has been complied with or
 10 this has not been complied with and if it has not been complied with we do the following? Why do you leave it on the basis well I thought that they were chatting amongst themselves and I – I thought that they – had it been resolved.

We know that it was not resolved and now years later you having to sit under the glare of television lights in public to answer questions about a major transaction that bound Denel to huge amounts of public money that just happens to have been given to a Gupta linked company where as it
 20 happens everybody now seems to accept that there were in fact procurement problems.

MR SALOOJEE: Chair I take the point I mean it is..

ADV KENNEDY SC: Yes. Can you answer it?

MR SALOOJEE: Why did I not...

ADV KENNEDY SC: Were you not remiss Mr Saloojee?

MR SALOOJEE: Chair I mean I had my chief Group Financial Officer, the Group Chief Operating Officer. I had in Mr Burger as he had said a CEO who had been in this business for thirty years and they were telling me that they had followed the correct process. I mean and that is the advice I had taken.

ADV KENNEDY SC: But you knew from the email correspondence that this thing had been bouncing back and forth between Mr Mlambo and Mr Burger. Mr Mlambo saying
10 XYZ are problems. Mr Burger comes back and says no well I have got a reason VR Laser are just great and we know they are going to do the job. And LMT are useless and the price does not really matter so much and so forth.

Mr Mlambo comes back and says no XYZ have not been answered in fact I have got a whole lot of other problems ABC. Mr Burger comes back and he says in a long email this is my answer to Mr Mlambo then says huh-ha you still have not answered in fact I am now thinking that the fact that you did not come to me initially as you should have
20 shows an ulterior motive. And he copies you in.

Now surely that should have alerted you to the fact that there is a serious disagreement between them where Mr Burger's say so is not satisfying Mr Mlambo and you leave it on the basis well people have chatted amongst themselves and they all say that they have done the correct thing. I

mean just at the level of professional courtesy apart from anything else does it not perhaps with the benefit of hindsight strike you as obvious what it seems to me to be obvious which is a response to Mr Mlambo's email.

“Dear Denis thank you very much for raising these issues. They will be dealt with by Mr Mhlothlo and by Mr Wessels in consultation with Mr Burger and you.”

And yet he has given evidence Mr Mlambo I am looking at
10 his affidavit here. I received absolutely no response from Mr Saloojee.

Now let us assume that you are right for a moment. That you were entitled simply to leave it even though you had been approached as Group CEO intervene for you to say well I am not going to intervene I am just too busy and I have got other people who should be resolving it so I am going to leave it to them to resolve and later I think that they have resolved it so it is all fine.

Just at the level of professional courtesy would it not
20 have appropriate for you to say to Mr Mlambo I am afraid I am too busy to deal with this but I am delegating it to Mr Wessels or I am delegating it to Mr Mhlontlo you will hear from them Would that not have been appropriate?

MR SALOOJEE: I agree with you.

ADV KENNEDY SC: Yes. And would it not have been

appropriate also for you to follow up so that before you did give your approval and we are going to take you to the memorandum in a moment where a few weeks later you did sign. Would it not have been appropriate just to be sure because you CEO. You are the Accounting Officer for Denel in terms of the PFMA not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: You cannot say in terms of the PFMA well we slipped up as an organisation but somebody further
10 down the picking order in the organisation did not do their job. You were responsible ultimately not so for compliance with procurement procedures, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And Mr Mlambo has said to you they have not complied with ABCDEF. Would it not have been appropriate before you signed approval not to rely simply on what Mr Wessels or Mr Mhlontlo oh well Mr Burger says that he has done it all. At least again by way of firstly courtesy and a way of protecting yourself to write to Mr Mlambo and
20 say, this memorandum has come back to me can I just confirm all of your queries have been answered and if they have not been answered tell me what they are.

And if there is a division of opinion between you at head office and DLS at divisional level we will refer it to our – for somebody to give some sort of professional view.

Would that not have been the obvious way of dealing with it?

MR SALOOJEE: Chair I mean I think you know within the context of what happened during that particular period okay I thought I had done the right thing by getting Mr Mhlontlo and Mr Wessels to get into this issue and look at the merits of this thing. And Burger and then came back into my office and as I have indicated they had gone through each one of these issues and said that they think that they have addressed this adequately okay. And the nature of this
10 program was of such criticality that we could not continue in the vein that we were without coming to some resolution. If I may I do not know if you have had a chance I mean I have got it in front of me Mr Wessels in his – in his affidavit indicates at that meeting and in fact Ntshepe was at that meeting as well where he said...

CHAIRPERSON: Well you can read – refer to what you want to refer to if it is relevant to your answer if you want to.

MR SALOOJEE: But if I may Mr Chairman.

CHAIRPERSON: Visit his affidavit.

20 **ADV KENNEDY SC:** Yes carry on.

MR SALOOJEE:

“So during the meeting either Mr Mhlontlo or myself referred to the email from Mr Mlambo ...”

CHAIRPERSON: You are now reading from Mr Burger’s affidavit?

MR SALOOJEE: No this is from Mr Jan Wessels.

ADV KENNEDY SC: Mr Wessels affidavit.

CHAIRPERSON: Oh Mr Wessels's affidavit.

MR SALOOJEE: So there was a meeting that was convened.

CHAIRPERSON: Okay.

MR SALOOJEE: With Mr Burger, with Mr Mhlontlo, with Mr Wessels and Mr Ntshepe was present.

ADV KENNEDY SC: Yes

10 **MR SALOOJEE:** To address this specific email of the 9th.

ADV KENNEDY SC: Yes but not Mr Mhlontlo. I am sorry not Mr Mlambo.

MR SALOOJEE: No he was not there he was not at the office that day.

ADV KENNEDY SC: Yes.

MR SALOOJEE: Okay. So they have convened this urgent meeting.

ADV KENNEDY SC: Yes.

MR SALOOJEE:

20 "So during the meeting either Mr Mhlontlo or myself referred to the email from Mr Mlambo on dated 9 September. I recollect that either Mr Ntshepe or Mr Burger responded that all Mr Mlambo's concerns were adequately addressed by DLS and the submission for

approval on GCEO table reflects that. As I recollect Mr Burger stated that almost three months had been lost since July 2014 and reiterated his position that as prime contractor for Hoefyster DLS use LMT as a program risk to the safety of this fighting vehicle project and that he as CEO of Denel Land Systems is unwilling to contract LMT for hull manufacture unless the GCEO instructs him to do so. And then GCEO will have to take the safety responsibility away from DLS and carry it on its own shoulders. As I recollect Mr Ntshepe supported Mr Burger strongly and stated that the principle of decentralised operating model of Denel is one where the divisional CEO's are responsible for the business performance operations and contract execution. If the GCEO and if the GCEO overrules DLS in this instance it creates a dangerous future precedent for the total group since divisional CEO's will not be held accountable for project execution and business performance. I also recollect that either Mr Burger or Mr Ntshepe stated to Mr Saloojee that in the

situation where DLS is instructed to use LMT for hull manufacture General Ntshepe eventually for the army and his senior staff will become aware with the monthly program reporting via Armscor that there is a safety risk on the Hoefyster project which could result in contract cancellation.”

CHAIRPERSON: May I interrupt you – may I interrupt you Mr Saloojee? Is the position not that nobody should have
 10 made bets or sought to say well if you do not agree with me then you will carry the responsibility? Is the position not that you as the final decision maker had to satisfy yourself whether the laws and the policies had been complied with. You could not be threatened by somebody to go against the laws and go against the policies of the company just because they thought you might make a decision they did not like and they saying that in the event you will take responsibility. You had to satisfy yourself whether the issues that Mr Mlambo had raised which went to the question
 20 complying with the laws and policies whether there had been compliance. Some – anyone else could say whatever they said was not your duty to satisfy yourself that there had been compliance and Mr Mlambo saying that there would no compliance.

MR SALOOJEE: Chair I take what you are saying and the

fact of the matter is that when all of these processes was finished all of these interactions were undertaken and yes there was a discussion around Mr Mlambo's email. That when they eventually brought this submission to me okay as I have indicated that I had given the mandate for them to continue with the negotiations with LMT and with VR Laser and I thought that was the correct thing to do and that is what I did.

CHAIRPERSON: But do you – do – did you satisfy yourself
10 whether the laws and the policies were complied with before you made the decision?

MR SALOOJEE: Well after the presentations that were made to me I Mr Mhlontlo by Mr Wessels by Mr Burger and responding to each of these things I – I was of the view that I was satisfied that they have addressed those issues.

CHAIRPERSON: Yes but I – I am asking the question. Did you satisfy yourself that there had been compliance with the laws and the policies or is the position that somebody said there had been compliance and you said well if so and so
20 says there was compliance I will accept that there was compliance even if I did not satisfy myself.

MR SALOOJEE: No Chair there was not an external view on – or advice on this matter.

CHAIRPERSON: But when I talk about somebody else I am talking about Mr Burger and so on.

MR SALOOJEE: Sorry Chair.

CHAIRPERSON: When I say – when somebody else says there was compliance maybe you would say okay if DLS says there was compliance I will take it that there was compliance. I am talking about internal people. So my question is did you satisfy yourself that there had been compliance or is the position that you deferred as it were to other people such as Mr Burger and whoever else who were saying Mr Mlambo's issues are not valid or have been
10 addressed and you took that and said well if they say so I will accept that that is so even – I will not have to satisfy myself.

MR SALOOJEE: Chair after having listened to all the arguments I had satisfied myself that this was the right thing to do.

CHAIRPERSON: Ja of course that does not answer the question whether you satisfied yourself that there had been compliance – compliance with the laws and policies. It might the right thing to do and he talked morality in terms of what
20 is morally right earlier on but I am simply talking about compliance with the laws and the policies. Did you satisfy yourself at approving that before you approved there had been compliance with the laws and policies?

MR SALOOJEE: Chair after having gone through all the arguments and debates and whatever else I had come to the

conclusion that there had been compliance.

CHAIRPERSON: Okay alright. Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Is that still your view?

MR SALOOJEE: Chair I mean I have to study this in a better way to understand that.

ADV KENNEDY SC: Interestingly Mr Burger who had been so adamantly in support of VR Laser's appointment and it ultimately prevailed thanks to the mandate that you gave him
10 although he did not comply with the condition. He has repeatedly conceded in the witness chair that you are now sitting in to the Chairperson that it was in fact irregularly done. And that Mr Mlambo's concerns about illegality and unfairness in a process were not only in good faith but actually correct. That is was done unlawfully and unfairly.

MR SALOOJEE: Chair I am not sure about the unlawful thing of what Mr Burger has conceded to.

CHAIRPERSON: Yes I think Mr Kennedy is correct. My recollection is that Mr Burger conceded that – but what he
20 insisted on was that he believed at the time that his decisions were in the interest of Denel. But as to the compliance with the policies or the legalities my recollection also is the same as Mr Kennedy's namely that he conceded that. We are not saying you must concede if you do not – if you do not see it. Mr Kennedy was just telling you what Mr

Burger's position was after for quite some time he seemed to have insisted that there had been nothing wrong with the – with how it had been – this matter has been handled.

MR SALOOJEE: Yes Chair.

ADV KENNEDY SC: Did you at any stage consider referring the matter either to an external lawyer or an internal lawyer within the company to give an opinion as to which view was correct?

MR SALOOJEE: No we did not.

10 **ADV KENNEDY SC:** Because you came to the view you say after considering all of the arguments that Mr Mlambo's concerns were unjustified. But you do not seem to have that time to have engaged with it and secondly that is not your field of expertise. So would not – I mean at least to protect yourself would it not have made sense? I mean for example if the Auditor General came to do an audit and found that there were irregularities how would you explain that? Would you say well Mr Burger said he did it so it was all fine in my view or that I thought that it was a compliance – compliant
20 process that was followed.

MR SALOOJEE: Chair I mean as I have indicated before I – I was of the view that the process had been followed.

ADV KENNEDY SC: Yes.

MR SALOOJEE: I was of the view that this thing had been discussed at the very highest level within the organisations

and that they had come to the conclusion that these issues were adequately addressed and that is what they came to brief me on. And that is what I am saying here. With hindsight yes we should have been...

ADV KENNEDY SC: Yes carry on sorry.

MR SALOOJEE: We should not have – we should have maybe had at least a third party have a look at this.

ADV KENNEDY SC: Yes. I find it interesting what you read out from Mr Wessels' affidavit where he explained in some
10 detail the discussion he had with you together with Mr Mhlontlo and Mr Ntshepe without Mr Mlambo present. You mentioned that Mr Mlambo was away for a couple of days.

MR SALOOJEE: Yes.

ADV KENNEDY SC: His email indicates I think he said I am back on Monday.

MR SALOOJEE: Yes, ja.

ADV KENNEDY SC: Was the matter so urgent that it had to be debated without Mr Mlambo present it could not have waited until he was back? Would that not have made more
20 sense whether or not he got...?

MR SALOOJEE: I agree with that Chair.

ADV KENNEDY SC: Yes. At the very least to make him feel that he is taken seriously.

MR SALOOJEE: I agree with that.

ADV KENNEDY SC: Because I must admit again as an

outsider and perhaps naively I am going to suggest this to you but again it just seems to me a bit strange that Denel goes to the trouble of appointing somebody who is got a wealth of experience. We have seen his background in his own affidavit Mr Mlambo and he raises all of these things. Everybody accepts that he does it in good faith. You happened to think that he was wrong. Mr Burger thought that he was wrong although ultimately Mr Burger has now accepted that Mr Mlambo was right. It just seems to me to be

10 a bit of a waste of time and money and human resources to employ somebody like Mr Mlambo with his decades of experience. He does his job in good faith, raises these concerns and nobody actually ever gets back to him to say, well we have actually had an answer from Mr Burger. It seems to me Mr Saloojee as GCEO that that is probably a good answer but Mr Mlambo are you happy? Can you confirm that you agree or do not? Is there something I have overlooked? Instead he is just ignored that was his evidence.

20 **MR SALOOJEE:** Chair I mean there were on-going discussions between Mr Mhlontlo and Mr Mlambo. He was not being ignored at all and that is what transpired.

ADV KENNEDY SC: And yet – and yet Mr Mhlontlo has not given any evidence even when he was asked about this to the effect that he was constant discussion with Mr Mlambo.

He did not deny that there was no response to this.

MR SALOOJEE: I mean I cannot – I cannot comment on whether he said that or not.

ADV KENNEDY SC: No. Yes. And you cannot comment on whether he actually did carry out what you would expect him to which is to have constant communication with Mr Mlambo.

MR SALOOJEE: That is what I was under the impression.

ADV KENNEDY SC: Yes. Were you moved when – I do not know you say you saw part of Mr Mlambo's evidence and
10 part of Mr Burger's evidence. Did you see Ms Malahlela's evidence?

MR SALOOJEE: Yes Chair I did.

ADV KENNEDY SC: Including the moment when she broke down in tears.

MR SALOOJEE: Yes Chair I did. I did not see that part but I heard you talk – reference it when Mr Burger was here.

ADV KENNEDY SC: Yes.

MR SALOOJEE: Yes.

ADV KENNEDY SC: And – and did you see Mr Mlambo
20 sitting giving evidence here and explaining how he came after a lengthy career at Denel that he eventually felt well he was – he had to leave because there was no point in him being there he was not being taken seriously. That is the effect of his evidence. Clearly very sad and moving from a purely human point of view to see somebody like him a

serious profession having become so demoralised trying to do his job and just being effectively ignored and the same from Ms Malahlela to the point of tears. Does that concern you as a human being as you sit here now?

MR SALOOJEE: Mr Kennedy, Chair I mean I sat here before you last year. What they had gone through I had gone through myself. The process that I had – underwent in Denel by the time of my suspension had an incredible effect on me and my life. I know Mr Mlambo from the days long days from
10 struggle we comrades together. I have the greatest respect for him. I have the greatest respect for Ms Malahlela. The fact that they were treated the way they were treated by that organisation. The fact that myself, the CFO, the company secretary were treated in the way in which we were treated is in many respects similar to the experiences that they have had. I mean the ...

CHAIRPERSON: The [00:23:11] of course is or part of the differences is that in this case you – on their evidence you seemed to have been part of the people who were acting in a
20 manner that was frustrating them.

MR SALOOJEE: Chair I have indicated very clearly what were the reasons, the issues that they comprise, the issues they are trying to resolve these issues so that we come to a win-win situation. I was doing what I thought was in the best interest of the organisation. I did not give blanket approval

for Mr Burger or DLS. They have to go through a process. This process went for over five months that is why when they came to my office they said that this is so critical now a decision has to be made. It was stalled for five months precisely because of these discussions and debates that were going on.

CHAIRPERSON: Of course one of the strange features for me is that there was that period of about you say five months.

10 **MR SALOOJEE:** Yes.

CHAIRPERSON: But if I recall correctly there were two instances where Mr Mlambo – where certain discussions happened when Mr Mlambo was not around in circumstances where those discussing the matter should have included him. The one is the one that we have just talked about.

You said he was not there on that day. But he was going to come back either the following day or in a few days' time and one asked the question, why could this not wait? But apart from that I think and I cannot remember the details
20 also at some stage I think when the agreement – I do not know which one was signed he had not been consulted at all. He heard much later that the agreement had been signed in circumstances where on his version and he seems to be right in terms of the policies of the company before that agreement could be signed he should have been approached

so that he could say whether there had been compliance or not.

So one is bound to ask the question was it always – was it coincidental on both occasions that he was not there when these serious developments happened or was there some sinister plan by somebody to exclude him because he was going to make it difficult to achieve what they wanted to achieve. Because he had these arguments and these arguments were standing in the way of appointing VR Laser
10 and Mr Burger at least on one occasion wrote a – wrote him a long email but did not address the real issues that he was raising.

And if I recall correctly when Mr Burger was here and I hope I am not mixing things up now he could not address those particular issues which he should have addressed in that email. So – so you see that – one looks at these things and one wonders whether it was always coincidental or at least not always on those two occasions when there were to be important developments it was coincidental that he was
20 not at work. Or that he was not invited to be involved.

MR SALOOJEE: I hear what you are saying Chair.

CHAIRPERSON: You understand that?

MR SALOOJEE: Yes.

CHAIRPERSON: Ja. Okay. Mr Kennedy.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: I see we are at quarter to eight.

ADV KENNEDY SC: Eight yes.

CHAIRPERSON: Eight should we – let us talk about how far we are from finishing and then maybe we should take a short adjournment of ten minutes.

ADV KENNEDY SC: Yes I think I probably need about another hour Chair.

CHAIRPERSON: About another hour.

ADV KENNEDY SC: The bulk of it we have dealt with.

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: In relation to these platform hull contracts. There are some further issues I still need to...

CHAIRPERSON: Yes okay. Mr Saloojee are you still fine to continue?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: Ja and okay alright. Maybe let us take a short adjournment ten minutes and then we come back and we continue.

ADV KENNEDY SC: Thank you Chair.

20 **CHAIRPERSON:**

MR SALOOJEE: Thank you Chair.

CHAIRPERSON: Okay we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay let us continue.

ADV KENNEDY SC: Thank you, Chair. Chair, we are still in Bundle 1. And may I ask you, Mr Saloojee to turn to page 793?

MR SALOOJEE: [No audible reply]

ADV KENNEDY SC: Now that is a recommendation that is dated – we see on page 795, the 29th of September 2014. And it is signed by Mr Mlambo, Mr Wessels and Mr Mhlontlo. Do you see that?

MR SALOOJEE: Yes.

10 **ADV KENNEDY SC:** And I am not going to take you through all of the details of this. The evidence has been that this was the product – this is what was called the physician(?) paper, relating to the Platform Hulls contract.

Before the final award to VR Laser, what was indicated here was a consensus view by the three individuals that a portion of the work be shared with LMT.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Are you familiar with this document? Do you recall if that was drawn to your attention?

20 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: It was?

MR SALOOJEE: [No audible reply]

ADV KENNEDY SC: And did you approve it?

MR SALOOJEE: No. I mean, there was no approval process with this.

ADV KENNEDY SC: Yes. And you were not asked to approve it.

MR SALOOJEE: Yes.

ADV KENNEDY SC: But did you think it was a good idea?

MR SALOOJEE: What? The sharing of the work?

ADV KENNEDY SC: Yes.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. And this, presumable, would have achieved the condition that you had set that they need to
10 share the work with LMT.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. Of course, what I suggest to you is that sharing the work between two of the bidders does not necessarily remedy any deficiencies or breaches in relation to procurement policies and laws, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. Okay. Mr Mlambo has given evidence that this decision that was taken jointly in this position paper that LMT should be given part of the work,
20 ultimately, was not carried into effect.

MR SALOOJEE: That is correct, ja.

ADV KENNEDY SC: Yes. And we then come to the next document at page 797 which is the submission, Group Chief Executive Officer Supply Chain submission. It is addressed to Exco. Do you see that on page 797?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And it comes from the DLS Exco. That is the Divisional Exco.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Headed by Mr Burger, correct?

MR SALOOJEE: [No audible reply]

ADV KENNEDY SC: And it is dated the 15th of October 20214. Now it sets out some of the background and we see the signatories to this document at
10 pages 804 to 806. The first is Ms Malahlela.

The second is Ms Africa, who is the then Executive Manager, Infantry Systems. And then Mr Teubes. We know he was another executive from DLS.

And then Mr Burger himself. He was the CEO of DLS. And then there is a recommendation by Mr Wessels. Do you see his signature, dated the 16th of October?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And likewise, a signature for the recommendation from Mr Mhlonthlo, Group CFO, Denel,
20 16th of October 2014.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Now you then signed it on the same date, the 16th of October 2014 and we see that on page 806.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Now is this the document you were

referring to earlier where you did not delete or mark which was approved and which was rejected?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. But everybody else seems to have interpreted this an approval by you, despite the fact that you did not circle the word approve or delete the word reject. Was this, in fact, not an approval by you?

MR SALOOJEE: My understanding was that it was a mandate given to them to engage in an negotiation.

10 **CHAIRPERSON:** I am sorry. Are you saying that by signing here, you thought you were giving them a mandate to enter into negotiations?

MR SALOOJEE: Yes, Chair.

CHAIRPERSON: Despite the fact that except the approve or reject? Or you thought you were approving negotiations?

MR SALOOJEE: Chair, I mean, if you look at this. It is a recommendation. It also has, for example, as I have indicated earlier on, the issue of contracting LMT as a Single Source Supplier. They had to go and negotiate this with the
20 parties that were involved.

CHAIRPERSON: Oh, okay. I am going back to page 804:

“In line with the discussion are contemplated here and we hereby recommend the approval of the Group CEO of Denel approves the deal as recommended selection of the Hull Supplier.”

So, certainly, that is not – it is the selection that you are approving there.

MR SALOOJEE: Yes, Chair.

CHAIRPERSON: Ja. And then B, you are approving a recommendation that the mandate to – a mandate be given to then contract negotiations for the manufacturing and supply of the hulls.

And then under C, you are – you would be giving permission to Mr Burger to sign the contract before the
10 manufacturing of the hulls.

So – and D, you were approving a recommendation and therefore you were going along with the recommendation that – what is this – contracting LMT as a Single Source Supplier for the vehicle hulls near rear internal fleet and the backdoor.

E: After the completion of the joint pass for design, that they did not therefore vehicle hull near rear internal fleet and backdoor be contracted on the same principles.

So I guess, it is not just negotiations that you were
20 approving, should be embarked upon. There may have been negotiations but there was a lot more, including concluding some contract, is it not?

MR SALOOJEE: Yes, Chair.

CHAIRPERSON: Ja. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: So maybe just to then go back to Mr Kennedy's questions because you did not delete or encircle any of the two words, approve or reject. You now confirm that you were approving what you have said you are approving, in line with the recommendations?

MR SALOOJEE: In line with the recommendations and the mandate to continue with the negotiations as well Chair.

CHAIRPERSON: Ja. Okay Mr Kennedy.

ADV KENNEDY SC: Thank you. But of course, B, D, D and
10 E are separate paragraphs. A starts with the Group CEO of Denel approves that DLS recommended selection of a hull supplier. That was VR Laser, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. So whether or not, ultimately, there were negotiations with, for example, LMT and whether or not they were appointed to produce the rear door, et cetera. You were approving VR Laser's appointment for the Platform Hull components, correct?

MR SALOOJEE: Yes.

20 **ADV KENNEDY SC:** Yes. And this is a mandate entered into contract negotiations with the manufacturing supply of the Hoefyster Platform Hulls for 183 armoured vehicles to ensure that the total contract's price fits within the DLS budget.

Now this seems to rather put things back to front.

Should one not be approving something as Group CEO, namely the award of VR Laser as the successful tenderer on the basis that they have produced a price, that they have produced a bid which involves a price that you then approve.

This seems to be back to front to say: I am approving their appointment but negotiate with them just to make sure that the price comes down to fit in with the budget.

This does not seem to me to record with what normal legal and fair procurement processes require, is it?

10 **MR SALOOJEE:** Chair, in any transaction of this nature, there will always be a discussion about the price, right up to the end in terms of what is the fairest price you will be able to get.

And that is what I understand here. Is that they have got a certain budget and they have got to fit it in with this budget.

And Mr Burger was very adamant and clear here that that was the right thing to do in terms of choosing VR Laser. But if we had to choose VR Laser, he had to then make sure
20 that he negotiates a price that was within his budget.

ADV KENNEDY SC: And does that not mean that VR Laser would have a rather strong negotiating position? They would be approached by Mr Burger to say: Guys, you have got the contract. Mr Saloojee, good news, has awarded you the contract. But I have just got to bring your price down a bit.

MR SALOOJEE: Chair, I mean, if you look at this document. Before it came to me, it has gone through the entire process as I have indicated, from... It says even there. It went through the technical – their Executive Committee, their Supply Chain.

In fact, the person – the originator of this document with obviously Burger's instruction, came from Ms Malahlela. She is the first one to it

Albert Africa, who is the Head of Infantry Systems.
10 Infantry System is where they actually build or take responsibility for the programme management of these hulls.

Teubes is the COO. Burger, Wessels, Mhlonthlo. Then it comes to me. It has gone through an entire process of some of the most senior people in the organisation.

And obviously by the time it gets to me, it has had to go through a thorough process and that is my understanding of this document.

CHAIRPERSON: But Mr Saloojee. You cannot always hide behind the fact that a number of people hold a certain view
20 when you are asked to justify your own decision. You have got to say, this was a correct decision because of A, B, C, D irrespective of who held what view.

And if you cannot justify your decision or your view, the fact that your view that you cannot justify happens to be held by other people, does not necessarily make it correct or

right, you know. They might all be mistaken.

MR SALOOJEE: Chair, I agree with you.

CHAIRPERSON: Ja.

MR SALOOJEE: But surely, if you look at the level of the executives who are here.

CHAIRPERSON: H'm.

MR SALOOJEE: As a Group CEO, I was to rely on the advice and information that was provided by the most senior people within the organisation. That is how organisations
10 work.

You cannot have five people, six people who have signed this document being wrong about it. And when they bring – they brought the motivation to me, obviously, I listened to them very carefully based on all the arguments that they have proceeded and I said yes.

CHAIRPERSON: Up to a certain point you take into account what they have to say and what their views are, but there is a reason why you are the CEO and they are not. And that is why ultimately the power is given to you to make the
20 decision.

MR SALOOJEE: I agree with you Chair.

CHAIRPERSON: Ja, okay. Mr Kennedy.

ADV KENNEDY SC: Thank you. Thank you, Chair. Mr Saloojee, I am interested in your answer. You say that all of these people signed and they were very senior people.

So you had to take them seriously and you acted on their advice.

What I find interesting is that Ms Malahlela's name and signature appear here as the Executive Manager for the Supply Chain. Nowhere do you see any reference to Mr Mlambo signing here or being asked to sign, to say where he supports the recommendation or not.

Now if Ms Malahlela was so important to give you advise at a divisional level where she is reporting to Mr Burger.

10 What you seem to have omitted in saying that: These are all the senior people that I was able to rely on their advice. Is an acknowledgement that Mr Mlambo's name is nowhere to be seen.

There is no reference here at all to Mr Mlambo having raised concerns and that Mr Mlambo had been engaged and had an agreed to anything to resolve these concerns or that he had been overruled for good reason or what those reasons were. There is just nothing.

20 So I just want to point out what Mr Mlambo has said before this Commission, both in his affidavit and in his oral testimony.

He said – can I take you back to page 793?

MR SALOOJEE: [No audible reply]

ADV KENNEDY SC: He said that he thought that at least some of his concerns had been relayed by the position paper

which would at least have given LMT some part of the work. Nobody came back to him after that.

Nobody came back to him to show him this submission at page 797. And that it is significant, I suggest to you Mr Saloojee, that when we go back to this heading I took you to a moment ago, page 797.

There is a heading to this document, as one would expect. The heading is that it comes from Denel Land Systems, Supply Chain submission.

10 It comes from the DLS Exco. It comes from the division. And then it contains on page 804, as we have seen, the signature from Ms Malahlela from the division.

From Mr Teubes, page 805. And also Mr Burger, from the division. Mr Wessels from head office. Mr Mhlonthlo from head office. But not once has anybody mentioned Mr Mlambo or his concerns.

He said he thought that his concerns had been resolved. And he said he found out later to his shock and dismay that all of this document – all that is contained in this document
20 was prepared and submitted to you behind his back and that you then signed it on the 16th of October 2014, despite his serious objections.

MR SALOOJEE: Chair, I mean, I cannot comment on whether he saw the document or not. I would imagine that Mhlontlo's signature here, who he reported to, was the

appropriate signature.

CHAIRPERSON: Is it not strange that all of you, yourself, Mr Mhlonthlo, Wessels, Teubes, Mr Burger – all of you happened to be available on the same day, the 16th of October 2014 but this one man who had strong views that – against this, one, is not there.

Two, nobody seems to say: Hang on. What about Mr Mlambo and his concerns? At this stage, everybody just signs. It is – it raises some issues. I am not saying
10 ultimately what one makes of them but it just seems strange.

MR SALOOJEE: I take your point Chair.

CHAIRPERSON: Yes, okay. Mr Kennedy.

ADV KENNEDY SC: Do you accept the point?

MR SALOOJEE: I accept the point.

ADV KENNEDY SC: Do you agree that it is strange?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And there is no explanation for it?

MR SALOOJEE: [No audible reply]

ADV KENNEDY SC: Otherwise, if there is an explanation,
20 this is your opportunity to give it.

MR SALOOJEE: Well, as I have indicated Mr Kennedy and Chair. That I would have imagined that if he was reporting to Mr Mhlontlo, it was generated from the division that that was sufficient. And I would be surprised – I am surprised that he said he was not aware of this document.

ADV KENNEDY SC: Yes.

MR SALOOJEE: At least ...[intervenes]

ADV KENNEDY SC: But you agree at least ...[intervenes]

MR SALOOJEE: At least his counterpart.

CHAIRPERSON: But why would you say – because I think that is what you are saying – you would not have seen, at least at stage anything strange about his absence because his superior, Mhlontlo was there.

And yet, I think Ms Malahlela who was in the same – or
10 maybe I am getting my facts wrong. Was she not in the same line of authority with Mr Burger? Both were there.

In other words, it does not look like it was a situation where it was said each unit or whatever must be represented by one person.

Here was a situation where a junior and a senior both signed. And therefore, why should Mr Mlambo not be there and sign as well even if Mr Mhlontlo was there.

MR SALOOJEE: Chair, I mean, I think Ms Malahlela is the one who generated it. That is my understanding.

20 **CHAIRPERSON:** H'm.

MR SALOOJEE: It is generated, this, on behalf of the division, Head of Supply Chain within the division.

CHAIRPERSON: H'm.

MR SALOOJEE: And again, I would be surprised Mr Kennedy that given the fact that all the Supply Chain

people talk all the time, that Mr Mlambo would not have been aware from Ms Malahlela that this – this document existed. I am just – I am speculating.

ADV KENNEDY SC: Are you suggesting that Mr Mlambo lied under oath when he ...[intervenes]

MR SALOOJEE: No, I am not. I am not at all.

ADV KENNEDY SC: That he was never – that they never came back to him.

MR SALOOJEE: I am not saying that Mr Kennedy.

10 **ADV KENNEDY SC:** Then what are you saying?

MR SALOOJEE: All I am saying is that, I am surprised that he was not aware of this document.

ADV KENNEDY SC: Yes.

MR SALOOJEE: That is all.

ADV KENNEDY SC: Yes. Because you would expect Ms Malahlela to go back to him.

MR SALOOJEE: I am not suggesting that.

ADV KENNEDY SC: You are not suggesting that?

MR SALOOJEE: No.

20 **ADV KENNEDY SC:** Okay. I just want to touch very briefly in conclusion on this leg of the questioning before we wrap up with a few other issues. This Hull - Platform Hulls contract.

You said that, earlier, if I understood your evidence, you were saying, you did in fact go through an exercise where

you considered all of Mr Mlambo's objections and believed that they had no merit. Is that correct?

MR SALOOJEE: I did not say Chair that they had not merits. I said when we had the meeting with the senior executives and with the CEO and CFO.

ADV KENNEDY SC: Yes.

MR SALOOJEE: When they explained how they just – all of those issues, from the finances to the BEE stuff and the process that they had gone through, I had satisfied myself
10 that they had resolved these issues.

ADV KENNEDY SC: Yes. Now you read out to us earlier from Mr Wessels' affidavit where he referred to it, but in very broad general terms. There is no document anywhere that we have been able to obtain with the vice powers that this Commission has had to get documents and information from various witnesses.

We have got all of these documents that we see, including Mr Mlambo's repeated emails in great detail. Nowhere do we see anybody, whether you or anybody else
20 saying, Mr Mlambo says in relation to B-BBEE certificate, it was unfair because LMT's B-BBEE certificate was rejected because it was out of date and they did not – nobody bothered to check with HR what the true credentials were.

Whereas VR Laser, also had something that was out of date and yet that was allowed in. Nowhere have you said or

anybody else said in a document that we are aware of, to say: Mr Mlambo is wrong on those facts. For example, VR Laser's certificate was not out of date and LMT's certificate, there was no basis on which we could have gone to HR and found out the facts.

Or we did go to HR and we found out that the facts are, to justify LMT is scoring very little on BEE. Nowhere have we seen that.

Now I am not going through the exercise of going point-
10 by-point through Mr Mlambo's email but I just wanted to dwell on that for a moment.

Sorry, I rather to hold a lot of questions in one, which is a bit unfair to you. Let me just unpack it.

Is it correct that you did not put down in writing anywhere an answer or your conclusion as to an evaluation of Mr Mlambo's concerns?

MR SALOOJEE: Chair, I should have acknowledged receipt of Mr Mlambo's ...[intervenes]

ADV KENNEDY SC: That is not the question.

20 **MR SALOOJEE:** Ja.

ADV KENNEDY SC: I did not ask you if you acknowledged receipt. We have already dealt with that.

MR SALOOJEE: H'm.

ADV KENNEDY SC: I have asked you. Have you ever put down in writing any analyses to justify your conclusion that

each one of Mr Mlambo's concerns was properly answered?

MR SALOOJEE: No, we have not.

ADV KENNEDY SC: Right. Why not?

MR SALOOJEE: Because I felt the way in which we have dealt with it was going into the organisation, going down to the other senior executives that that was sufficient to deal with.

ADV KENNEDY SC: Now, nowhere in these documents is there any other document from anybody other than yourself,
10 Mr Saloojee in which that analysis has been done, other than the vague emails that Mr Burger keeps sending back to Mr Mlambo, where he said: But you do not address the B-BBEE issue, for example, for the following reasons.

He never actually deals with that. Correct?

MR SALOOJEE: From my understanding, they responded to him but Mlambo was not happy with the response.

ADV KENNEDY SC: Yes, yes. And in fact, Burger – if we had the time, I would like to go through all of that is, to go show you exactly why Mr Mlambo seems to have been
20 justified.

Now, nowhere in Wessels' affidavit is there anything specific, for example, that actually Mr Mlambo in point 3 of his email on the 9th of September 2014 or whatever is wrong factually or is wrong legally because he has overlook this provision clause whatever of the procurement policy.

None of that is dealt with. What you happily read out to the Chairperson, again, is blessed with complete generality and vagueness.

We discussed all of these issues including B-BBEE and they – and we then persuaded Mr Saloojee that everything was in order that DLS had in fact satisfied what was required legally under the procurement policy.

They do not say that and you have never said that. So on what basis can you seriously expect the Commission to
10 accept your word that, A, you went through this analyses and B, you had good reason for coming to your conclusion that every single one of those concerns raised by Mr Mlambo had no substance or could not be taken to justify what he was saying? Start this process again.

MR SALOOJEE: Chair, as I have indicated. On the balance of everything that was brought before me, the discussions with the senior executives and that this is how things unfolded and that is how the decision was made. And I have said that.

20 **ADV KENNEDY SC:** We know that.

MR SALOOJEE: Ja.

ADV KENNEDY SC: You have told the Commission how it unfolded. My question was not how did it unfold Mr Saloojee. My question was: Have you – how can you be seriously believe when you say to this Commission under

oath: I actually did go through it point by point, Mr Mlambo's concerns and I was satisfied.

Let me ask you for example just to test how sure you are of this. The B-BBEE issue. Mr Mlambo has said. LMT was given no points for BEE on the basis that its BEE certificate had expired.

Now was Mr Mlambo correct or not correct on the facts there?

MR SALOOJEE: From what I read, he was not correct.

10 **ADV KENNEDY SC**: He was not correct?

MR SALOOJEE: [No audible reply]

ADV KENNEDY SC: But what had – had it not expired?

MR SALOOJEE: It had expired.

ADV KENNEDY SC: It had expired?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. His next point was then, that as a Senior Procurement Specialist, I know how these things have to be implemented and on the basis of my specialist knowledge, and no doubt on some of the case law and so
20 forth which bears him out to an extent.

If you can easily obtain knowledge about BEE credentials, apart from the certificate, whether or not it has expired, you should do that as a matter of fairness.

Was he wrong or right in that legal opinion?

MR SALOOJEE: Sorry, just repeat that Mr Kennedy.

ADV KENNEDY SC: The fact that a BEE certificate has expired, even if it has expired, does not mean that you have to give that person a zero rating. You have to find out, if you can easily find out the information, whether or not they have BEE credentials. Was he wrong or right in that view?

MR SALOOJEE: Chair, my view is that, if you apply it for any tender and if you do not have a valid BEE certificate, that is the law. There is no valid BEE certificate. You cannot go to the HR Department and find out: Are you
10 compliant?

ADV KENNEDY SC: Did you ever tell that to Mr Mlambo?

MR SALOOJEE: I never engaged with Mr Mlambo.

ADV KENNEDY SC: Did you... Exactly. Did you ever ask a lawyer who was right and who was wrong? You are not a lawyer. I accept Mr Mlambo is not a trained lawyer, as far as I understand his CV.

MR SALOOJEE: Sorry, just repeat that Mr Kennedy.

ADV KENNEDY SC: Did you ever go back to Mr Mlambo or did you ever go to an outside lawyer to check whether in fact
20 his view was right or wrong or whether your view was right or wrong?

MR SALOOJEE: No, I did not.

ADV KENNEDY SC: You just knew this.

MR SALOOJEE: [No audible reply]

ADV KENNEDY SC: You just knew it?

MR SALOOJEE: But I... Chair, with respect. I mean, we tender all the time with government departments and we are familiar with... If you are going to say that you are BEE complaint and you submit a tender without a valid BEE certificate, it is not valid.

ADV KENNEDY SC: And ...[intervenes]

MR SALOOJEE: That is the truth.

ADV KENNEDY SC: Well, in fact, the law is a little bit more complex than that Mr Saloojee. I happened to practice in
10 that area and the case law in particular, is a lot more complex than you suggest.

MR SALOOJEE: I am sure Mr Kennedy.

ADV KENNEDY SC: Yes.

MR SALOOJEE: I am sure.

ADV KENNEDY SC: And in relation to VR Laser, he was saying: Why could you exclude LMT because their document had expired and yet by the same token, admit VR Laser's certificate even though it was submitted after the due date?

Do you know whether they submitted their – a certificate
20 before or after the due date?

MR SALOOJEE: I am not sure when but the certificate was ...[intervenes]

ADV KENNEDY SC: You do not know when.

MR SALOOJEE: Ja.

ADV KENNEDY SC: Yes. So you cannot say now whether

in fact Mr Mlambo's concern was correct or not.

MR SALOOJEE: I cannot.

ADV KENNEDY SC: You cannot.

CHAIRPERSON: What you can say, of course, if they thought – if they could accept VR Laser's certificate after the due date there is no reason why they could not given LMT an opportunity to submit or what would you say?

MR SALOOJEE: Chair, my understanding was that an extension was given to both parties and that the one came
10 and then the other did not come.

CHAIRPERSON: Oh, okay. Okay, Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. I think let us move on from the platform hulls contract, if we may, and there are some other issues that we need to touch on but briefly. In relation to the single source supply agreement, I understand that was ultimately approved by Mr Ntshepe once he had replaced you as Group CEO, is that right?

MR SALOOJEE: I do not know which one you are referring to.

20 **ADV KENNEDY SC:** The single source, single supplier agreement between DLS and VR Laser. You did not give the final approval for that, that was given by Mr Ntshepe after you had been suspended, correct?

MR SALOOJEE: There are two.

ADV KENNEDY SC: DLS I am talking about, not DVS.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Denel Land Systems as distinct from Denel Vehicle Systems.

MR SALOOJEE: Yes, what I understand that there were two agreements.

ADV KENNEDY SC: Agreements between DLS and VR Laser.

MR SALOOJEE: VR Laser there was one, that was done just before I was suspended.

10 **ADV KENNEDY SC:** Yes.

MR SALOOJEE: And then there was another one that was done by Ntshepe.

ADV KENNEDY SC: Between?

MR SALOOJEE: Between DVS.

ADV KENNEDY SC: DVS, yes.

MR SALOOJEE: Ja and VR Laser.

ADV KENNEDY SC: Yes, that is right.

MR SALOOJEE: Ja.

20 **ADV KENNEDY SC:** I am asking you about the DLS contract with VR Laser, with single supplier.

MR SALOOJEE: That was done May.

ADV KENNEDY SC: That was done in May. The actual final approval was given. If I can take you in bundle 1, page 825. Just check you have got the right bundle, it is not the bundle 10 that we were looking at earlier, it is

bundle 1. You got that?

MR SALOOJEE: Bundle 1.

ADV KENNEDY SC: Right, thank you, page 825.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes, that was the memorandum that was signed by Mr Ntshepe as we see on page 825.

MR SALOOJEE: Yes.

ADV KENNEDY SC: But that admittedly had followed some history where the transaction had in fact been
10 approved and implemented with the contract being issued to VR Laser by DLS the previous year and Mr Mlambo then raised serious objections and so forth.

MR SALOOJEE: I do know, I did not...

ADV KENNEDY SC: You were not party.

MR SALOOJEE: No.

ADV KENNEDY SC: To this particular process.

MR SALOOJEE: No. Chair, I was not party because by this time I was suspended, obviously.

ADV KENNEDY SC: You were suspended, that was my
20 point earlier.

MR SALOOJEE: Yes.

ADV KENNEDY SC: But you were party to the approval of the award to DLS in the first place.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Not this overriding of Mr Mlambo as

it were.

MR SALOOJEE: Well, that is what we have discussed.

ADV KENNEDY SC: I am sorry?

MR SALOOJEE: So you say I was party to...?

ADV KENNEDY SC: The approval the previous year to award the contract to VR Laser for single source.

MR SALOOJEE: Yes, Chair, we have just discussed that, ja.

ADV KENNEDY SC: What we have just been discussing is
10 the platform hull contract, not the single source contract.

MR SALOOJEE: Sorry, Chair, maybe I am getting a bit confused.

CHAIRPERSON: Well, it is late in the day.

ADV KENNEDY SC: Yes, we are all a bit tired, Chair. Mr Saloojee, I ...[intervenes]

MR SALOOJEE: Can you please just repeat that, Mr Kennedy?

ADV KENNEDY SC: We are finished with discussing the hull ...[intervenes]

20 **MR SALOOJEE:** The hull contract, yes.

ADV KENNEDY SC: The platform hulls contract.

MR SALOOJEE: Yes.

ADV KENNEDY SC: We have been through all of those documents.

MR SALOOJEE: Yes.

ADV KENNEDY SC: I am just trying to wrap up with a few side issues. The single supplier contract, not for the platform hulls but single supplier for steel fabrication, that was given by DLS to VR Laser, correct?

MR SALOOJEE: Yes, there was a memorandum of agreement that was signed between them.

ADV KENNEDY SC: That is correct.

MR SALOOJEE: Yes.

ADV KENNEDY SC: It was initially an MOU and then it
10 became an MOA.

MR SALOOJEE: Yes.

ADV KENNEDY SC: And you ultimately signed that, not so?

MR SALOOJEE: I signed the MOU.

ADV KENNEDY SC: You signed the MOU and
...[intervenes]

MR SALOOJEE: I signed a memorandum that came to me requesting that they engage in an MOU.

ADV KENNEDY SC: Yes.

20 **MR SALOOJEE:** Subsequently to that they actually – Mr Burger signed an MOA.

ADV KENNEDY SC: Correct.

MR SALOOJEE: With VR Laser.

ADV KENNEDY SC: And that was approved by you, you gave him a mandate to sign it rather than having to come

back to you to sign the MOA, not so?

MR SALOOJEE: So the MOU, my understanding was – and remember, this was in May.

ADV KENNEDY SC: Yes.

MR SALOOJEE: Chair, in June the old board was leaving.

CHAIRPERSON: That is 2015?

MR SALOOJEE: Yes and in July the new board was appointed in August was the handover period where I did the hand – I mean, orientation of the new board. In
10 September, on the 10 September we had the first board meeting. The week after that I had gone to the United Kingdom with the Minister and with the Chairperson of the board. That week when I came back I was suspended. So that is the context in which this happened.

ADV KENNEDY SC: Right.

MR SALOOJEE: So that MOU, my understanding was that he was given a mandate to go and negotiate an MOU.

ADV KENNEDY SC: Yes.

MR SALOOJEE: Subsequently I discovered – that was in
20 April. In May of that year he signed an MOA with VR Laser.

ADV KENNEDY SC: Right. But you gave him the mandate to go and conclude a single source contract with VR Laser, correct?

MR SALOOJEE: To engage in an MOU. That is the

approval I gave, the mandate I gave him.

ADV KENNEDY SC: Yes and if those negotiations in this engagement process proved fruitful he would then be entitled to sign an agreement binding Denel Land Systems, correct?

MR SALOOJEE: I am not – I cannot say for sure that that is what was there. My understanding was that I had given him the mandate to negotiate an MOU.

ADV KENNEDY SC: Yes.

10 **CHAIRPERSON:** Negotiate and sign.

MR SALOOJEE: Chair ...[intervenes]

CHAIRPERSON: The mandate you had given him was it to negotiate and sign?

MR SALOOJEE: I cannot recall whether there was an issue of the signing but my understanding but my understanding was that he should have brought it back to me, the MOU.

ADV KENNEDY SC: Now were you aware that Mr Mlambo when he became aware of what had happened, strenuously
20 resisted the implementation of this agreement on the basis that *inter alia* there had been no competitive procurement process. You are aware of that?

MR SALOOJEE: I am not aware of a formal document that I have seen.

ADV KENNEDY SC: I am not asking about a formal

document, I am asking you are you aware or were you at the time that you were Group CEO aware of the fact that Mr Mlambo raised objections to the agreement whether it would be an MOU or an MOA appointing VR Laser on the basis that there was no competitive procurement process followed?

MR SALOOJEE: Chair, to the best of my knowledge I cannot recollect whether that was the case.

ADV KENNEDY SC: Yes. Do you accept that a
10 procurement contract such as this, particularly one that is going to involve millions and millions of public money has to follow a competitive procurement process? Were you at least aware of that in terms of the law applicable to state entities?

MR SALOOJEE: Chair, I mean, we signed many strategic partner agreements with many companies which is again motivated. If we go through the motivation, there is very strong motivation as to why they wanted to do this in terms of who faced the contract, in terms of the fact that the
20 duration of the contract was over a certain period, the fact that they needed a steady and reliable supplier which would not entail going to many different other suppliers where the quality of the product could not have been from an engineering perspective treated the same. So they were - again there was a whole motivation that came with

the fact that they wanted to place – well, not placed, that they wanted to enter into a single supplier contract with VR Laser. So it was not in isolation, it was not because - there was a motivation that came which made sense. I said that they can go ahead and engage in a memorandum of understanding. A memorandum of understanding is just to say we want to agree that we explore cooperating with one another. That was in April, okay?

And there is a lot of background to this as well,
10 Chair. There were two drafts of that memo that ...[intervenes].

ADV KENNEDY SC: I am sorry to interrupt, Mr Saloojee, but please excuse me, I do not mean to be rude.

MR SALOOJEE: Yes.

ADV KENNEDY SC: It is very late in the day, in fact in the evening and my question had nothing to do with various drafts of documents.

MR SALOOJEE: Okay.

ADV KENNEDY SC: My question was very simple and
20 very specific. Were you aware at the level of GCEO of Denel at the time that the law required that before you awarded any such contract that you would have to follow a competitive process? That is the simple question, not whether there were drafts, not whether there was a good reason, not whether you did this all the time with various

people, not whether you always memorandums motivating it in detail, none of that. Did you know that you, before you award a contract, giving business to somebody on particularly a single supplier basis you would have to follow a competitive process? I think it is a yes or a no answer that we are really looking for.

MR SALOOJEE: Chair, if you may indulge me. This was an agreement for a single supplier, it was not a contract took place, a contract to manufacture other hulls or
10 whatever else, so it was an agreement. It was not a contract which said we are placing a contract to the value of x amount on VR Laser. That was my understanding of it.

CHAIRPERSON: Well, Mr Kennedy said what he was asking is what you were aware of in terms of the legal requirements. Of course if you may have been aware that that was the requirement or you may say but that was not the requirement.

MR SALOOJEE: From my understanding it was not the requirement.

20 **ADV KENNEDY SC:** Now is that because of the content of the agreement or because what you approved was simply an initial step which was really a memorandum of understanding which is really just a statement of broad intent that you cannot be held to?

MR SALOOJEE: Absolutely, Chair, that was ...[intervenes]

ADV KENNEDY SC: Which of the two?

MR SALOOJEE: It was the latter.

ADV KENNEDY SC: The latter, yes.

MR SALOOJEE: Yes.

ADV KENNEDY SC: I understand that but can I just understand then, if that is the case, once you gave that approval, as you did, everybody seems to agree that you gave approval, you gave a mandate for Mr Burger and co to enter into negotiations with VR Laser to enter into a
10 memorandum of understanding. If they succeeded in discharging that mandate and fulfilling that mandate, those negotiations succeeded and an MOU was then signed, that did not have the status of an MOA which would bid the corporation. Do I understand your evidence correctly?

MR SALOOJEE: That is correct.

ADV KENNEDY SC: Right. But in your mind, once you gave that mandate and once that was fulfilled and an MOU was then concluded, presumably that would then be followed by an MOA in due course, correct?

20 **MR SALOOJEE:** Chair, it would have had to come back to corporate, we would have had to consider it before an MOA could have been signed.

ADV KENNEDY SC: Yes, quite right. And my final question on this is when that came back to corporate, would a procurement process then have to been followed?

A competitive procurement have to be followed?

MR SALOOJEE: I would imagine.

ADV KENNEDY SC: You would imagine so?

MR SALOOJEE: No, I would hope that it would, it will, it would have to.

ADV KENNEDY SC: It would have to.

MR SALOOJEE: Yes.

ADV KENNEDY SC: It is a bit different from I would imagine so.

10 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: Would you agree with me as a CEO who understood that there was such a thing as PFMA and Treasury regulations ...[intervenes]

MR SALOOJEE: I agree with you.

ADV KENNEDY SC: ...that a competitive process has to be followed before a state entity awards any agreement that is binding?

MR SALOOJEE: I agree with you.

20 **ADV KENNEDY SC:** Correct. Alright, thank you. Was it a matter of shock to you later to hear that that was then done after your time by others without any procurement process having been followed?

MR SALOOJEE: Of course, Chair, I mean now, when I reflect over the last few years as to what has happened particularly after my suspension and coming into – with the

appointment of the new board. I mean, I have gone through my previous testimony about the circumstances around the new board, the controversies around the new board, issues around how we were treated, what was the reasons for our suspension and the process that we had gone through. If I look at really where all of this had emanated from was leading up to an environment where then they would have been an unfettered ability to do business in this instance with VR Laser.

10 **CHAIRPERSON:** Is that answer – is your answer that you were shocked when some time after you were gone or during your suspension you learnt that an agreement was concluded without a competitive process?

MR SALOOJEE: No, Chair.

CHAIRPERSON: Oh.

MR SALOOJEE: Sorry, I was not shocked.

CHAIRPERSON: You were not shocked.

MR SALOOJEE: Because that was the logical conclusion as to what I think they were wanting to do.

20 **CHAIRPERSON:** Okay, okay.

ADV KENNEDY SC: Now whose idea was it to explore a single supplier agreement with VR Laser from - for DLS?

MR SALOOJEE: Chair, that emanated from DLS.

ADV KENNEDY SC: From DLS.

MR SALOOJEE: Yes.

ADV KENNEDY SC: And Mr Burger particularly.

MR SALOOJEE: Mr Burger specifically.

ADV KENNEDY SC: Yes. Now again I do not want to go into detail unless you feel the need but the question is simply this. You are aware that Mr Burger has said in his evidence both in lengthy portions of his affidavit as well as in his oral testimony that actually the initiative, the idea and the initiative and the pressure to pursue this line of single supplier agreement with VR Laser for DLS came
10 from you, not from him.

MR SALOOJEE: Chair, I categorically deny that.

CHAIRPERSON: Just repeat that?

MR SALOOJEE: Mr Kennedy is saying that in Mr Burger's testimony he says that the initiative to enter into an agreement with VR Laser, the pressure was put on him and there was then an instruction, Mr Kennedy?

ADV KENNEDY SC: Yes, that you instructed him.

MR SALOOJEE: That I instructed him to enter into this agreement and I am saying that I categorically deny that I
20 did that.

CHAIRPERSON: Yes, okay. Well, if you approved that Mr Burger should negotiate and conclude the memorandum of understanding, is the position not that the memorandum of understanding that was concluded would be inconsistent with initiating a competitive process after that, did it not

necessarily mean that you either needed to have no such memorandum and then embark on a competitive process or have such a memorandum and then embark on a single source agreement?

MR SALOOJEE: So, Chair, that was the whole purpose of saying go and engage in a memorandum of understanding. What is the scope of the cooperation that you want, how would you manage this, what were the parameters that would allow you to do this? That is my understanding of a
10 memorandum of understanding. A memorandum of agreement says we will do this, x, y and z.

CHAIRPERSON: But the memorandum of understanding does it not say – I have not refreshed my memory on it, does it not entail that business would have to be done with them?

MR SALOOJEE: They would, from my understanding, Chair, there still have to be competitive pricing, they still had to go out into the market to see what other capabilities there were, what is the pricing in the market before they
20 can have a strategic partnering agreement with them.

CHAIRPERSON: But why engage in a process that leads to that memorandum of understanding if indeed you are – you intend to have a competitive process?

MR SALOOJEE: Chair, from my understanding, is that again from a DLS perspective they wanted to secure a

relationship for a longer period with VR Laser and that is what happened.

CHAIRPERSON: Yes, that is why I am asking you the question because my understanding is that the memorandum of understanding already points towards having a relationship or giving business to VR Laser so but you have said you expected a competitive tender process to happen after the memorandum of understanding then before the memorandum of agreement.

10 **MR SALOOJEE:** Chair, my understanding is that if VR Laser met all the requirements that were set out in a memorandum of agreement or a memorandum of understanding then they would be appointed as a single source supplier.

CHAIRPERSON: Without a competitive process.

MR SALOOJEE: If – no, if they had gone out into the market and they had looked at other prices and they had looked at other capabilities my understanding is that they would have given preference, and that is what they wanted,
20 to VR Laser if they had met the minimum criteria for a particular contract.

CHAIRPERSON: Was your understanding that they would give preference after an open competitive process or that they would give preference without an open competitive process?

MR SALOOJEE: Chair, I – ja, they had to go to the market, whether it was – and I may correct myself, whether it was for competitive process or not but they had to do an analysis of the market. So I agree with you, not necessarily through a competitive process.

CHAIRPERSON: Yes. So therefore, just part of what one is trying to do is what you envisaged would happen when you approved that they should negotiate and conclude the memorandum of understanding. So am I correct in saying
10 the effect of what you are saying is that if they concluded – if a memorandum of understanding was concluded, what you did have in mind was that a competitive – open competitive process, tender process, might not be involved.

MR SALOOJEE: That is what they were suggesting, Chair.

CHAIRPERSON: Yes, Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. So, Mr Saloojee, did you then assume that they had gone to the market to
20 test the market before they entered into the MOU?

MR SALOOJEE: No, Chair, I did not assume that.

ADV KENNEDY SC: So what did you believe? I want to go back to the question from the learned Chair, what is the real point of a memorandum of understanding if it does not give somebody something? Now let me put the question

perhaps at its most basic form.

If you were going out to somebody to say we are going to enter into a memorandum of understanding with you which may lead to business coming up later, subject to a competitive process, should that not actually be a process in which you go out to the market and ask anybody who may be interested to compete to be awarded the MOU, let alone the MOA at a later stage?

You see, the whole thing seems to be manoeuvring
10 into a situation where VR Laser without a fair competitive process gets given an MOU and thereafter without a fair competitive process gets an MOA and that then gives them the right as a single supplier for those components to provide that for DLS. Do you see the point?

MR SALOOJEE: Chair, I take the point.

ADV KENNEDY SC: So what is the answer to it then?

MR SALOOJEE: So the answer is ...[intervenes]

ADV KENNEDY SC: Where does, where does – you said it may or may not necessarily involve a procurement
20 process, you have accepted already that there has to be a fair legal competitive process before you award a contract that is binding on DLS, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. So where in this scheme of things, going through this creature called the MOU that

might later result in an MOA, where would there have been a fair competitive process rather than saying to VR Laser we like you guys, let us sign an MOU, that then seems to get them at least a foot in the door where after they then get an MOA? Where would, if at all, would there be a competitive process?

MR SALOOJEE: Chair, a strategic single source supplier agreement is exactly that. If you can motivate strategically why this is a critical issue, why it impacts on your
10 business, why it impacts on your contractual obligations and why the strategic nature of it for business continuity, there have been instances where agreements like this have been signed in the past in my understanding and this was to define the parameters that if they were going to be the fabricator of those hulls over a certain period that they, if they were competitive, if they had met the obligations, if they had invested more in equipment and so forth, that they would be a preferred supplier and that is a fact, Mr Kennedy.

20 **ADV KENNEDY SC:** So how do you know that they would be competitive if you do not have a competitive process?

MR SALOOJEE: Well, I would imagine that DLS, for example, who would manage this, would have an understanding of what the market has – what the thresholds are in the market.

ADV KENNEDY SC: Without going out to a competitive tender or RFO process?

MR SALOOJEE: I mean, my understanding is that they would have because they have been in the business for so many years.

ADV KENNEDY SC: They would have what?

MR SALOOJEE: They would have had an understanding of what would be competitive.

CHAIRPERSON: Why – if you accept that there is a need
10 to know what their competitors may have to offer, why not make it open instead of letting DLS just contact them without anybody knowing and saying what would be your price for this, or what, what, what. If you do need to know what their competitors can offer, VR Laser's competitors, why not put it transparently open and say put your proposals on the table, let VR Laser put their proposals on the table, then we will decide who will emerge as the preferred supplier.

MR SALOOJEE: Chair, I agree with you and I think again,
20 if you look at the motivations that DLS had put forward in terms of what they call security of supply to guarantee supply, to guarantee workmanship quality, there was a whole motivation again as to why they think that it was important for them to enter into this thing. And I agree with you, I agree with you that in a sense it was to

establish a preferential relationship with VR Laser. I mean that was what the motivation was.

CHAIRPERSON: And if you think VR Laser would be such a good supplier, if you think VR Laser will not have a serious contender or competitor, why not put it open, let – because they will emerge victorious anyway, they will wind anyway.

MR SALOOJEE: Chair, I agree with your sentiment.

CHAIRPERSON: H'm. Mr Kennedy.

10 **ADV KENNEDY SC:** Thank you, Chair. In fact the Chairperson is suggesting to you a very simple, sensible, logical business reason why you do not do it. I want to, with respect, add to that to say that whether or not you think it is a good reason or not, it is what the law requires. Nowhere that I have picked up in the Section 217 of the Constitution or anywhere in the PFMA or anywhere in the Treasury regulations or anywhere in the supply chain management policy of Denel at head office or DLS, all of those documents are available to us here. Nowhere have I
20 found anything that supports that your suggestion that well, if a division thinks that they have got a good understanding of how competitive somebody's prices might be, we can then commit ourselves, nowhere. In fact the very point that the Chairperson makes is you find out from the market by following a competitive process.

So may I just take you back for a moment to the platform hulls contract. You say you assumed that the division would have known how they would be. The first point which is really one of the points that the Chair has raised with you is how do you know that until you have gone out with tender prices being submitted whether a public tender or an RFO, let us leave that aside, but a competitive process?

But what I want to add to that is this, you were
10 aware, as was DLS, that just a few months before this of entering into an MOU, they had gone out into the market, DLS. Not for a single supplier but for the platform hulls manufacture and guess what came out of that competitive process? Not that VR Laser was very competitive with prices. On the contrary their bid was for 260 million and LMT was for about 160 million. Massive difference, almost double.

And then when Mr – his own evidence, that you may have heard, Mr Burger, was he thought this, really they are
20 trying to push their luck here. So what do I do? I phone them up and I say I am really unhappy, how can you tender so much and they say do not worry, Mr Burger, we will reduce it from 260 to 195 million, still a major amount more than LMT.

So what I am suggesting and I am not asking you to

defend the decision of DLS ultimately to sign the MOA but I am asking for your comment. Is it not a bit naïve to suggest that a division such as DLS on the strength of your mandate can go out and award an MOU on the basis that they think that the market is such that VR Laser is not only the best to do this but probably has the best price. We know here that it did not give the best price at the very last occasion that business was awarded to them. You get the point, Mr Saloojee?

10 **MR SALOOJEE:** I get the point Mr Kennedy, I mean the issue of knowing the market is not just one element that I had to raise, the more important element that I wanted to raise was the fact that they motivated that for strategic reasons this was an important thing.

CHAIRPERSON: Please just repeat that.

MR SALOOJEE: I said the issue of the market was just one element, it wasn't the motivating factor. The issue that they were motivating specifically was the issue of the strategic capability and what they call guarantee of supply,
20 that they need ...[intervenes]

CHAIRPERSON: But why, why is that a justification for not going out on open tender, because that factor can still be taken into account I would imagine even if it is an open competitive process, to say we won't take that supplier because it doesn't provide the strategic advantage that VR

Laser would provide to us. I may be missing something but that is – and I don't understand something in the defence as security but help me understand.

MR SALOOJEE: Chair I agree with you, but if you read their motivation there is a lot of engineering terminology that they use there in terms of justifying the precision welding, the ...[intervenes]

CHAIRPERSON: But they might just be using words and words without substance.

10 **MR SALOOJEE:** Whatever, but they are engineers ...[intervenes]

CHAIRPERSON: Ja, but they may be using that and it is ...[intervenes]

MR SALOOJEE: But I do, I mean I agree with you.

CHAIRPERSON: Ja, you say it is like a – you know when I was at university for my degree non-law students used to say law students at student meetings will throw in a lot of Latin words to confuse everybody, even when there is no substance, so if VR Laser if it – if they thought it would be
20 good to give this job to VR Laser because VR Laser would give DLS a certain strategic advantage that would come with having a contract with them, that's a factor that can still be taken into account when there are many other competitors, you accept that?

MR SALOOJEE: Yes Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: I don't want to engage in a legal debate with you because that would be unfair to you but I just want to point out something that has been stressed by our highest courts, both the Constitutional Court and the Supreme Court of Appeal, and that is this, yes requirements of procurement processes are often quite technical and often quite complex and may take some time, but there is a good reason for that, firstly it is what the law
10 provides and one has to comply with the law. Not on the basis of well if there is something strategic we think it would be good to have or whatever. If the law says you have to follow that process you have to, so the law is an end in itself, but secondly in relation to procurement there are reasons why the law is so specific, particularly for State Departments and State Entities, one of the objectives is to ensure that you actually do get the very best deal for the State, because you are dealing with public money which is limited and the needs of the nation are massive,
20 but there is a further reason that the Courts have stressed, that there needs to be compliance with these processes and that is to ensure that there is accountability, because if these things get blurred when you think as an official, well I think we should do it because I think it is good for the organisation, even if you are genuine in that it just

allows room for a lack of accountability and a lack of transparency and it then allows a situation in which corruption a fester.

Now do you understand that objective of the legislation? And what I want to – I don't want to debate the legal principle, if you accept that what I am simply putting to you is this, it is all very well for DLS and managerial level to be talking in technical language and talking about strategic objectives there is a simple
10 question at the end of the day, can you do it in terms of the law or can't you? You accept that that is a fundamental point?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes, and things like strategic suppliers and making sure that you get a committed supply from a particular supplier that is all dealt with in the Public Procurement Legislation and Supply Chain Management Policy. After Denel had two Supply Chain Management Policies, at group level and at divisional level, that could
20 make provision for exactly that, not so?

MR SALOOJEE: Yes you can make provision for strategic partnerships.

ADV KENNEDY SC: Yes, yes, and if there is no such provision that allows you to do something you cannot do that thing unless and until you change your supply chain

management policy, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Now if for example there is a situation in which there is a monopoly there is one single supplier of a particular item in the country and in the world and it is impossible to go out on a competitive process or it would be completely silly to go out on a competitive process, the law recognises that, and says provided these conditions are met and you follow these formalities and
10 you report and give reasons and so forth you then don't have to go out to tender. This was not such a situation not so Mr Saloojee?

MR SALOOJEE: Chair I mean I think if you look at the motivation, that's why they call it a strategic supplier agreement, that they said even the kind of capabilities that are vested in that organisation, the kind of engineering requirements to meet the very exact and critical mission standards of the Defence Force with equipment of this nature they saw it as a critical supplier of this service, so
20 you know ...[intervenes]

ADV KENNEDY SC: The question was not whether they saw it that VR Laser was a critical supplier, the question was could anybody else have done the work?

MR SALOOJEE: In South Africa?

ADV KENNEDY SC: Anywhere?

MR SALOOJEE: No of course.

ADV KENNEDY SC: Of course and we know that Denel, your people, at the time you were CEO for the hugely important platform hulls contract had seen fit quite rightly to go out on an RFO, whether they should have gone further to a publically advertised tender is debatable, but at least they did that. Now this wasn't done here, not even that was done, so you seem to be suggesting that because VR Laser would be a good supplier of a strategic
10 item so we could depend on them let's go the route of VR Laser, but in the process you haven't asked anybody else would they like to do it, would they like to try and compete and satisfy you that perhaps they do have the capacity, rather than the division, leaving it to the division to say but we know these things. The whole point of a competitive process is to allow everybody who may be interested and capable to put in their tenders, put in their bids and if they are technically incapable or untrustworthy or too expensive or whatever they can be eliminated or rejected, but none of
20 that was allowed for here in a process in which you approved that one entity should be approached by DLS, namely VR Laser, an entity which by the way you knew was connected to a very controversial family and business network.

MR SALOOJEE: Chair I can say that with the motivation

that was sent to me I said go and explore the possibility based on your requirements and MOU, and that is what happened.

ADV KENNEDY SC: Is that it?

MR SALOOJEE: Yes Mr Kennedy.

ADV KENNEDY SC: Thank you Mr Saloojee. I would like to touch on just a couple of issues to complete the LSSA acquisition, you have set that out, if you look in Bundle 10, Bundle 10 to go back to your affidavit, page 803.

10 **CHAIRPERSON:** Did you say page 803?

ADV KENNEDY SC: Page 803 yes Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: It runs to page 805, and there is a heading there if you have got the right document, the purchase of BAE LAN Systems South Africa, LSSA, by Denel, you have dealt with that in the next two and a half pages. I don't propose to ask you any questions in relation to this issue, I think your affidavit is clear, is there anything you want to add in relation to that issue for the
20 benefit of the Chairperson before we move on?

MR SALOOJEE: Chair I mean this is self-explanatory but this issue was the reason why the incoming board within a space of a few weeks used to suspend us and then eventually exited us from the organisation. As you are aware we had consistently asked for a disciplinary process

to take place, that never happened. The two other colleagues, the Company Secretary and the CFO, Mr Mhlontlo, they settled early on I think in about March/April of that year, 2016. I then continued asking them for a disciplinary, show me what I have done, they refused to take me to a disciplinary, they had investigations done, I am not sure whether those investigations have been concluded, but I do know that right at the onset, and that was also in my previous affidavit, the then Chairperson of
 10 the Board, Mr Mantsha, had directed the then legal person in Denel to ask the company that did investigation to change the report to support their charges. I went through the whole of 2016, I took them to the CCMA and eventually my issue was resolved at the CCMA and for the record I never got the settlement from them, I was just paid out what was due for me for the rest, the remainder of my contract which was expiring in a few months time after that.

CHAIRPERSON: Do you recall how many months were
 20 still to run?

MR SALOOJEE: Probably about four/five months were left.

CHAIRPERSON: Okay, okay. Yes Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. While we are on that topic Mr Saloojee can I ask you please to refer to

Bundle – it is in fact marked Exhibit W4B, it doesn't have a bundle number, this was before the current bundle numbering system I believe was introduced Chair, before my time, but it is part of the original affidavit of Mr Saloojee, or part of the annexures to that, so if your registrar ...[intervenes]

CHAIRPERSON: So it would be the one that has got Mr Saloojee's two statements?

ADV KENNEDY SC: No, those are the recent ones, it is
10 the previous one from the previous year when the ...[intervenes]

CHAIRPERSON: No, no I mean last year when he gave evidence ...[intervenes]

ADV KENNEDY SC: Yes, yes.

CHAIRPERSON: There were two statements that he ...[intervenes]

ADV KENNEDY SC: Oh I see what you mean yes.

CHAIRPERSON: Is it that one?

ADV KENNEDY SC: That is correct, and it is called
20 Exhibit W4B.

CHAIRPERSON: Ja, so just the one that has got Mr Saloojee's statements.

ADV KENNEDY SC: But it is the second volume of those.

CHAIRPERSON: Are you going to his statements or are you going to somebody else's statements?

ADV KENNEDY SC: I am going to an annexure to his statement.

CHAIRPERSON: Ja, okay give me the one that has got his statements, they are both in the same file. What page?

ADV KENNEDY SC: Page RS499 and at that stage they were not the two different sets of page numbers, there seems to be just the one on the right hand side in black Chair, RS499.

CHAIRPERSON: RS499, or is it page 499?

10 **ADV KENNEDY SC:** That is correct.

CHAIRPERSON: Okay, R – yes okay.

ADV KENNEDY SC: That is the document Mr Saloojee, are you not there yet, sorry.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Have you got it?

MR SALOOJEE: Yes.

ADV KENNEDY SC: That is the document headed termination of employment agreement between Denel and Saloojee. Have we got the same document in front of us?

20 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: Right thank you. Now Chair I want to apologise, in a previous hearing I gave you a truncated version of the full facts relating to this which may have created the wrong impression, I was in fact under the wrong impression. As I understand it Mr Saloojee when

you – when your services were terminated you were suspended for a lengthy period, is that right?

MR SALOOJEE: Ja, from September of 2015 and we resolved the matter in I think towards November of 2016.

ADV KENNEDY SC: 2016, so it was at least a year that you were on suspension?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And you were on paid suspension throughout that period?

10 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: Is that right?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Now ultimately and we have heard some evidence about this in some detail, particularly from Mr Mhlontlo did you listen to his evidence as well?

MR SALOOJEE: No, some of it, not all.

ADV KENNEDY SC: Some of it, not at all, have you lost interest halfway through.

20 **MR SALOOJEE:** No, no, no I had other responsibilities as well.

ADV KENNEDY SC: I am sure. Mr Saloojee Mr Mhlontlo gave evidence that over many months you and he and Ms Africa attempted to get documents to substantiate the charges, to get details in relation to the charges and to get the disciplinary process under way, is that correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Does that apply to you?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And you and your lawyers expressed frustration sometimes in correspondence saying if you want to charge us charge us and run it to its disciplinary end so that we can be heard, get finality in the matter because we believe that we are innocent and will be vindicated, does that apply to you?

10 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: And ultimately they never actually started the disciplinary process.

MR SALOOJEE: Yes.

ADV KENNEDY SC: There was a preliminary issue where a ruling was made, never did they actually get to the stage of presenting evidence against you?

MR SALOOJEE: Yes that's right.

ADV KENNEDY SC: Or giving you an opportunity to give your evidence, is that right?

20 **MR SALOOJEE:** That is correct yes.

ADV KENNEDY SC: And ultimately your services were then terminated?

MR SALOOJEE: Yes Chair.

ADV KENNEDY SC: Now at that stage as I understand the factual position, please correct me if I am wrong, at

that stage there was no settlement agreement concluded, this settlement agreement, the termination of the employment is something that came sometime later, is that right? Can you not recall? It is in fact in November 2016, page 514.

MR SALOOJEE: I just want ...[intervenes]

CHAIRPERSON: It was signed on the 8th of November 2016 by both sides.

MR SALOOJEE: This was at the end of the CCMA
10 process.

ADV KENNEDY SC: The end of the CCMA process?

MR SALOOJEE: Yes.

ADV KENNEDY SC: That is really where I am trying to go to.

MR SALOOJEE: Yes.

ADV KENNEDY SC: So initially you left employment and they agreed to pay you to the end of your contract which ...[intervenes]

MR SALOOJEE: No.

20 **ADV KENNEDY SC:** Not?

MR SALOOJEE: This was concluded while my contract was still valid.

ADV KENNEDY SC: While your contract was still valid, I see.

MR SALOOJEE: Yes.

ADV KENNEDY SC: I see and after you had gone to the CCMA?

MR SALOOJEE: Yes.

CHAIRPERSON: Had gone to the CCMA to challenge your suspension?

MR SALOOJEE: Yes.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Challenge the suspension, not the actual termination, your employment was still going at that stage.

MR SALOOJEE: Ja, it was still.

ADV KENNEDY SC: Okay. Alright thank you. And the payment for the balance of your employment contract was that the payment that was provided for in this settlement agreement?

MR SALOOJEE: Yes, ja.

ADV KENNEDY SC: So if we take you please to page 505, this provides for the settlement of the disputes and termination of employment, 505 are you with me, clause 4.

20 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: Clause 4 is headed "Settlement of Disputes and Termination of Employment".

MR SALOOJEE: Yes.

ADV KENNEDY SC: And paragraph – Clause 4.2 it is recorded that all disciplinary proceedings against the

employee have been terminated.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes, and then we see in Clause 6.1:

“Settlement

The employer shall pay to the employee an *ex gratia* amount of R2 362 492 being an amount equivalent to 50% of the employee’s annual remuneration.”

And did this cover you for the rest of your employment
10 contract?

MR SALOOJEE: That was my understanding of it yes.

ADV KENNEDY SC: I see.

CHAIRPERSON: Well you – I understood you to say you didn’t get any settlement, you were just paid for the balance of your contract, now I accept that you are not a lawyer therefore your understanding of some terminology might not be the same as that of a lawyer, but in Clause 6.1 you and the employer agreed that you would be paid an *ex gratia* amount, an *ex gratia* amount as you would know
20 is an amount that the employer is not obliged to give, that is different from an amount that they would be obliged to give to you anyway, you understand that.

MR SALOOJEE: Yes Chair I understand that perfectly.

CHAIRPERSON: Yes, that does give the impression that the parties were settling the matter, the employer didn’t

want to say I am paying you your salary, or the rest of the contract what you were going to earn, but it may be that in the end in rands and cents it amounted to what would have been your salary anyway for all those months but that is how they put it.

MR SALOOJEE: Chair I mean the issue of *ex gratia* or I specifically said to them that I want the remainder of my salary and I want whatever else has accrued to me in terms of leave and whatever else and that was what I agreed with
10 them.

CHAIRPERSON: Yes, and what you got reflected ...[intervenes]

MR SALOOJEE: Reflected that.

CHAIRPERSON: ...what would at that, the terminology might have meant something else but what you got was what you demanded?

MR SALOOJEE: Absolutely.

CHAIRPERSON: Okay, alright. Mr Kennedy?

ADV KENNEDY SC: Thank you. And of course as we
20 have seen the settlement was on the basis that effectively your employment came to an end by mutual agreement with all disciplinary charges against you dropped.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Right, now the allegation has been made in the various documents that were issued to you at

the time of your suspension and then the charges that were issued that these were extremely serious charges and allegations of disciplinary misconduct which could lead to your dismissal. Do you have any comment on the fact that ultimately not only were those disciplinary charges dropped completely despite more than a year's delay and your frequent requests for the process to be undertaken and finalised, but in addition they paid you for the balance of your contract, do you have any comment on that?

- 10 **MR SALOOJEE:** Well Chair I mean all I can say is that you know a new Board that comes in it is hardly there six weeks, we have taken them through an orientation programme, we are briefing them on this particular matter, they are not fully understanding the nature of the transaction, there is just no way that you could empower yourself within that short period of time to take such a serious view of getting rid of three of your most important people in the organisation.

- 20 You know for me it was just a ruse to get us out, and immediately we left and in fact if I – I don't know if I can make a comment here Chair. If you look really what happened to Denel after we left, I mean up to that point Denel was a very successful organisation. They had a strong order book, we had profits year on year, we had clean audits from the Auditor General. The first thing that

happened after we left was the issue of the VR Laser Asia and then we know what has happened in the precedent. It has also come to my knowledge that there is a huge amount of behind the scenes work that was going on whilst I was still at Denel to establish VR Laser Asia okay, and that a primary motive for getting rid of myself and Mhlontlo was specifically because of the fact that they saw us as an obstacle to the further implementation of the Asia project and bring it to its logical conclusion because then that
10 would have closed the loop completely in terms of VR Laser's relationship with Denel.

And all I can say is that if there was an impression that was created or a narrative that has been created that given my role and responsibility within the organisation and with the issue of the relationship with the VR Laser agreements, I am still thinking to myself that if individuals like myself had been captured and remember the context within which we are talking here, that during that period the entire country was engulfed in the notion of State
20 Capture, whether it was Law Enforcement Agencies, whether it was our political principals who were being implicated, there was a sense of – almost a sense of fear as to how you conduct yourself in these times, you know and I tried to do the best of my ability to keep Denel intact, I tried to the best of my ability to manage the kind of

relationships that we were engaged with and if I was compliant after having done lifestyle audits, having investigated me, whatever else, if I had done anything that was wrong, if I had materially benefitted from this role it surely would have come out, that is the first thing. And the second thing is that the very person who has been at the forefront of people who have been at the forefront of the VR Laser Asia thing were the ones who were put in charge of running Denel after I left, I was suspended. Ntshepe
10 who was central to this whole process becomes the Acting CEO and then he becomes the CEO, and I know now from information that he was central with Burger in the whole Asia thing of establishing Asia and partnering and signing Memorandums of Agreement with Indian companies in India in preparation for this even before they got board approval for it.

So the point that I am trying to make is that yes there were some of us who were put under huge pressure, okay, and I have dealt with it in my previous affidavit, we
20 had to manage it to the best of our ability and I tried to manage it to the best of my ability. I tried to be as fair as possible, even during the hull contract thing, and we have gone into a lot of technical detail about that. I tried to create the best situation for Denel with securing the interest of LMD for example.

The issue of genuinely the memorandum of understanding was that they would have had to bring it back to me to consider but it was just at the point at which we were going to be suspended and the new Board was coming in, so that process was out of my control.

In fact after I left they used that same thing to then enter into the kind of agreements that they want to with VR Laser. So the political context within which all of this going on was one in which this whole State Capture thing
 10 was taking place. Denel is a clear example of that, that it was a target of State Capture. We were targets of State Capture, and we had to manage it in the best way possible, to the extent that – and again I ask a simple question if I was compliant, if I was colluding why would I have been suspended.

CHAIRPERSON: Ja, no, no that question remains and it is a question that needs to be confronted, certainly when I write my report, when I need to make findings. I have got to ask the question, your suspension with the other two
 20 was for a long time, without any evidence being led in a disciplinary inquiry to sustain any allegations of misconduct and ultimately with a settlement, a conclusion of agreements that you go, if there was no basis for in terms of misconduct, if there was no evidence, why was – why were the suspensions effected and why were you not

allowed to come back and complete your term once it was – if it was accepted that there was no evidence and therefore you should not have been suspended in the first place why was that not done.

Of course Mr Mantsha has not finished his evidence and he has said that there was misconduct arising from your conduct I think two of you, in regard to this transaction, I think in regard to what – it is said it is something else I am not sure. So I am interested in hearing
10 what he will put on the table. I did say to him when he was here that it is a pity that he says this now and yet from last year he was given your affidavits which said exactly how you were suspended and how you – you were kept out of the company until you left and

1. He did not file any application to challenge your evidence to say I want to lead evidence and challenge Mr Saloojee's evidence that he and the other two were treated like this because they stood for what is right and they were kicked out because they were not
20 compliant. He did not do that.

He had the opportunity to apply for leave to cross-examine you. He did not use that opportunity. He was given all your bundles and affidavits and if I am – and he was invited to file affidavits last year by the commission he did not.

And even now he comes before the commission

because he has been as far as I recall been compelled to come. I do not know whether I am mistaken in that regard but he did not show much enthusiasm certainly last year and early this year to come in and challenge your evidence.

So – but he will give his evidence and it will be examined – he will be questioned about the allegations of misconduct because I am interested in hearing evidence that relates to the allegations that the – you had misconducted yourselves in the way you – or you had not performed your
10 job properly. I want to hear that if that is the position.

But one will have to bear in mind that it comes very late when there had been such a lot of opportunity to have brought it much earlier.

So – ja I thought I would say that.

MR SALOOJEE: Thank you Chair.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Before we leave this bundle Chair and leave the issue of the settlement may I just ask you as I understood it you said that only once you
20 referred the suspension dispute to the CCMA did you then reach the settlement agreement and once the settlement agreement was reached you were then paid out for the balance of your contract.

MR SALOOJEE: That is what I understand Chair.

ADV KENNEDY SC: You understand? Can you not recall?

MR SALOOJEE: No that is what I know. No that is what I know.

ADV KENNEDY SC: That is what you know okay. Because I just want to understand this then if you look in the same bundle at page – page 492 there if a form referring a dispute to the CCMA for conciliation including Conarb – do you have that?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And then at page 495 it has been
10 signed by yourself as I understand it and your attorney?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Is that the attorneys' signature under the name printed name Shahied Dolly is that right?

MR SALOOJEE: Yes I would – ja.

ADV KENNEDY SC: And then next to that is the printed name Riaz Saloojee and your signature?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And it is dated the 23 August 2016, correct?

20 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: And that was then accompanied by an annexure which we find at page 496 and that is a statement setting out as the heading indicates the details of what you contended to be an unfair labour practice, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And then at page 497 we see printed at the bottom Riaz Saloojee and your signature.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Did you sign this document?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Okay. What interests me is on the previous page 496 paragraph 4. Or in fact can I start at paragraph. You were suspended on the 23 September 2015. Paragraph 3 on the 23 December 2015 you were informed of
10 the charges against me, that is correct so far is it?

MR SALOOJEE: Sorry just where are you?

ADV KENNEDY SC: Page 496.

CHAIRPERSON: Yes I have got that.

ADV KENNEDY SC: Paragraph 3.

MR SALOOJEE: Yes.

ADV KENNEDY SC: On the 23 December 2015 I was informed of charges against me.

MR SALOOJEE: Yes.

ADV KENNEDY SC: That is factually correct is it?

20 **MR SALOOJEE:** Yes.

ADV KENNEDY SC: Alright paragraph 4 says:

“On the 17 March 2016 before the disciplinary proceedings could commence I was informed that my contract of employment would not be renewed for a period beyond

January 2007 – 17 I beg your pardon. I was further paid out until the end of my contract period being until the end of January 2017 during April 2016 but I was not informed as to how such payment was made up.”

That seems to be saying in April 2016 you were actually given the payment to pay you out for the rest of your contract period, is that correct?

MR SALOOJEE: Sorry – yes ja.

10 **ADV KENNEDY SC:** Yes. So then what I do not understand if I take you back to page 506 your evidence earlier that the settlement amount the ex gratia amount of 6.1 – sorry in Clause 6.1 the amount of R2 362 492.00 being an amount equivalent to 50% of your annual remuneration why that was actually the same as what you had already been paid in April?

MR SALOOJEE: So – no Chair sorry. It is a mistake – it is a mistake on my part.

ADV KENNEDY SC: Your evidence was a mistake. This was
20 in addition to being paid to you.

MR SALOOJEE: No, no, no. When ...

CHAIRPERSON: The CCMA document did not talk about...

MR SALOOJEE: March 16

ADV KENNEDY SC: Sorry Mr Saloojee what? March 16.

MR SALOOJEE: No it says before the disciplinary hearing I

was informed [00:07:09].

ADV KENNEDY SC: You at page 496 paragraph 4 are you?

MR SALOOJEE: Okay so that was in March. I was further paid out until the end of my contract being the January 2017.

ADV KENNEDY SC: Yes.

MR SALOOJEE: So it – so ja it may have been lapse of memory but what happened is that Denel unilaterally said that they are not going to renew my contract in January 2017.

10 **ADV KENNEDY SC:** Yes.

CHAIRPERSON: Okay.

ADV KENNEDY SC: And they paid you out.

MR SALOOJEE: And they paid me up to that point.

ADV KENNEDY SC: In April.

MR SALOOJEE: And unilaterally put that money which was the remaining part of that half a year 50% of my salary.

ADV KENNEDY SC: I get that.

MR SALOOJEE: Yes.

20 **ADV KENNEDY SC:** So they took it upon themselves while you were still suspended.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Unilaterally to say by the way we telling you we are not going to renew your contract in January 2017.

MR SALOOJEE: And they put the money...

ADV KENNEDY SC: Please do not talk over me.

MR SALOOJEE: Sorry.

ADV KENNEDY SC: Until – which expires in January 2017 and then whether you liked it or not they put the money in paying you until the end of January 2017.

MR SALOOJEE: Yes that is correct.

ADV KENNEDY SC: Yes. But then there was...

CHAIRPERSON: Was your contract ending – going to end in January 2017?

10 **MR SALOOJEE:** Yes Chair.

CHAIRPERSON: Okay alright. And then you – when they did that you had not referred your suspension dispute to the CCMA or had you already referred it to CCMA?

MR SALOOJEE: No because I was still saying them continue with the disciplinary hearing.

CHAIRPERSON: Yes. So you referred the suspension dispute to the CCMA after that?

MR SALOOJEE: Yes.

CHAIRPERSON: Yes.

20 **ADV KENNEDY SC:** We note – sorry Chair. May I continue?

CHAIRPERSON: Ja.

ADV KENNEDY SC: We know that because we have already shown you Mr Saloojee at page 495 you signed that on the 23 August 2016, correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And your – that was accompanied by the statement that says already before the – before I referred this dispute while I was still suspended which is the subject of my referral as an unfair labour practice I have already had my contract terminated and I have been paid out as far back as April 2016 that was four months before the referral was to the CCMA?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Correct. Then you pursue the
10 complaint - the dispute at the CCMA and you then settle that dispute, not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Correct?

MR SALOOJEE: It was agreed that we settled.

ADV KENNEDY SC: It was then settled in terms of the settlement agreement that was then signed in November 2016. We have seen that at page 514.

MR SALOOJEE: Sorry 59?

ADV KENNEDY SC: 514. 8 November 2016.

20 **CHAIRPERSON:** That is the agreement that we looked at earlier.

ADV KENNEDY SC: Correct.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Yes. The Chairperson actually read out the date to you earlier when you were taken to this. So at

page 505 in this settlement agreement that you conclude in November 2016 after you have referred the dispute and after you have already been paid in April for the balance of your contract. You are then – you then agree to a settlement amount an ex gratia amount of R2.36 million and then there is provision in Clause 7 as to when that is to be paid and how.

7.1 They will render payment into a bank account of your choosing and

10 7.22 Sorry 7.21 is deduct income tax and

7.22 Make any payments due by no later than 30 November 2016.

It seems to me Mr Saloojee that this R2.36 million must have been on top of not as the balance of the contract that you had already been paid in April 2016.

CHAIRPERSON: So maybe the prior question should be what happened to the money that the company put into your account unilaterally?

MR SALOOJEE: Chair that was – that was my
20 understanding was my monthly salary until my contract expired.

CHAIRPERSON: Yes.

MR SALOOJEE: Yes.

CHAIRPERSON: You did not return it to the company?

MR SALOOJEE: No.

CHAIRPERSON: Okay when you signed the settlement agreement that you signed with the company in November 2016 this amount that is mentioned in that agreement of R2.something million was it in addition to the money that they had put into your account unilaterally? Were you going to get another amount?

MR SALOOJEE: Yes.

CHAIRPERSON: Or were they talking about the amount that had been put into your account unilaterally?

10 **MR SALOOJEE:** Chair I know that the total amount that I got was about R3.6 million.

CHAIRPERSON: About how much?

MR SALOOJEE: R3.6 million.

CHAIRPERSON: Yes.

MR SALOOJEE: Total with...

CHAIRPERSON: Are you counting now the money that they put into your account unilaterally plus the money that is mentioned in the agreement put together came to R3, something million?

20 **ADV KENNEDY SC:** Perhaps I can help Mr Saloojee?

MR SALOOJEE: Yes please do.

ADV KENNEDY SC: If you received R3.6 million that is obviously different from the R2.36 million in Clause 6.1 on page 505. It seems one possible way of looking at this but I am speculating we need evidence on this is that you

received something maybe R1.something million in April 2016.

MR SALOOJEE: And then this was...

ADV KENNEDY SC: Then you – then you received a further R2.36 million in November 2016 in terms of the settlement which was obviously a win for you because you brought the claim in the CCMA. You came out of it with more money not so?

MR SALOOJEE: Ja.

10 **ADV KENNEDY SC:** Did you not receive a payment in November 2016?

MR SALOOJEE: Yes. Yes if I do recall.

ADV KENNEDY SC: You do recall?

MR SALOOJEE: Yes.

ADV KENNEDY SC: And you also as your statement earlier said you had received an amount in April 2016, correct?

MR SALOOJEE: Yes, ja.

ADV KENNEDY SC: So that – so in total you received R3.6 million made up partly of what was the amount that was paid
20 in April 2016.

MR SALOOJEE: And then what was paid there.

ADV KENNEDY SC: And then the R2.36 million in November 2016, is that right?

MR SALOOJEE: And including – and including the accrued leave.

ADV KENNEDY SC: Including accrued leave I see.

MR SALOOJEE: Yes.

ADV KENNEDY SC: Okay.

CHAIRPERSON: But Mr Saloojee if you – if the company put into your account unilaterally in March or April of 2016 put an amount that would cover the rest of your contract period that would mean that it was an amount that would have covered about twelve months or close to twelve months. Because you said your contract was going to end in January
10 2017.

MR SALOOJEE: Yes Chair.

CHAIRPERSON: Is that right. So if they were putting in – if they put into your account in March an amount that you say covered the rest of your contract period that would have been about ten months and ten months would not have been R1 million, something it would have been much more than that if R2.3 which is written I think in the settlement agreement amounts to 50% of your annual salary. Can you see that? That is what the agreement says. It is R2.3 or 2,
20 something and that is – they say that is 50% of your annual salary. So that must mean your annual salary must have been about R5 million or thereabouts.

MR SALOOJEE: Yes, yes Chair.

CHAIRPERSON: So if they put in – if they put into your account in March or so 2016 an amount which was – which

would cover the rest of your contract period that is – that would have been amount that covered about at ten months.

MR SALOOJEE: Yes.

CHAIRPERSON: Maybe nine or ten months. So that would not have been R1, something. That would have been certainly over R3 million I would imagine.

MR SALOOJEE: Chair with your permission I mean I can get all that information and send it to the commission

CHAIRPERSON: Yes. But you understand what I am saying/

10 **MR SALOOJEE:** Yes you right I do understand what you saying.

CHAIRPERSON: So that if the amount that they gave you in March 2016 was never returned to them and the amount that is written in the settlement agreement was in addition to the amount that was put into your account then in total the amount that you got could not have been less than I think R6 million.

MR SALOOJEE: Chair as I say I will get all the information.

CHAIRPERSON: Yes.

20 **MR SALOOJEE:** And send it to the commission.

CHAIRPERSON: But I must be right more – you know in terms of how I arrive at that – the figure might be...

MR SALOOJEE: No Chair you are right.

CHAIRPERSON: Yes.

MR SALOOJEE: I mean I – my own – let me get the

information and I will send it to the commission.

CHAIRPERSON: Yes no, no that is fine. Okay alright Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. There is one final topic I would like to deal with.

CHAIRPERSON: Ja.

ADV KENNEDY SC: It arises in your – both in your latest affidavit as well as your original affidavit. I am not going to take you to the actual content of it I just want you to confirm
10 and then explain certain things. I just want to remind you what you said. You referred to various meetings that you had set up by Mr Essa with the Gupta's, correct?

MR SALOOJEE: Yes Chair.

ADV KENNEDY SC: And you said

“I was eventually summoned to again another meeting with the Gupta's by Essa. I cannot recall the specific date of this meeting save that it was in the latter part of 2012. In this meeting I was told in no uncertain terms that
20 I was not cooperating and that my lack of cooperation was a serious issue.”

Tony said – that is Tony Gupta presumably correct?

MR SALOOJEE: Yes.

ADV KENNEDY SC:

“That he did not want to elevate it further. I

took the statement as a threat and the purpose of the meeting as means to strong arm me into cooperating with Essa and the Gupta's. I reiterated what I had said in all the previous meetings namely that proper process must be followed. All business had to be commercially viable and add value to Denel."

Then there is reference to Tony Gupta saying that
10 they were working hard to have the blacklisting of Denel in India lifted. And then – then there is reference to the need to support the New Age Newspaper. And then crucially you have said this in your original affidavit and you have confirmed it in your latest one.

"When that meeting ended as we walked out Tony asked me why I do not take money and that I should take money because everyone does. I categorically stated that I do not."

Now you confirm that evidence?

20 **MR SALOOJEE**: Yes.

ADV KENNEDY SC: And where did that take place? At the Gupta residence in Saxonwold?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Or one of the Gupta residences.

MR SALOOJEE: Yes Chair.

ADV KENNEDY SC: Yes. Now when he said why you do not take money had he offered you money already?

MR SALOOJEE: No it was a comment that he made.

ADV KENNEDY SC: But I am trying to understand it. Do you understand it because when somebody says why do you not take money it suggests that you had already been offered money and you had rejected the offer. Had you previously been offered money by Mr Gupta?

MR SALOOJEE: No I was never offered money by him.

10 **ADV KENNEDY SC:** So how did you understand the question why do you not take money? And then to follow up you should take money because everyone does. Was he actually offering you money now?

MR SALOOJEE: Chair he was – the context was cooperating and whatever else okay. And I think if the discussion had gone in the way in which I was amenable to that thing that is the context within which I thought he made the comment.

ADV KENNEDY SC: Was any specific amount ever
20 suggested to you that if you do certain things you could expect to get paid?

MR SALOOJEE: No Chair.

ADV KENNEDY SC: But did you understand that the question here based on the earlier discussion then and previous meetings was really to this effect. If you are

amenable and you should be amenable we will pay you money to ensure that the business comes to us.

MR SALOOJEE: That was my understanding Chair.

ADV KENNEDY SC: Yes. And you rejected that?

MR SALOOJEE: Yes Chair.

ADV KENNEDY SC: Suggestion. Was this the only occasion on which there was any talk by Mr Gupta or any of his associates that you should be taking money?

MR SALOOJEE: Yes Chair.

10 **ADV KENNEDY SC**: I see. And did you understand what you would have to do if you took the money in exchange for doing something what would that something be?

MR SALOOJEE: My own view is that there was the India issue that was looming that they wanted access to the India market. There were obviously the VR Laser issue was an issue. And then of course the Middle East was a bit thing for them you know. So they wanted to get involved in the defence industry via Denel into those environments as well.

ADV KENNEDY SC: I want to remind you of the wording that
20 you used in your affidavit, the latest one that is at page 8-1 in Bundle 10 Chair but I am not – I do not think it is necessary for you necessarily to page to it. I will read it out if I may? Paragraph 10 you said:

“During this period there was both significant
public debate and media speculation

concerning the relationship between the
Gupta's and senior people in government
that included the then President"

Not so?

MR SALOOJEE: Yes.

ADV KENNEDY SC: That was already part of the public
controversy. It is part of the reason for the public
controversy not so?

MR SALOOJEE: Yes.

10 **ADV KENNEDY SC:** Then you say this:

"Consequently I was genuinely wary of who I
could turn to, confide in or discuss such
matters with. I also was of the view given
my history and experience that I was strong
enough to be able to manage these
advances."

Now did you in fact confide in anybody else when you
were being approached repeatedly by the Gupta's to make
sure that business comes their way and for example give –
20 give work to New Age Newspapers and for example to assist
them in the – in the Asian market etcetera. Did you confide
in any of your colleagues at Denel that such approaches and
insinuations were being made?

MR SALOOJEE: No Chair I did not.

ADV KENNEDY SC: Did you confide in anybody outside the

Denel organisation such as the Minister or DG of Public Enterprises?

MR SALOOJEE: No Chair.

ADV KENNEDY SC: Why not?

MR SALOOJEE: I mean my own view is that – that they were supporting the Gupta family.

ADV KENNEDY SC: Right.

MR SALOOJEE: And that if I had elevated it to that level I do not know what my situation would have been. If fact
10 frankly as I have indicated there I did not know who to turn to. And I was...

ADV KENNEDY SC: Did you...

CHAIRPERSON: Sorry just repeat that?

MR SALOOJEE: I did not know who to turn to.

CHAIRPERSON: Yes.

MR SALOOJEE: And I was also – I was – I was concerned about my own position and my welfare.

MR SALOOJEE: Yes. And who was the Minister responsible for Denel at the time?

20 **MR SALOOJEE**: First it was Minister Gigaba and then it was Minister Lynne Brown.

CHAIRPERSON: Ja but I am talking about that time where you had to decide whether you could talk to...

MR SALOOJEE: 2014 it was Minister Brown then?

CHAIRPERSON: Hm.

MR SALOOJEE: Minister Brown was there in 2014.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Did you consider and I am not trying to cross-examine you on this but did you consider when you said you did not know who to turn to perhaps that the Public Protector who at that stage was Advocate Thuli Madonsela might have been somebody you could have approached and confided in?

MR SALOOJEE: Chair I must say I did not.

10 **ADV KENNEDY SC:** You did not think about that?

MR SALOOJEE: Yes.

ADV KENNEDY SC: Okay. And the Auditor General?

MR SALOOJEE: Chair I did not.

ADV KENNEDY SC: Okay. Just to complete this section of your affidavit you say:

20 “These advances were not normal business practices and I kept resisting them during a very difficult period in our collective political history. Again I repeat I was of the view that I could manage the situation. I must acknowledge that I was genuinely concerned by the turn of events and concerned for my future. I might add I was also concerned for my and my family’s personal security having regard to the apparent reach and ambit of

the Gupta influence.”

Did you have any actual threat made to you or did you just feel uncomfortable that there might a risk to yourself?

MR SALOOJEE: No Chair I mean you know you always worried about is there a possibility that something could happen – always. And in fact you know you – at some point you can become paranoid about some of these things as well. I mean we lived in a very difficult time during that
10 period. I was being put under pressure on this side. I was still trying to manage Denel. I was trying to address all the issues that have [00:25:09] here whilst trying to keep my head above water you know. So of course it was a very difficult, very stressful period in my life.

ADV KENNEDY SC: In retrospect do you think that perhaps you could and should have confided in somebody such as the Public Protector?

MR SALOOJEE: No at that point I thought what I was doing was protecting my own interest.

20 **ADV KENNEDY SC:** But what about the nation's interests?

MR SALOOJEE: Shoo I mean I was trying to manage it the best way that I can. You know.

CHAIRPERSON: Of course Mr Kennedy there is the question whether you can confide in the Public Protector because I guess you either lay a complaint in which case it

will be dealt with transparently.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Or you do not. So I am not sure if you can confide.

ADV KENNEDY SC: No I accept that it may not have been possible.

CHAIRPERSON: Ja.

ADV KENNEDY SC: It is just a suggestion that I am raising for his comment. I understand your predicament Mr
10 Saloojee. Chair may I just have a moment to confer with my team to see if there is anything further?

CHAIRPERSON: Ja okay.

ADV KENNEDY SC: Thank you. Thank you Mr Saloojee, thank you Chair we have no further questions.

CHAIRPERSON: There is one question which I want to check. Mr Ntsepe I do not know whether Mr Burger as well but Mr Ntshepe said that you and Mr Salim Essa had known each other for quite some time and had your own relationship outside of Denel for some time. Because when
20 he gave evidence he sought to say you may have downplayed your own role in what happened. So did you have a relationship of – or did you know Mr Salim Essa outside of Denel before you met him at the I think you – I understood your evidence to say you met him at the – before you met him I think before he took you to the Gupta

residence? When did you get to know him for the first time
Mr Salim Essa?

MR SALOOJEE: Chair if I recall from some of the evidence
that was led it was Mr Mantsha who said that I had known Mr
Essa for a long while because we come from the same
locality.

CHAIRPERSON: Well Mr Mantsha may have said that but I
am under the impression that Mr Ntshepe also said
something. But I may be mistaken but some witness said you
10 and Mr Salim Essa had known each other.

MR SALOOJEE: Ja we have never known each other. We
have never been friends. We do not come from the same
locality. We come from different communities. I have been
brought up in the Western – in the old Western Transvaal in
Johannesburg. I think he comes from Pretoria if I am not
mistaken. I have never known him. I have never interacted
with him socially at all. It was just during this period that he
made my acquaintance.

CHAIRPERSON: So did you meet him for the first time a
20 short while before he took you to the first meeting [talking
over one another.

MR SALOOJEE: It was in the first quarter of about 2012.

CHAIRPERSON: The first quarter of 2012?

MR SALOOJEE: Yes.

CHAIRPERSON: Before that you did not know him?

MR SALOOJEE: I mean I knew about him.

CHAIRPERSON: You knew about him.

MR SALOOJEE: I used to see him in the streets and...

CHAIRPERSON: Yes. Okay. Alright. Thank you. Mr Kennedy is your recollection the same as mine that Mr Ntshepe may have said something similar?

ADV KENNEDY SC: I think he may have said that but I am afraid I cannot be certain about it.

CHAIRPERSON: Yes okay alright. Thank you very much Mr
10 Saloojee for coming back to deal with the matters that you
had to deal with. I appreciate the fact that you were
prepared to give evidence until so late in the evening. Thank
you very much. If the need arises we will ask you to come
back but hopefully it will not be necessary.

MR SALOOJEE: No thank you Chair.

CHAIRPERSON: Yes thank you very much you are excused.
I must also thank you Mr Kennedy and everybody all the staff
for being prepared to stay and – to so late.

ADV KENNEDY SC: Thank you Chair.

20 **CHAIRPERSON:** So that we could finish Mr Saloojee's
evidence.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: So we are going to adjourn for the day and
tomorrow I will hear in the morning the evidence of Mr
Makhubo the Johannesburg Mayor and in the afternoon I will

continue with the evidence of Mr Ramosebudi who gave evidence earlier today. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 27 NOVEMBER 2020