

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

26 MARCH 2021

DAY 369



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 26 MARCH 2021

CHAIRPERSON: Good morning Mr Kennedy, good morning everybody.

ADV KENNEDY SC: Good morning Chair. We are ready to proceed Chair with the...

CHAIRPERSON: Yes good morning Mr Mantsha. Thank you.

ADV KENNEDY SC: May I ...

CHAIRPERSON: You are ready to proceed.

10 **ADV KENNEDY SC:** Thank you My Lord. May I indicate that Mr Mantsha is today assisted by his attorney Mr Bhenga.

CHAIRPERSON: Yes okay. You can place yourself on record from where you are if your mic is working. If it is not working they will sanitise the podium.

MR BHENGA: As per the hearing I am Mr Bhenga hearing on behalf of Dan Mantsha.

CHAIRPERSON: Thank you very much. Thank you.

ADV KENNEDY SC: Thank you Chair. Good morning Mr
20 Mantsha. Mr Mantsha I would like to pick up on the point
...

CHAIRPERSON: Hang on Mr Mantsha are you going to prefer to have your mask on today? Okay alright. Okay. Thank you. Yes Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Mr Mantsha we

were dealing last time with the situation concerning the termination of employment of the then Group CEO Mr Saloojee, the Group CFO Chief Financial Officer Mr Mhlontlo and the Company Secretary Ms Africa and you recall we started dealing with the process that was followed in that regard.

And we were looking specifically at the steps that were taken in relation to the disciplinary inquiry that they had been told they would be facing and we were exploring
10 why it took so long and ultimately it never took place at all because the – the termination of employment was then done by settlement.

Now Mr Mantsha I would like you please just to confirm you have before you a bundle hopefully what you have in front of you is Exhibit W4B. Do you have that?

MR MANTSHA: I do Chairperson.

ADV KENNEDY SC: Thank you and we looked at part of the annexures to Mr Saloojee's statement last time. I would like to take you please to Bundle – this bundle and it
20 has got different page numbering system than some of the other bundles so it is – just bear in mind in this – in this file we have to look at the numbers on the right hand – top right hand corner and I would like you please to turn to page RS405.

MR MANTSHA: Page?

ADV KENNEDY SC: RS405. When I am dealing with this bundle I am going to omit reference to the RS unless we run into difficulties. Right do you have that? That is a letter from Zarina Walele attorney.

MR MANTSHA: I do Chairperson.

ADV KENNEDY SC: And we looked at part of that letter on the last occasion. That is the letter from Ms Walele who at the time was acting as the attorney for Mr Saloojee, Mr Mhlontlo and Ms Africa, correct?

10 **MR MANTSHA:** Correct Chairperson.

ADV KENNEDY SC: And it is – it is dated the 18th of February 2016. Now by this stage Mr Saloojee, Mr Mhlontlo and Ms Africa had been on suspension since September, is that correct?

MR MANTSHA: Correct Chairperson.

ADV KENNEDY SC: And they had received a charge sheet – I think it was in December of 2016 and we dealt last time with the process in which it was that disciplinary inquiry was meant to proceed in January instead it did not proceed
20 instead a mediation process was attempted and there was various correspondence between the attorneys. Cliffe Decker Hofmeyr to whom this letter is addressed were acting at the time for Denel. Is that right?

MR MANTSHA: Correct.

ADV KENNEDY SC: Yes. Now we already dealt I believe

on the last occasion with the first part of the letter on page 405 where Ms Walele referred to your appearing as Chairperson of the Denel before a select committee of Parliament where you had made statements that and she quotes there

“These officials were in breach of the law
and they failed to observe the legal
requirements of the PFMA.”

You recall we dealt with that in your evidence last time?

10 **MR MANTSHA**: I recall Chairperson.

ADV KENNEDY SC: And you recall saying yes you said something along those lines in Parliament.

MR MANTSHA: Chairperson if I were to repeat myself again I said I am not going to take this statement because it is allegedly reported by the paper and I told the Chairperson that Parliamentary presentations are in a documentary form. So if that statement which I made from Parliament was to be quoted then I would either agree or disagree.

20 But I cannot comment on statements which are allegedly coming from the paper and are then said to your Chairperson I would be very conscious as in terms of my own training not to put the word allege. Ja so that was my answer.

ADV KENNEDY SC: Right thank you.

CHAIRPERSON: Can I take that to mean that you are saying you do not want to commit yourself as to whether you were correctly reported to say you have – you accept this? But you say there would be some document somewhere which reflects what you said.

MR MANTSHA: Indeed Chairperson that is what I am saying.

CHAIRPERSON: That is what you are saying. Okay.

MR MANTSHA: Thank you Chairperson.

- 10 **ADV KENNEDY SC:** Now what Ms Walele says on the following page is that this is unfortunate because it indicates a view on your part and on the part of Denel that her clients – the three individuals have already been found guilty before even having a hearing. What do you say to that?

There was no response that we are aware of from Denel's correspondence to that letter to say no in fact Mr Mantsha did not say that in Parliament or to say no there is no decision already taken by Denel as to your guilt.

- 20 **MR MANTSHA:** Chairperson with respect this letter is addressed to the then attorney of the Denel at the time whom I have no doubt was competent to deal with the matter. And I had no doubt that where necessary he responded to correspondences. So ...

CHAIRPERSON: Just come closer to the mic so I can hear

you.

MR MANTSHA: Thank you Chairperson.

CHAIRPERSON: Hm.

MR MANTSHA: All I am saying is the letter was addressed to the then attorney of Denel so not either to my board or to myself. So what – whether there was a reply or no reply is not a matter within my knowledge. And whether there is a complaint that these three employees were found guilty before the disciplinary hearing took place – listen she was
10 entitled to represent these people and she was entitled to say whatever she said but all I can say to you is this was never brought to my board, it was not addressed to my board so I am not going to comment.

ADV KENNEDY SC: What she then says in her letter and you may have the same answer to this that is up to you whether you want to comment on this but I believe fairness requires that I put it to you that what she then records in paragraphs 4, 5 and 6 is a concern that there – her clients had not yet been heard and that they were requiring she
20 said we insist that the disciplinary process that your client claimed in the same forum that was Parliament is underway is convened or at the very least a date is agreed upon for it so that the matter can be finalised.

Were you aware that the three officials who were still on suspension on full pay through their attorney were

repeatedly through their attorney in the correspondence saying we have not been heard, we want to be heard please would you get on and convene the inquiry. Were you aware of that?

MR MANTSHA: Well Chairperson again I think we must distinguish the role of the board and the role of the executives including the legal department of Denel. The legal department of the company with the executive they were in communication with their attorneys who were
10 representing Denel at the time and I do not think the attorneys of Denel at the time were not responding to the correspondence.

But what you do not have Chairperson you do not have a correspondence from Denel attorneys at the time address in reply to this which of course have given the reasons. But be that as it may Chairperson of course is – I am not trying to say – to suggest anything but it is one thing to present correspondences from one party and you do not present correspondences from the other party. And
20 the correspondences that we dealing with here is correspondence to the attorneys of the company.

I am sure the company would probably maybe have the records or maybe the attorney in question have the record. But repeatable as they are I do not think they were not responding to correspondence. Whatever answers they

have given I cannot say because I do not have that.

CHAIRPERSON: Ja but the question is irrespective of whether Denel's attorneys did or did not respond to the executives' attorneys the question is whether you were aware on the basis of whatever source which could well be the legal department of Denel telling you as Chairperson of the board or the attorneys if they had direct communication with you as Chairperson of the board 00:12:18 whether you were aware that the executives, the suspended executives' position was repeatedly conveyed as being that they wanted the disciplinary hearing to take place.

MR MANTSHA: Chairperson what I knew at the time was the matters was not concluded. The attempt for mediation failed and these disciplinary proceedings were still pending. I was not privy to the to and fro communication between the respective lawyers of the parties concerned.

CHAIRPERSON: Hm. Is that answer to say you were not aware that the suspended executives repeatedly said through their attorneys we want a – the disciplinary hearing to take place taking that position and conveying that position over ...

MR MANTSHA: No.

CHAIRPERSON: A number of months.

MR MANTSHA: I – I – if I can try to recall of course there were communication from probably the legal team to the

executive – executive to the board about these processes but what I cannot tell you is what was said at the time. But what I can tell you now is that I do not remember being told that they – are these correspondences were they insistence please do this, please do this. Yes Chair.

CHAIRPERSON: Hm. Maybe – maybe this is the right time for me to say this. I would have expected that in the light of the seniority of the executives who were suspended that the board would be quite involved in terms of the process
10 for the disciplinary process and the preparations for the disciplinary hearing and the suspension that is what I would expect simply because of the seniority of the people involved including the executives.

It would have been different if one was talking about lower management and so on. But the – the fate of the Chief Executive of any organisation would be in the hands of the board I would imagine and therefore I would expect that even the internal legal department if they were handling that they would be reporting to – to the board and
20 taking instructions in quotes as attorneys would do from decline because they should not do anything that is contrary to what the board maybe wanting to be done. And they would be – I would be expecting that they act as advisors to the board but they are not – they would not be the decision makers.

The decision makers would be the board. They would just advise. Would this approach be legally defensible, would that approach be tenable in law but in the end the decision makers would be the board. That is what I would have expected.

But from what you said last time and maybe that is what you still say today that is not how it happened. In this case the legal department did not so to speak take instructions from the board or from you in regard to the
10 handling of the disciplinary process.

MR MANTSHA: Okay Chairperson maybe let me put this in proper context. The – the board has taken a decision which it had to be implemented. In terms of – of course governance the decisions of the board they are implemented by various functions and this specific decision the functionaries involved the HR department, the legal department and of course in terms of the protocol they report to whoever is the Chief Executive. So the decision was Chair the implementation is done by those
20 functionaries.

Those functionaries will report as they execute or implement the decision. But again what you do not have is any of the reports from those functionaries through the board that says this is what happened, this is what not happened. So to then ask me almost four years down the

line – five years down the line of course I would not have you know that information in terms of what was it for. And maybe to create the impression as you were trying to relate to me the board did not just – took a decision and walked away.

The board duly expected the management to process in terms of the governance of the company and there were interactions between the board and the people who were involved. There were displeasure as I indicated
10 previously that the board expressed about this process but of course he do not have you know that information.

That information is not within my control it is within the company that is for sure because again the actions of the board are through the minutes and the minutes would say exactly there was a report by Group Legal, there was a report by this one, HR and these other 00:18:50. So those reports would be there and again I repeat what I kept on emphasise throughout from the beginning of my evidence the board was overwhelmed by the bigger issue.

20 I understand the position of a Chief Executive Officer but at this point in time the board was overwhelmed by the situation where the country could find itself in the serious crisis because there would have been a default by the state owned company and that would have meant that other learners to other companies state owned companies

might recall therefore. So that was an issue of marginal importance which the board was preoccupied.

But I am not saying the board was not serious about this matter. Yes there were reports which were given and I am sure the records of the company will reveal in every either meeting of Audit and Risk. What were the reports given as 00:20:05 of these suspensions? What the lawyers were saying. I am sure those reports are there.

CHAIRPERSON: Mr Kennedy.

10 **ADV KENNEDY SC:** Thank you Chair. Let me say immediately Mr Mantsha I do understand it is some years afterwards and I cannot reasonably expect you to recall every last detail and that is why I think most of my questions in the last few minutes have been – have started with do you recall whether there was a response – do you recall why there was a delay etcetera and that is really what we are after. And if you cannot remember you must say I cannot remember.

20 What I can take and sorry just the other point that I just want to draw your attention in response to one of the comments you made. You said all that has been presented to you are the letters from the executives, attorneys and there are no – there are no letters that we have produced from the attorneys acting for Denel at the time – Cliffe Decker.

In fact this bundle includes various letters from Cliffe Decker from Mr Adel Patel some of which are relevant to what we have – what we are dealing with. Some were in fact raised on the last occasion I believe but we are going to deal with a few of – of the crucial letters in that regard from Cliffe Decker.

So there is no selectivity certainly not on the part of the commission and its investigators and legal teams we have repeatedly asked Denel for all the documentation and
10 we have produced to the commission in the form of the bundles that have admitted by the Chairperson all the relevant documents that seemed to be material.

But may I now take you Mr Mantsha to a letter which in fact came from the board and in fact came from yourself. If I can ask you in the same bundle to look at page 412 please? That is a letter from Denel it is on Denel Group letterhead you have it?

MR MANTSHA: I do Chairperson.

ADV KENNEDY SC: And on the top right hand side just
20 under the heading Denel Group it is dated the 17th of March 2016. You see that?

MR MANTSHA: I do.

ADV KENNEDY SC: And we see your name and what appears to be your signature on page 413. Is that your signature?

MR MANTSHA: Correct Chairperson.

ADV KENNEDY SC: Alright thank you. Do you recall that you sent this letter if I can just remind you we are going to look at the detail in a moment but this letter effectively was saying the board has decided not to renew Mr Saloojee's fixed term contract when it expired. You remember that decision was taken by your board?

CHAIRPERSON: I do remember.

ADV KENNEDY SC: Right. And this is the letter in which
10 you recorded this and just – just if you go back to your signature and name on page 413 we see that it is typed cc Zarina Walele Attorneys so she was cc'd – she was copied in on this letter.

MR MANTSHA: Correct.

ADV KENNEDY SC: And which was – which was addressed to Mr Saloojee personally on page 412 but quite correctly you or the people who were preparing this letter and advising you quite correctly as a matter of courtesy addressed a copy also to Ms Walele. Is that right?

20 **MR MANTSHA:** Correct.

REGISTRAR: Right thank you. Now let us just look at a couple of the paragraphs of your letter. It is headed Termination of Employment Relationship Group Chief Executive Officer Position at Denel. Now if we can just remind ourselves where we are in the sequence. This is

the 17th of March 2016 Mr Saloojee had as we have heard much evidence on being suspended about six months before that in September, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: September 2015 and they had then received a charge sheet saying they were going to be disciplined. They were suspended pending that disciplinary process and we have seen letters where there is a complaint that there is a delay in the disciplinary why
10 are you not convening it? And why are you not sending us documents? You have dealt with all of that. Now your letter does not say we are going to now hold the disciplinary inquiry it is – it deals with another matter.

MR MANTSHA: Correct.

ADV KENNEDY SC: And that is the termination of the employment relationship not through the disciplinary process, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: You could have proceeded with the
20 disciplinary process at least in theory, held it if you had substance – if Denel had substance to the charges and persuaded the independent Chairperson that Mr Saloojee was guilty he might have been dismissed at the end of that process but here you were saying that you are terminating the relationship on a different basis – on a contractual

basis. Is that correct?

MR MANTSHA: Correct Chairperson.

ADV KENNEDY SC: Yes. Now you say in paragraph 1

“The above matter refers to: The board is
of the view – this is Mr Saloojee that –
sorry that your – Mr Saloojee’s contract of
employment was not valid extended as per
the PFMA. Nevertheless your alleged
current fixed term contract of employment
10 terminates on 31 January 2017
notwithstanding your current suspension as
the Group Chief Executive Officer which
was effective from the 23rd of September
2015.”

Now this contains quite a number of elements to it
but just to unpack it essentially what you are saying is
there is doubt as to whether in fact Mr Saloojee’s current
contract had been validly extended but despite that
reservation you had decided as board that if there was a
20 contract at all still in existence it was going to expire on
the 31st of January 2017 and it would not be extended. Is
that right?

MR MANTSHA: Correct.

ADV KENNEDY SC: Yes. And then you say this::

“The alleged acts of misconduct are viewed

in a serious light and as a result the trust relationship between the board and yourself has irretrievably broken down.”

Now as I understand it in context you referring there but correct me if I am wrong the alleged acts of misconduct are the alleged acts of misconduct according to the charge sheet which was already issued to them for a disciplinary inquiry that was pending. Is that right?

MR MANTSHA: Correct.

10 **ADV KENNEDY SC:** You not referring to other alleged acts. Correct. Now I just want to ask you and let me explain the relevance upfront so that we know where we going.

I am raising the next series of questions really to deal with the evidence that the commission has heard from Mr Saloojee and a commissioned Chairperson will obviously with respect have to weigh up all the evidence from Mr Saloojee and from yourself and anybody else who may testify in this regard.

20 Mr Saloojee’s version is one that paints a very negative picture about the board and you in particular in relation to why he was suspended and why and how his employment was terminated. And you will recall because as you have confirmed previously you have seen at least parts of the evidence that Mr Saloojee provided to the

commission previously.

You will recall that Mr Saloojee's evidence and I hope I do justice by way of summary is that there was a sinister purpose to the suspension, the disciplinary charges, the failure to hold a disciplinary inquiry and ultimately to terminate the relationship inter alia in terms of this letter.

And the – a text that he has really proposed as it were a motion that he has posed – proposed to the
10 Chairperson is that what you were really doing, you Mr Mantsha as Chairperson and those who acted with you was really to get him out of the organisation on a pretext that the charges against him were a pretext, charges about misleading the board at the first board meeting etcetera was all a pretext and that in fact you were trying to contrive a false basis to get rid of him and the real purpose was because he was perceived as being somebody who would not facilitate the awarding of contracts to the Gupta business conglomerate.

20 You recall that that was essentially I hope I did justice to his version but I am trying to give as brief as I can. So that is his theory that he has put before or view or opinion that he has put before the Chairperson. Now you finuously [?] disagree with that you have already said that on the previous occasion. Correct?

MR MANTSHA: Ja Chairperson should I just say something? Look I am going to repeat myself. Mr Saloojee had no problem with Mr Essa because Mr Saloojee negotiated that Mr Essa buys three 00:29:30 this is the information that I tell – I told him before that I had reason.

Mr Saloojee was working with Mr Essa and I said to the commission I am not saying anything beyond that. The reports which are tabled before this commission the BBO
10 report they did inform this commission that the investigation was that the entry of VR Laser and to Denel was not ...[indistinct] [Speaker's voice drops – unclear]

ADV KENNEDY SC: Was not?

MR MANTSHA: Was not ...[indistinct]
[Speaker's voice drops – unclear]

ADV KENNEDY SC: Yes.

MR MANTSHA: And therefore, that taking actions and those executives who were involved with. And it is before this Commission, the evidence from the so-called people
20 implicated in signing the first, I think they call it memorandum or whatever the case is. Wessel told this Commission that he was told by Mr Saloojee that we need to work with VR Laser(?) He gave his reasons *what he was called* ...[indistinct] ...[intervenes]
[Speaker's voice drops – unclear]

CHAIRPERSON: That we need to work with...?

MR MANTSHA: They need to work with VR Laser. Yes. Mr Burger the same. Mr Ntshepe the same. So I do not think it is going to help us that I must keep on repeating my answers because questions are asked ...[intervenes]

CHAIRPERSON: No, no, no. Mr Mantsha, no.

MR MANTSHA: Ja.

CHAIRPERSON: Mr Kennedy's question is not the one you are addressing. His question is: What do you say to
10 Mr Saloojee's evidence that you or the board of Denel suspended him, not because of any proper grounds but because of some other agenda because you suspended him on the basis of allegations of misconduct in September. He was ready for a long time for a disciplinary inquiry.

You made approaches to him to try and resolve the matter by paying him money – by paying them money. They rejected that. They said: We wanted a disciplinary inquiry because we want to clear our names. When there was supposed to be an inquiry, you, Denel, proposed
20 mediation and he said at the mediation they took the position that they want a disciplinary inquiry to clear their names.

And that is why the mediation failed because that is what - ...[indistinct]. And if I recall correctly, they asked for some documents as well. Now you will remember

from last time that the evidence revealed that sometime in December you had made – there was – Denel made an offer. I do not know whether it was for three months' payment, just before he charges were – the charge sheet was set. If I am not mistaken.

And then now we have a letter, a number of months, three months after that in March from – ja, in March from you. The letter that we are looking at, 17 March. Where, despite the fact that you said, right from
10 the beginning when you suspended, Denel had strong evidence in March 2016.

You still do not want to use that strong evidence and have a disciplinary hearing. And if he is as guilty as you say you thought he was in terms of the evidence, get him dismissed without him being paid for so many months but you are offering to let him be paid for maybe something like eight, nine months. Somebody that you believe is guilty of most serious misconduct.

So I think it will be in your interest to address
20 that issue properly because I am very interested to hear your side of the story on that. Because to me, on the face of it, there seems to be a problem when the employer says: I have strong evidence showing misconduct, serious misconduct by this employee. So I suspend him in order to for a disciplinary inquiry.

And six months later, despite the fact that there is strong evidence, there is no inquiry. And on the evidence that I have been told, the employee or the employees keep on saying: Bring it on. Let us have the hearing. You know. They do not seem to ask for any settlement but it is the employer that keeps on come – approaching them for a settlement.

There is an allegation. They say: According to the evidence, we want a hearing. In March 2016, you now
10 say: Yes, your contact – the allegations against you are very serious but want to pay for about 10-months. Where you could say: Come next week for a hearing. We have got the evidence. We believe that you would be found guilty. And then you do not have to pay him for 10-months.

So I just want to say. It is important that you address that because on the face of it, it calls for an explanation to say: If you have got evidence and you believe it is strong evidence, why do you – have you not have an inquiry for so long?

20 So I am mentioning this you because it is important that you know some of the things that are causing me concern so that you can address them head on. That is the purpose.

MR MANTSHA: Well, Chairperson, thank you very much. All I am trying to do before you is to actually give you the

context because the point, the evidence is driving to, is that Mr Saloojee would be an obstacle in terms of the Denel Asia.

I am saying this because when I give you that background, it is simply because he was not an obstacle to VR Laser because he got VR Laser to Denel. So one cannot say that the charges had something to do with VR Laser because he brought it.

So to then suggest that the charges had to do with Denel Asia, I am then trying to give you that background. That is nonsense.

CHAIRPERSON: No, no. If you put it like that, I understand the background.

MR MANTSHA: Yes.

CHAIRPERSON: So...so... You must carry on. Ja.

MR MANTSHA: So all I am trying to say ...[intervenes]

CHAIRPERSON: You will have to deal with that. So but that background is good.

MR MANTSHA: Ja.

20 **CHAIRPERSON:** But ultimately, I must listen to everything you have to say.

MR MANTSHA: Yes. So all what I am saying is. To say these charges have anything to do with the decision which was ended up taking of – taking Mr Essa as a partner to Denel Asia. You know, this is what I want to address, to

say he had a longstanding relationship with Mr Essa. He made a lot of efforts to get Mr Essa to Denel. I recall when we were in London, he did pleaded with me when he was in confidence, telling me some of the efforts he had made to assist Mr Essa.

But he has always said to me: Well, this is what I have done. But in terms of the understanding of us as a board and my understanding, the defence in this country is an industry where there are no black players and part of
10 the mandate from the shareholder whose government to Denel is that: Please transform the industry. We want to see black suppliers on the main business of Denel. Not to supply toilet paper and what have you.

So VR Laser, according to what has been presented and according to what Mr Saloojee said, it was that black empowerment partner which plays in the space of Denel's main business and it was the only black company as it was presented to us.

So in short. All I am trying to drive to is that,
20 there was no any other motive to put these charges against Mr Saloojee and his two co-employees. The only motive was the misconduct committed. I recall, I think my dealing with him in London, after the email he came to me, he came to my room and he really pleaded with me that he should not be fired.

And that was the very same day when there was a call from the Audit and Risk Committee to say: We are not given access to the committee rooms to have our meeting to discuss the investigation about that LLS transaction. So he pleaded with me to say: Chair, please protect me. I should not be fired.

And with respect, I was very troubled to see him crying and to see him pleading because at that time, he realised that the relationship between himself and the
10 board, as a result of the LLS transaction was broken. And the only thing he could do was to plead that I try to find a middle-ground between him and the board.

And something, as I said to you when I started this evidence, I had a very good relationship with him. I think we liked one another. So it troubled me. I did not sleep that night.

So when I got back home, I tried to see if there is any other way we can avoid suspensions and conflict but the evidence was such that it was difficult because
20 Mr Saloojee and Mr Mkhonthlo, they went to conclude a 6-months or 5-months a bridging finance contract with Nedbank while the Minister of Finance and the Minister of Public Enterprises had approved a facility for five years.

And what complicated the matter further was that. We did not have the money. We did not have the 450

to pay. So it was impossible to then try to stay off the eminent disciplinary proceedings against him. So the only reason, the only reason why he was suspended. It was simply because of the misconduct in regard to that transaction.

He did not comply with in terms of the approval of the Minister of Finance and from the Minister of Public Enterprises. No one, between those two offices, knew that Denel had to pay 450 within 6-months.

10 When the matter was reported to the Executive Authority. The Executive Authority then implored the board: Please find a solution because if you do not then it is going to be catastrophic because other bond holders will pull and will demand their money and there will be a cross-default. So that was a clear instruction to say resolve this.

 And I can tell you, at that point, most members of the Audit and Risk Committee and some members of the board, they wanted to resign because they felt that they were being, so to speak, under the bus. That the
20 appointments for the board, it is actually an appointment of a sinking ship.

So I had to try to get board members there. To get board members to work very hard with the Executive. To try and convince Nedbank which was very angry. As I have indicated before. Immediately they realised that

apart from the fact there were the transactional advisor to Denel when Denel was acquiring this asset. Denel gave ABSA Bank R 400 million in case, as a security, and they were given nothing.

So at that point, they did not want to hear anything because they felt they were doomed. And at that point, the Minister of Public Enterprises clearly set the condition: Please do not conflict the two banks because you are going to ask this money from the two banks.

10 So it was a difficult situation for me as the leader of the organisation to try to see how I can get a middle-ground between Mr Saloojee and the board and also to get the board members to stay and not to resign. And get the board to try to get some resolution with Nedbank. So it was quite a very difficult challenge.

CHAIRPERSON: But what you have said up to now Mr Mantsha might explain certain things, certainly, subject to what Mr Saloojee's evidence is in this regard and maybe other people in regard to his working with Mr Essa, as you
20 say. That might be one thing.

But nothing you have said so far explains why the board when it had strong evidence against Mr Saloojee and the other executives in September 2015 still did not have – had not put together a hearing by March 2016. So that... I hear what you say but that is the part I am also

interested in.

I am not saying what you have said is irrelevant. Certainly, the part that deals with Messrs Essa and Saloojee working with Essa is quite important. And the other part that you said also might explain certain things but I just want to make sure, do not forget that I am interested on this aspect as well.

MR MANTSHA: Chairperson, I am actually happy in the sense that I am talking to someone who, in a sense, a very
10 experienced and authority on the labour related ...[intervenes]

CHAIRPERSON: Well, I am rusted on that.

MR MANTSHA: In the name of a chairperson ...[intervenes]

CHAIRPERSON: [laughs] I am rusted on it. [laughs]

MR MANTSHA: So Chairperson, there are, of course, two issues here that Chairperson has delivered several times... in terms of the substance. Substantive issues and procedural issues. I do understand the Chairperson's
20 concern and to sum up the Chairperson's concern is: Look, you say you have got a strong case but you do not proceed to finalise it.

And I think at the starting point, I then said: Look, we were very overwhelmed. We were busy with other matters of default. We were not happy with the

Executive. I mean, the department concern who was handling this matter.

So. But the fact that the procedural issues and substantive issues... The substantive issues, as I am saying Chairperson, is that there was a case – the evidence – I mean, the objective evidence before this Commission, not from me and not from Mr Saloojee but objective evidence from people who had nothing to do with this, who just investigate the matter.

10 The objective evidence before the Commission is that: Look, where we are at the moment, we are trying even to work the interest rate that we had paid for 6-months versa vie the five year's fee. So the objective evidence before the Commission is that, there was indeed a serious misconduct by this employee.

So the issue that the Chairperson is raising with me relating to say: You said there was a serious breach but the disciplinary hearing is not finalised ...[intervenes]

CHAIRPERSON: You do not act like somebody who
20 believes you have got a strong case.

MR MANTSHA: You do not act. Yes, you do not act like somebody who believes that.

CHAIRPERSON: H'm.

MR MANTSHA: But Chairperson is well-aware that that does not mean that the breaches are not serious because

there was a delay in prosecuting the delays. I think we can cite a lot of case law where there has been delay ...[intervenes]

CHAIRPERSON: No, no. I accept. I accept that you can have a situation where you have a strong case that an employee is guilty of misconduct but you might not follow procedural steps that you are supposed to follow. And I accept that just because you do not or you did not follow proper procedure does not necessarily mean that on
10 substance you do not have a strong case.

But what I am saying to you, as you have also indicated, is that, I am saying what one expects from an employer who believes he has a strong case is to act pretty fast, you see?

Particularly when you are dealing with high executives. Executive who are being paid a lot of money while sitting at home, you know. You do not want to be paying a lot of money for over months when you do have the evidence. You do not have - to be investigation.

20 I mean, it is different if you must still investigate. When you do have the evidence, once expects that you would act expeditiously. When you do not act expeditiously, one starts looking for inspiration, why?

MR MANTSHA: Exactly Chair.

CHAIRPERSON: Because if there is no explanation, it

may well be that one starts to say: Did you really have a strong case? You see? You will see that I am not saying one will start saying you do not have a case.

MR MANTSHA: Ja.

CHAIRPERSON: But one would start questioning because you are not acting like somebody who believed they had a strong case. So.

MR MANTSHA: I think, I ...[intervenes]

CHAIRPERSON: Ja.

10 **MR MANTSHA:** ...I fully agree with Chairperson on that.

CHAIRPERSON: H'm.

MR MANTSHA: But Chairperson, as I have indicated earlier. I am sure the board minutes would indicate the nature of reports given about this matter and how the board acted in those matters..

CHAIRPERSON: H'm, h'm.

MR MANTSHA: I think you would see that - I think the person who was acting as the Company Secretary and also a Group Legal, also had to leave and in the process
20 because of the pressure from the board, there was some medical condition because the board was not happy.

And the other thing which, of course, triggered the – apart from that the fact – the process was draining from our point of view but there was leaking of letters. The letter that we dealt with last week, the letter which was

addressed to the acting Company Secretary ...[intervenes]

CHAIRPERSON: Company Secretary.

MR MANTSHA: ...and the legal whatever. That letter was leaked to the suspended employees. That is how they got it because the letter was addressed to her. So. And when an incident like that happens – so there was a serious rupture within the organisation between her and the Executive and other people who were involved and the board. How could a communication between you end up
10 with the suspended employees?

So the impression that we formed at the time was that, of course, she was working with the suspended employees. We felt that at the time she was deliberately dragging the process because she probably had alliance or allegiance to the suspended employees. So that was our impression out of all the dragging and the matter not arriving speedily as we thought.

CHAIRPERSON: H'm.

MR MANTSHA: So eventually, we removed her from being
20 Company Secretary. We got somebody to act in that position and later, I think, we got somebody to act as a Group Legal. But yes, there was dragging from within. And as far as we – I can remember we did act.

CHAIRPERSON: H'm.

MR MANTSHA: Yes.

CHAIRPERSON: H'm. Well, I do not think from that I got an explanation as to why with this strong evidence the board did not act expeditiously, other than that you have said that: Well, the board was under pressure because of other challenges and what you have just about the Company Secretary. I do not want to take it further but I am just saying that is the impression I get.

MR MANTSHA: Well, it matters to me Chairperson ...[intervenes]

10 **CHAIRPERSON:** How so?

MR MANTSHA: ...the impression you have because what I am trying to say to you. In terms of the governance, the board cannot process it. These things are processed by relevant sections...

And I am saying to you: Yes, correctly, there was dragging but that dragging was not by the board. That dragging was by the officials, as I mentioned, acting Group Company Secretary and the acting Head of Legal and steps were taken against that person. The person was removed.

20 And I said to you. If you are having the minutes of ...[intervenes]

CHAIRPERSON: Of the board meetings.

MR MANTSHA: ...of the board meetings. Because remember, throughout that process, the suspension in many board meetings, it was a standing issue for

reporting(?). What is happening? How far? So the matter was being reported. But you know, for me to actually make detailed explanation to say: No, you know, this month, this is what happened. That month, this is what happened.

The person who was full-time dealing with that matter would be able to explain. How did he do this? Why this was not done in time? But the decision we took, it had to be implemented by those people. So I do not think I can ...[intervenes]

10 **CHAIRPERSON**: Take it further.

MR MANTSHA: ...say more than that.

CHAIRPERSON: Ja, ja. No, no. That is fine. I just want to say this because you have mentioned the issue of minutes of board meetings. Prior to Mr Kennedy coming into this work stream, for quite some time I had spoken to the team that was working at the Denel work stream and said they must obtain a lot of documents and minutes of board meetings and they had given me reports that they were not finding cooperation.

20 I think I was told, this would have been in, maybe early 2020 or probably not or even 2019, at some stage that the Company Secretary was somebody from outside Denel. I do not know whether it was an accounting firm or legal firm and that – I think I was told it was a she. She was not cooperating.

At some stage, I even said they must approach the chairperson of the board to try and get assistance but for quite some time there were serious difficulties as: Those are the reports that were given to me in getting various document but the resolutions and minutes of the board.

So to the extent that there might not be certain documents here. It may be that partly that was the problem but it may well be that the problem was solved at
10 some stage. But I thought I would just mention that for what it is worth. Mr Kennedy might know better.

MR MANTSHA: May I say something on that Chairperson?

CHAIRPERSON: Ja, h'm.

MR MANTSHA: I am here primarily to explain the actions of the board that I led. And the action of the board that I led are captured in various board meetings. And since I am called to do that here, it would be more than fair that I am assisted by those minutes because ...[intervenes]

CHAIRPERSON: Ja.

20 **MR MANTSHA**: Chair, you would recall you warned ...[intervenes]

CHAIRPERSON: No, that is fair enough.

MR MANTSHA: ...the previous board minutes, some of it, you forget.

CHAIRPERSON: No, no. That is a fair point.

MR MANTSHA: Ja.

CHAIRPERSON: That is a fair point.

MR MANTSHA: So to a point where I might not assist you because I might not have certain recollection.

CHAIRPERSON: You might not recall.

MR MANTSHA: I think, accept my good faith in that.

CHAIRPERSON: H'm.

MR MANTSHA: I would have loved to explain everything as per the actions of the board as captured by the board
10 minutes.

CHAIRPERSON: H'm.

MR MANTSHA: Thank you, Chair.

CHAIRPERSON: Ja. Well, of course, the question which I would like to pose to you in that regard is, whether from your side you made any approach to Denel to say: Look, I am required to give evidence. I am the former chairperson of the board. I need documents from Denel that would assist me. And if you did, what was the response?

MR MANTSHA: Well, Chairperson, there is so much
20 hostility. There is so much hostility there and there is, with respect you know condemning and sentencing people without giving them a hearing. So there is so much hostility that you cannot even break the air. So, you know, those things, you know, I would love it in another ideal world. That would be ...[intervenes]

CHAIRPERSON: Mr Kennedy, do you want to say something about the board meeting minutes or something?

ADV KENNEDY SC: Yes, we have it at various stages since I became involved at a fairly late stage in the email stream, we have been engaged in attempts to get further minutes.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And some minutes have in fact been produced for us.

10 **CHAIRPERSON:** Yes.

ADV KENNEDY SC: And are included in a bundle that is being made available.

CHAIRPERSON: Yes. Okay.

ADV KENNEDY SC: But we do not believe that there is anything there that seems to actually shed any light otherwise we would have relied on it here.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: So I am deliberately trying to limit my questions to things that are fair to put to Mr Mantsha and
20 particularly where we have a letter from him he can either explain it or he can say, if he wishes, I cannot remember, I cannot give an explanation because I cannot remember why I said that but at least we can ask him that and ...[intervenes]

CHAIRPERSON: Well, whatever minutes are there, if they

relate to particularly the period September to the departure of the executives.

ADV KENNEDY SC: Yes.

CHAIRPERSON: I think they should be shared with him if they have not been shared.

ADV KENNEDY SC: Indeed.

CHAIRPERSON: Let him satisfy about what we have.

ADV KENNEDY SC: Yes.

CHAIRPERSON: And if he takes a different view he might
10 say no, this one jogs my memory on something that is relevant.

ADV KENNEDY SC: Sure.

CHAIRPERSON: Then he can take it from there.

ADV KENNEDY SC: Yes, thank you, we will do so. May I then proceed to return to this letter, Chair, in asking just a few more questions on it from Mr Mantsha.

CHAIRPERSON: Yes.

ADV KENNEDY SC: The Chair ask you earlier that – or he put it to you that this – that if you were – if you decided
20 not to renew his contract, he would not be employed after his contract expired, that was in January 2017, correct?

MR MANTSHA: Correct, Chairperson.

ADV KENNEDY SC: And so that was the ten months that Chair referred to, nine or ten months, in fact ten months from March to January but he would be entitled to be paid

out for the rest of his contract, so that would be ten months he would still received, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And that would, of course, be in addition to the seven months that he had already been sitting at home on suspension since September the previous year, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: Now I just want to draw your
10 attention to paragraph 4 and I just want you to see if you are in a position based on your memory to explain what I am going to ask you to explain. You say in paragraph 4:

“The alleged acts of misconduct...”

Which you have already indicated related to what they were suspended for.

“...are viewed in a serious light as a result the trust relationship between the board and yourself has irretrievably broken down. The question of whether they were guilty of misconduct and the question of
20 whether trust relationship had broken down irretrievably or otherwise surely was something that could have been deal with in a disciplinary inquiry.”

What you were saying here was a view as to the alleged acts of misconduct having broken down are very serious and having broken down irretrievably the element of trust.

That was said to Mr Saloojee in your letter to him without having afforded him yet an opportunity to be heard, is that correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And he says – not what I am saying, he says, I am just putting to you his version, he says that shows that you in fact had a closed mind, you were determined to get rid of him without a hearing. Any comment on that?

10 **MR MANTSHA:** Well, Chairperson, Mr Saloojee knew himself that the allegations against him are so serious and that is why, as I said, he pleaded with me that I should try to avoid that he gets suspended and expelled. So, as I indicated, what the board or the audit and risk committee was dealing with was an objective evidence before the board that says please pay in two weeks an amount of 450 million which we did not have. How did that come about? It came about because Mr Saloojee and his CFO went against the instruction given to them as an approval for the
20 PFMA application.

The PFMA application said yes, you can die, LSSA ...[intervenes]

ADV KENNEDY SC: Mr Mantsha, I am sorry to interrupt you, I do not mean any disrespect but this is the third day on which we are hearing evidence and on the last occasion

you complained that the evidence was taking a long time. With respect, we do need to try and keep some sort of focus on this. My question was very limited. It was not was he guilty of misconduct, my question was not was he guilty of misconduct that had resulted in irretrievable breakdown of trust, my question is very focused and it is simply this. When you reached that conclusion that you express in the letter that was at a stage when he had, as yet, still not been subjected to a disciplinary or any other
 10 hearing.

MR MANTSHA: Yes.

ADV KENNEDY SC: Is that correct?

MR MANTSHA: Yes.

ADV KENNEDY SC: Yes.

MR MANTSHA: But, Chairperson, I think it is also important for me to give context to a correspondence because if you see the letter that he is referring to, the letter starts with:

“The board is of the view...”

20 **ADV KENNEDY SC:** Yes.

MR MANTSHA: So which means there was a report before the board looking at this matter and the report could be saying look, depending on what they have reported about this hearing, the hearing is dragging, there is pressure to finalise the funding structure with Nedbank and

there is a pressure that the lenders and the partners out there, they want to deal with people who are permanently in the position. So there was a context to the letter.

ADV KENNEDY SC: But the point is that there may have been reason – there may be reasons apparent from board minutes that are not before us now but the point is that it was done without a hearing. That is all I am all I am asking for, okay?

MR MANTSHA: Yes but at that the same token,
10 Chairperson, I think for me to explain should not be seen as I am delaying the hearing because I think I am the only person here who has got the background and the information of decisions taken and some of the things taken. So when I am of the view that perhaps an explanation is needed, a context is needed to be given, so I should not be penalised for trying to drag the hearing.

CHAIRPERSON: No, no, no, obviously we have got to strike a balance between being fair to you but also utilising the time properly, also for your own sake because you are
20 paying.

MR MANTSHA: Yes, Chair.

CHAIRPERSON: For – so but I think what you have conceded is yes, there was – the board reached that conclusion about giving him a hearing, ja. The one thing I wanted to put to you, you said Mr Saloojee knew, I think

what you said he knew in effect how guilty he was. In effect how guilty he was, you did not put it like that but I am saying but you came across as saying ja, but Mr Saloojee knew, that he knew what he had done, he knew we had evidence. Did I understand your evidence correctly?

MR MANTSHA: I think Mr Saloojee knew that ...[intervenes]

CHAIRPERSON: Ja, there was a strong case against case
10 against him.

MR MANTSHA: That there was a strong case against him and it was wrong for them to have approved six months bridging finance without the permission of the Minister of Finance and Minister of Public Enterprises, that he knew it was ...[intervenes]

CHAIRPERSON: Yes, no, no, that is fine. What do you say to the proposition that between September 2015 when he was suspended and March when he wrote this letter he never acted or conducted himself like somebody who was
20 scared of the disciplinary hearing. On the contrary, he was saying bring it on, acting like somebody who was confident that he would not be found guilty of anything and he never made, unlike the board, unlike Denel, he never made any offer to settle the matter.

MR MANTSHA: Well, with respect again, Chairperson, I

am speaking with a very experienced Chairperson on things like this, that the bravado that accused persons and all sorts of people do in court, sometimes they fight for six years and go up and down and claiming innocence but it does not mean the bravado that you do should mean that you are not guilty of anything.

CHAIRPERSON: Mr Kennedy, maybe we should take the tea break.

ADV KENNEDY SC: Yes, Chair.

10 **CHAIRPERSON:** Yes, let us tea break and resume at quarter to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV KENNEDY SC: Thank you, Chair. Mr Mantsha so you and your board adopted the position then, as we have seen in the letter, that there was a breakdown of the relationship and therefore the contract which was due to expire the following January would not be renewed and
20 that it was proposed – that it had been decided that he should not continue to work the rest of his contract until January but he would be paid out for that period, is that right?

MR MANTSHA: That is what the letter say.

CHAIRPERSON: Mr Kennedy, I have just consulted with

my registrar because ...[intervenes]

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

CHAIRPERSON: I just consulted with my registrar because I seemed not to remember the oath being administered to Mr Mantsha this morning and she confirms that no, it was not administered.

ADV KENNEDY SC: I am sorry. I take it that will be done.

CHAIRPERSON: So it is not your fault, Mr Mantsha, it is
10 my fault, so I think we should have it administered now and I think you can then ask Mr Mantsha whether the evidence that he has given up to now is true and correct.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Then that should cover it. Okay, let us have that done.

ADV KENNEDY SC: Thank you, Chair.

REGISTRAR: Please state your full names for the record?

MR MANTSHA: Lugisani Daniel Mantsha.

REGISTRAR: Do you have any objection to making the
20 prescribed affirmation?

MR MANTSHA: No objection.

REGISTRAR: Do you affirm that the evidence you will give will be the truth the whole truth and nothing but the truth,. If so, please raise your right hand and say I truly affirm.

LUGISANI DANIEL MANTSHA: I truly affirm.

CHAIRPERSON: Thank you. If we did not discover it and somebody else discovered it they would wonder how a judge and so many lawyers including a lawyer witness did not remember this. Okay, alright, you may continue.

ADV KENNEDY SC: Thank you, Chair. So, Mr Mantsha, you have given evidence on two previous occasions under oath and you have given evidence again this morning so far, under the affirmation. Do you confirm that the evidence you gave already this morning is covered by the
10 affirmation that you have just taken, that is was true and correct?

MR MANTSHA: It is true and correct, Chairperson.

CHAIRPERSON: Thank you.

ADV KENNEDY SC: Right, thank you. Now, Mr Mantsha, so there is further correspondence in the file. I do not need to take you through it all but effectively it says that Ms Walele says we are not happy that he should just stay at home until the end of his contract and we demand that you convene the hearing and then what we have is a
20 response from Denel's attorneys, Cliffe Dekker, CDH at page ...[intervenes]

CHAIRPERSON: I am sorry, Mr Kennedy, Ms Walele's letter that you are referring to, what page is it?

ADV KENNEDY SC: If I might have a moment?

CHAIRPERSON: Or is that the one we looked at earlier?

ADV KENNEDY SC: Yes, so we have just been looking before the tea adjournment at page 412 which was Mr Mantsha's own letter.

CHAIRPERSON: Yes.

ADV KENNEDY SC: And then there was subsequently correspondence at page 415 and 417, is an example of where she has indicated that they want a hearing, not for the first time such a request. If I can take you, Chair, to page 418, paragraph 6:

10 "Our client holds the view that your client's resistance and failure to follow a fair procedure to determine any wrongdoing is pertinent to the aforesaid and it is an opportunity to be heard by the shareholder of your intention is required. We further believe since no fair procedure has been followed to date that there is no grounds for early termination of employment of our client."

7:

20 "We therefore urge your client to convene a disciplinary process as a matter of urgency."

So are you aware that that letter was sent or is that just something that happened behind the scenes?

MR MANTSHA: I am not aware, Chairperson, of the letter.

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

we get to the letter I mentioned at 420 from Cliffe Dekker
from your attorney Mr Aadil Patel and he says, paragraph
1:

“We do not intend dealing with all the allegations.”

And they reserve rights. Then paragraph 2:

“Your request for a hearing is misplaced, your
client’s employment is not terminated due to
misconduct. We reiterate what is stated in our
client’s letter to you dated 17 March 2016.”

10 That was in fact your own letter of 17 March, let me just
put to you, Mr Mantsha. And then he says:

“Your client’s contract is simply not renewed. Our
client does not require your client to work the
remaining part of the contract.”

So that is the answer to the request for a hearing. He is
saying it is not needed because your client’s employment
has now been terminated, it is not going to be renewed
from next January, in the meantime, he does not have to
come to work. Are you aware that that was taken

20 [inaudible – speaking simultaneously]

MR MANTSHA: Absolutely I am shocked, I am not aware.

ADV KENNEDY SC: You are shocked?

MR MANTSHA: Yes.

ADV KENNEDY SC: What later happened though was a
letter ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, what shocks you, Mr Mantsha?

MR MANTSHA: No, that this was never brought ...[intervenes]

CHAIRPERSON: Oh, to you, okay.

ADV KENNEDY SC: Then we came to page 422, another letter from Denel's attorneys and this relates to – I am going to try and go through this quite quickly now, the correspondence, it in fact relates to a further proposal to
10 try and settle the matter and it refers what would be paid out to Mr Saloojee. Then if I may take you please to – if I might have a moment Chair – page 490. 490 is yet another letter from Cliffe Dekker, this time it is dated the 23 May 2016. It is rather faded, the quality of the copy, but it says – it refers to earlier correspondence and then says in paragraph 2:

“We confirm that Bafana Ncube or Ncube Incorporated Attorneys has been appointed as a Chairperson for the disciplinary inquiry.”

20 So it seems at this stage ...[intervenes]

CHAIRPERSON: What page is that, Mr Kennedy?

ADV KENNEDY SC: 490.

CHAIRPERSON: 490, okay.

MR MANTSHA: 490?

ADV KENNEDY SC: Do you see that?

MR MANTSHA: Yes, Chairperson.

ADV KENNEDY SC: So it seems that having previously told Ms Walele Mr Saloojee's attorney in earlier correspondence that there is going to be no disciplinary inquiry, there does not need to be because his employment is now terminated with effect from the next January and he is not going to come in the meantime. It appears that that was revisited and now back on course is the proposal or the intention to hold the disciplinary inquiry and in fact the
10 attorneys have gone so far as to appoint Mr Ncube, an attorney to chair the disciplinary inquiry. Were you aware that that was done?

MR MANTSHA: No, but Chairperson, let me speak under correction.

ADV KENNEDY SC: Yes.

MR MANTSHA: As I said before that ordinarily this matter, as long as it was still pending, it would have served before the board and as I indicated before, of course the board was not happy with the internal people who were
20 working on the matter, I have explained the reasons and what happened. So the appointment of the Chair or whatever in terms as this letter say is not something that is within my knowledge, so as I indicated, we were not dealing with the attorneys ourselves, the respective officials were dealing with the attorneys on the matter.

ADV KENNEDY SC: Right, thank you. Now there is a response to the last letter from Cliffe Dekker that I have just taken you to and it is a few pages earlier in the same bundle at page 487. By this stage it is apparent that Mr Saloojee was no longer represented by Ms Walele and he had moved to Mr Shaheed Dollie. For the transcriber's benefit, it is D-o-l-l-i-e, and Mr Dollie responded to Mr Patel's letter, the one we have just looked at where he said attorney Ncube would be appointed as the Chairperson and

10 so Mr Dollie says in paragraph 2:

“On the 23 May...”

I am sorry, before I get there, I just note the date of Mr Shaheed Dollie's letter to Mr Patel, it is the 1 June 2016 and he says in paragraph 2:

20 “On the 23 May 2016 you informed us that attorney Ncube would be the Chairperson of the disciplinary proceedings. You further informed us that you would let us know when the disciplinary proceedings would commence and that you would also furnish us with a bundle of documents your client intended utilising for purposes of the disciplinary proceedings. The charges have been pending since 22 September 2015.”

And then he proceeds to explain why his client feels prejudiced because of this delay and then in paragraph 6

there is a threat that if Mr Patel does not furnish a date when the disciplinary proceedings will actually commence, which must be within a reasonable period, there is an indication that they would bring an application – a legal proceedings to set aside his suspension and an order entitling him to return to work and resume duties. Are you aware that that was said on behalf of Mr Saloojee to your attorney?

MR MANTSHA: Well, I do not recall, Chairperson.

10 **ADV KENNEDY SC:** Okay. Can recall and I appreciate that you do not have – we do not have in front of us all the minutes and so forth but can you from your memory recall at this stage – I also appreciate that at this stage Denel was still in a state of serious difficulties and your focus on the board was largely on trying to get out, get Denel out of the financial and other difficulties, but can you recall – this is now June 2016, about nine months since you had taken a decision to suspend Mr Saloojee and the others, can you recall whether you ever felt concern that these executives
20 were no longer doing their job because they have been suspended, they were still receiving pay, substantial pay and that nine months or so down the line they still had not got to the beginning of a disciplinary inquiry, let alone the end of it? Was that not a concern to you bearing in mind, for example, you were accusing them of breaches of the

PFMA, that under the PFMA you, as executive authority, had the obligation to ensure that discipline was taken and to avoid fruitless and wasteful expenditure?

MR MANTSHA: Just correction, Chairperson, the board is not an executive authority in terms of the PFMA, the board is an accounting ...[intervenes]

ADV KENNEDY SC: I beg your pardon, you are quite right.

MR MANTSHA: It is an accounting authority.

10 **ADV KENNEDY SC:** But you still had that obligation, not so?

MR MANTSHA: Well, let me say, Chairperson, we were extremely concerned about the delays in this matter and as I alluded before, there was people internally, as I have identified the former acting company secretary who was at the same time the head of legal. So there was in the opinion of the board at the time a deliberate strategy to frustrate the process, to move it slow and, of course, we were concerned and we tried to push that person out. I
20 cannot tell you when the person was pushed out, but we were concerned about it. It was a big concern because we wanted clause on the matter.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: I just want to go back to what you and I had an exchange on with regard to the delay. Of course is

it not true that if a disciplinary inquiry was held there would be the possibility that the executives or Mr Saloojee, the executives could be found not guilty and if they were found not guilty the board would have no option but to allow them back into their jobs? Would you accept that proposition?

MR MANTSHA: No, there was no possibility of them not being found guilty, it was not possible.

CHAIRPERSON: Well, I am not sure why you say that if
10 you were not going to chair the ...[intervenes]

MR MANTSHA: I can tell you the reason why.

CHAIRPERSON: If you are not going to chair the inquiry,
I mean...

MR MANTSHA: Look, Chairperson, I can tell you why I am saying this.

CHAIRPERSON: Ja.

MR MANTSHA: Because, you see, firstly, when you take a decision to suspend, when you take a decision to suspend, I think as the evidence showed you, it was not
20 like one morning people wake up and [indistinct – dropping voice]. There were several meetings there were investigations and members of the audit committee, some of them were delegated to meet the bankers, Nedbank and Absa, I tried to find out what really happened and they got the side of the story from Nedbank because Nedbank were

helping from the transaction, so there was an investigation which was conducted in the bank and, Chairperson, you act on the basis of the approval that you were given by the two executives authorities which is Minister of Finance and Minister of Public Enterprises and on the documents you were given an approval of five years to pay the loan and you go and change that to six months or five months to pay that loan. Clearly on the face of the document you have contravened the approval. There was no approval for six
 10 months so which means in effect that transaction was not approved and this is the evidence that it is conveniently now serving before this Commission. There was no proper approval for that transaction because when the terms – so, Chairperson, when you enter transactions like this, I know you know this very well in your previous life, you prepare a term sheet where the term sheet records the agreement between the lender, in this instance these two banks and Denel and that term sheet is submitted for the purposes of the PFMA approval to the relevant executive authority. In
 20 this instance it is Minister of Finance and Minister of Public Enterprises. They look ...[intervenes]

CHAIRPERSON: Can I stop you there?

MR MANTSHA: Yes.

CHAIRPERSON: I think let us put it this way, I think your answer to my question is the evidence against the

executives was so strong that you are saying there was no chance of them being found not guilty.

MR MANTSHA: Correct, Chairperson.

CHAIRPERSON: Yes, of course that strengthens the difficulty about delaying when you are so certain that, you know, these people, you know, there is no chance of them not being found guilty. But we have dealt with that, I am not wanting us to go back there, ja.

MR MANTSHA: Ja but just to add on that, Chairperson.

10 Precisely the delay was not on the part of the board.

CHAIRPERSON: Ja.

MR MANTSHA: The board act through functionaries being HR, being company secretary being the head of legal, they have appointed reputable law firm. So it was not on the part of the board.

CHAIRPERSON: Well, you see, for me – or let me ask this question, are there any specific steps that the board took against people in the management who, according to the board, were failing to do their job properly because
20 their job was to make sure that this process was expedited.

MR MANTSHA: Yes, we did, Chairperson, the acting company secretary at the time and the head of legal who took steps, we had to remove that person.

CHAIRPERSON: Yes.

MR MANTSHA: And, as I said earlier, there was also clear evidence of leaking communication between herself and the board to these executives and it was clear to us that she is deliberately aiding them maybe because they were working together for a long time, they developed some allegiance to one another but she was deliberately aiding them and we took action.

CHAIRPERSON: And when was that if you are able to remember?

10 **MR MANTSHA:** I think as I said, Chairperson, I mean when this matter, as a standing matter to the board comes to the board, so the minutes would have captured lot of our displeasure and a lot of our discussion about this matter.

CHAIRPERSON: But have you got a recollection whether it might have been 2015 of 2016 or you do not remember?

MR MANTSHA: No, I do not think it is - I am not really sure.

CHAIRPERSON: Ja.

MR MANTSHA: But I am not really sure.

20 **CHAIRPERSON:** Yes, okay.

MR MANTSHA: But I do not think it is 2015.

CHAIRPERSON: Ja, you say you removed the head of legal?

MR MANTSHA: The company secretary. Eventually, I think – I am speaking under correction because there were

a lot of pressure we put to the Acting CEO and the Acting CFO because the two of them were also getting pressure from the lenders to say ...[intervenes]

CHAIRPERSON: What is happening?

MR MANTSHA: Ja, what is your standing talking to us because you are acting and I they put a lot of ...[intervenes]

CHAIRPERSON: Just to ...[intervenes]

MR MANTSHA: Sorry, Chairperson, sorry?

10 **CHAIRPERSON:** Ja, I just wanted to have the names of the people you say you took action against, was it the company secretary and the head of legal or was it the company secretary only? I wanted the names of the people of their positions against whom you took action because you believe as the board that they were delaying or failing to expedite the process. You said it was the acting company secretary, is that right?

MR MANTSHA: Yes and head of legal.

CHAIRPERSON: Was there somebody else?

20 **MR MANTSHA:** Well, she was the only one who was solely responsible with the matter.

CHAIRPERSON: Yes.

MR MANTSHA: Yes, that is the only person that action was taken.

CHAIRPERSON: The head of legal?

MR MANTSHA: Ja.

CHAIRPERSON: What was her name, do you remember?

MR MANTSHA: It was Legoabe.

CHAIRPERSON: Ms Legoabe?

MR MANTSHA: Ja.

CHAIRPERSON: Okay. Mr Kennedy?

ADV KENNEDY SC: Thank you, Chair. So after this correspondence between the attorneys, Mr Mantsha, we know that from the documents – I do not know if you recall
10 or have knowledge of it, Mr Saloojee then lodged a dispute with the CCMA. You are aware of that?

MR MANTSHA: I see the referral (indistinct – recording distorted)

ADV KENNEDY SC: Yes. I am not sure why we have got a feedback – in fact the referral is right here as you point out, it is from page 492. We do not need to go into the content of that. That was referred and the dispute was then resolved. Are you aware then that there was a settlement with Mr Saloojee?

20 **MR MANTSHA:** Well, eventually there was a settlement with Mr Saloojee.

ADV KENNEDY SC: Yes.

MR MANTSHA: Which was, I think facilitated by the former CFO.

ADV KENNEDY SC: Yes. If I can just have a moment?

Yes, it is page 513, in fact it starts a bit earlier. Sorry, Chair.

CHAIRPERSON: Is 5.3, is that a paragraph of a document?

ADV KENNEDY SC: I am sorry, I am just speaking, Chair, I thought it was 513.

CHAIRPERSON: Okay.

ADV KENNEDY SC: It actually starts at page 499.

CHAIRPERSON: Okay.

10 **ADV KENNEDY SC:** I think we touched on this on a previous occasion but there are just a few aspects I need to ask you some questions on. Were you the signatory on behalf of Denel to that settlement agreement? If I can take you to page 513, it seems that it was signed not by you but someone else. Mr – I cannot actually quite read the writing of his name, he was Acting Group Financial Director. Can you help me with the name, is it Mr Mhlwana?

MR MANTSHA: Ja, I see here it is the former CFO of
20 Denel, Mr Mhlwana.

ADV KENNEDY SC: Yes, he was acting at that stage and we see that that settlement agreement was signed on the 8 November 2016. So that was some 14 months or so after they had been suspended, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And just a couple of points I need to raise with you here. What he was – the terms of the settlement reflect that he was given an *ex gratia* payment on the basis that his employment was terminated, an *ex gratia* was the amount of R2 362 492. Were you aware that there was this settlement? You will find that at page 505, clause 6. Presumably this must have come to you or your board for approval to settle with Mr Saloojee.

MR MANTSHA: Well, it was debated in the board.

10 **ADV KENNEDY SC:** Yes. And did you give your approval? You did not ...[intervenes]

MR MANTSHA: The board approved it.

ADV KENNEDY SC: Right. And so that, as it says, the R2.36-odd million is an amount equivalent to 50% of his annual remuneration so he got effectively a payout of six month salary – an amount equivalent to six months' salary. Were you aware of that?

MR MANTSHA: Well, yes.

ADV KENNEDY SC: Okay. And that was – in addition
20 there were certain other amounts such as accrued leave in clause 5 and so forth. Now was in addition to the payment that had already been made pursuant to your letter earlier that year where you had said we have decided not to renew your contract but will pay the rest of the year out and that was duly paid long before he referred the dispute to the

CCMA. Are you with me?

MR MANTSHA: I do not remember that payment, Chairperson.

ADV KENNEDY SC: Okay. So on the basis of his – and that we know was about ten months from the time of your letter and that was in addition to the seven months that he had been suspended. So if we take all of these periods together he was on paid suspension for seven months until you terminated his contract by saying we are not going to
10 renew it and we are not requiring you – we do not want you back. Then there was another ten months to the end of the period of contract so that was 17 months and in addition you were now – you, Denel, I mean, were now paying him out *ex gratia* another six months of salary to resolve the dispute, correct?

MR MANTSHA: Well, Chairperson, just to give some background, the letter ...[intervenes]

ADV KENNEDY SC: I am just asking you for the facts and then I will ask you for the background.

20 **MR MANTSHA:** No but you made a statement that I do not know where you are getting the facts from.

ADV KENNEDY SC: So is it request for clarification?

MR MANTSHA: The letter which indicated – as was read, we are terminating your contract, I do not remember that there was payment after that. So if ...[intervenes]

CHAIRPERSON: After when?

MR MANTSHA: There is a letter which he has read.

CHAIRPERSON: The one about ten months' payment?

MR MANTSHA: The one of – yes, it proposed termination and all the things.

CHAIRPERSON: Ja, ja, ja.

MR MANTSHA: I do not remember there was payment made at that stage, I remember there was payment made at the end of this settlement.

10 **CHAIRPERSON:** Yes.

MR MANTSHA: Ja. But again, I mean, I would rely on the figures which are said on the document.

CHAIRPERSON: Now the letter which the payment that you say you do not know whether it was made, that would be the payment in terms of the letter which I am under the impression you signed.

MR MANTSHA: Yes.

CHAIRPERSON: Of 17 March.

MR MANTSHA: Yes.

20 **CHAIRPERSON:** That is the one. That letter did say to him he was going to be paid for the rest of his – balance of his contract period.

MR MANTSHA: Yes.

CHAIRPERSON: But that it said that you know but what you say you do not know is whether it was implemented.

MR MANTSHA: Indeed, Chairperson.

CHAIRPERSON: Ja, okay, alright.

MR MANTSHA: I have not seen any evidence to show that that was accepted and implemented.

CHAIRPERSON: Yes, okay. Mr Kennedy.

ADV KENNEDY SC: That is fair enough, Mr Mantsha, thank you, and I rather skipped over a few letters in the hope that we could make some progress but I am happy to take you back to page 422.

10 **MR MANTSHA:** Page?

ADV KENNEDY SC: 422. 422 is another letter from Cliffe Dekker, CDH, dated the 13 April 2016. That was shortly after the letter that the Chairperson has just referred you to that you confirmed that you signed and he says:

“We record that in relation to this dispute your client’s employment has been terminated and your client...”

And that is Mr Saloojee.

20 “...has been paid out for the remainder of the term of the fixed term contract of employment up to and including 31 January 2017.”

So that was what Denel’s attorneys confirmed Mr Saloojee’s attorneys confirm we received it but we do not accept that that is sufficient, we want a disciplinary inquiry. We are not satisfied that you are entitled to terminate and

Mr Saloojee has also given evidence that he did receive that payment.

CHAIRPERSON: Yes, that is what I wanted to confirm also, that in his oral evidence he confirmed that the money was paid into his account.

ADV KENNEDY SC: Yes, thank you Chair. So I appreciate your position Mr Mantsha. You do not know, you cannot remember.

MR MANTSHA: I do not know.

10 **ADV KENNEDY SC:** But I just thought in fairness I need to show you the missing evidence as you suggested.

MR MANTSHA: Thank you Mr Kennedy, thank you.

CHAIRPERSON: Let me ask you about the payment that you know about at the end. You said the board debated the matter and approved the final settlement. Why did the board in November 2016 give Mr Saloojee who had not been working, who had not rendered any services to Denel for over a year, why did you decide it should give him any money other than what was due to him because his
20 contract was going to expire in January?

MR MANTSHA: Chairperson, as I indicated earlier, there was a long discussion which in this instance was the company was represented by the then CFO.

CHAIRPERSON: By?

MR MANTSHA: By the then CFO.

CHAIRPERSON: Yes.

WITNESS: Talking directly to the suspended employee.

CHAIRPERSON: Mr Njebe, that was Mr Njebe.

MR MANTSHA: Yes, and at that stage we were under tremendous pressure. We were under tremendous pressure to stabilise it. Stabilise the company by having permanent [indistinct]. In order to give assurance to our learners, to our business partners, that whatever decisions we arrived at, whatever negotiations we are busy with,
10 these officials are permanently employed and they will be there to see this decision through.

So the settlement was given primarily weighing the interest of the company at the time, what the company was losing at the time because of the vacuum at the top and of course there was submission by the relevant officials to the board, to say look, this is where we find ourselves and in view of all these problems that we have, in terms of stabilising the company, stabilising the business of the company, we are of the view that this kind of settlement
20 would be in the best interest of the company.

After the board has considered the issue and considering the pressure at the time, the board was of the view that it was in the interest of the company that this matter must be closed so that we can then move on to have permanent appointments which would then give confidence

to our partners, give confidence to our learners.

So it was just the interest of the company that has given us to accept the submissions made. Firstly of course there was submissions made by the executive to say look, can we talk to these people. If I remember I think the CFO was approached.

I am not sure whether by the former, the suspended CFO at the time and they started to explore these issues and of course he came to the board to say look, this is
10 what we think is in the best interest of the company, can we proceed to talk.

He was given the go ahead to talk, and when the ... he has reached this kind of conclusion, he came back to the board and said look, we request that you approve this for these reasons and the board took a decision.

CHAIRPERSON: Well, I must just say Mr Mantsha it does not make sense to me.

MR MANTSHA: Well Chairperson, it is not going to, sorry to ...[intervenes]

20 **CHAIRPERSON:** Yes.

MR MANTSHA: It is not going to make sense to you.

CHAIRPERSON: Yes.

MR MANTSHA: Because you have no benefit of the discussions. The rational of arriving at this is not before you. So I do not accept this to make sense to you and as

much as you should not expect me to then reprint what was discussed when these discussions was taking place because I do not have it in my [indistinct].

But there is a context, there is full discussion about this and again Chairperson, I would, I am talking to somebody who has presided over settlements, many years of your time and Mr Kennedy as well. We sit here as the commission, looking back to five years ago.

As the commission as we sit here today we do not
10 have the submissions made to motivate certain decisions and if we then expect the Chairperson of the commission to come to more or less same conclusion with those who were given the submissions or expect the Chairperson of the commission to say this is reasonable, this is not unreasonable, in the absence of those submissions, I think it is a difficult decision.

It is difficult for me as I represent the board to then go point by point on those submissions I do not have and try to explain submission by submission and the reasons
20 for it. So I think it is unfair to expect that kind of a thing. I think the nature of this process Chairperson, we must accept that certain things we might not understand properly because we were not there five years ago.

We were not seized with the moment because apart from if you look at the settlement, this settlement is not in

isolation of the total issues that the company was facing at the time.

CHAIRPERSON: Yes.

MR MANTSHA: So those who took the decision, they had to look at the bigger picture and satisfy their fiduciary duty to say look, we can pay this amount but for the greater good.

CHAIRPERSON: Yes, you see I wanted to say in particular what does not, what makes this not to make
10 sense to me, is that in March Denel is aware that Mr Saloojee's contract is going to come to an end by a fraction of time in January 2017.

It is even aware that that would not be seen as a dismissal, it would just be the coming to an end of a fixed term contract. It has taken the decision it will not renew. Various things happened in the meantime after that. Now in November, Mr Saloojee is left with November, December, January for his contract to end.

He has been on suspension for more than a year.
20 All that one would expect is that at that stage, Denel would simply allow the contract to come to an end by a fraction of time. if Denel wanted to appoint a permanent CO, CEO in order to address the concerns of the investors or whatever, if it made an announcement that it appointed a CEO but he would start with effect from, you know February after the

expiry of this contract, at least the investors would know that at least now there is going to be a permanent CEO.

So, so you have a situation where as far as Denel is concerned, as far as the board is concerned, for over a year it is sitting with on its version, very strong evidence that these executives are guilty of serious misconduct. No hearing takes place.

Closer to the end of the contract period, three months, when the ... if they just allowed the contract to
10 expire they would not pay anything extra. They pay him more. I do not know whether it is three months more or six months more ...[intervenes]

ADV KENNEDY SC: It was six months more, Chair.

CHAIRPERSON: Ja, they pay him more. This is, this person that they say has put the financial position of the company in a very difficult position, they give him some more money that he is not entitled to, so but I do not want us to go back.

I just want you to understand what is going on in my
20 mind.

MR MANTSHA: I really appreciate that Chairperson.

CHAIRPERSON: Yes.

MR MANTSHA: Let me just say one thing. What are we settling? What are we settling? We are settling [indistinct].

CHAIRPERSON: What?

MR MANTSHA: We are settling a case, we are settling a litigation and Chairperson, you would know that whether we have got a case or not, is a matter for another day. At this stage we concede within the best interest of the company, that the litigation must and this is the primary reason of the settlement.

Would be reasons that I have given, because whether the contract is finishing in three months or
10 whatever the case, there was dispute in every board and we did not want to sit in that dispute because it was harming us for the greater part.

That is how far I can give you.

CHAIRPERSON: Okay, alright. Mr Kennedy?

ADV KENNEDY SC: Thank you Chair. Just to complete the factual situation as to the settlement. We have dealt with Mr Saloojee's settlement in relation to how much he was paid and you have explained why. On the same page, 505 Clause 4.2, says it is recorded that all disciplinary
20 proceedings against the Employee have been terminated.

Were you aware that one of the objectives and terms of the settlement agreement was to abort the disciplinary inquiry that was still to take place?

MR MANTSHA: It was to terminate all the legal [indistinct]
– 00:12:15].

ADV KENNEDY SC: Yes, well I am referring not to a legal action in general.

MR MANTSHA: Yes.

ADV KENNEDY SC: I am referring specifically to disciplinary proceedings.

MR MANTSHA: Yes.

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

CHAIRPERSON: Just to confirm also, there was no litigation at that stage between the executives and Denel,
10 is that right?

MR MANTSHA: Well, there is a letter where there was a threat for some applications and all of that.

ADV KENNEDY SC: May I just help you Mr Mantsha, I am sorry to cut you short, but it seems to me that ...[intervenes]

CHAIRPERSON: Nothing came of it.

ADV KENNEDY SC: That there was litigation in this sense, apart from that threat of an urgent application which presumably they were threatening to bring in the labour
20 court although they did not say it, there was litigation in the looser sense, in the sense that he has already referred his dispute to the CCMA.

So it was a legal dispute that was pending before the CCMA.

CHAIRPERSON: Okay.

MR MANTSHA: And we saw the referral that you in fact pointed out there was a referral document there. So in that sense there was litigation.

CHAIRPERSON: Okay.

ADV KENNEDY SC: I am sorry to have ...[intervenes]

CHAIRPERSON: No, no, no that is helpful.

ADV KENNEDY SC: Pre-empted the witness to answer your question.

CHAIRPERSON: No, no that is helpful, ja.

10 **ADV KENNEDY SC:** But that seems to me Mr Mantsha to have been present in your mind with the board that you want to terminate any dispute.

MR MANTSHA: Yes.

ADV KENNEDY SC: So there is a dispute about whether they were guilty and so forth, which could have been the subject of a disciplinary inquiry. He was raising disputes, threats of urgent applications which he does not seem to have carried out.

20 But what he did carry out was the threat to bring a CCMA dispute before the CCMA and that was then pending. So this was all completely resolved, including the disciplinary proceedings.

MR MANTSHA: Correct.

ADV KENNEDY SC: Alright, thank you. Thank you Chair, I am sorry if I ...[intervenes]

CHAIRPERSON: No, no.

ADV KENNEDY SC: Stepped on his toes, but
...[intervenes]

CHAIRPERSON: No, no that is helpful.

ADV KENNEDY SC: Mr Mantsha, we have touched
previously in an earlier session before today on the fact
that ...[intervenes]

CHAIRPERSON: I am sorry Mr Kennedy, I just realised
that for some reason I do not have the second page of the
10 letter at 422.

ADV KENNEDY SC: I am sorry, 522.

CHAIRPERSON: 422.

ADV KENNEDY SC: 422.

CHAIRPERSON: One page only, but your junior could
attend to it while you ...[intervenes]

ADV KENNEDY SC: I see we have the same problem.

CHAIRPERSON: Oh.

ADV KENNEDY SC: We have the same problem.

CHAIRPERSON: If that can be addressed.

20 **ADV KENNEDY SC:** Yes, perhaps with your leave may we
...[intervenes]

CHAIRPERSON: Ja, during lunch.

ADV KENNEDY SC: Get that page and have it inserted?

CHAIRPERSON: Ja, that is fine.

ADV KENNEDY SC: Thank you Chair. Apart from Mr

Saloojee Mr Mantsha, you also of course had two other employees then on suspension, Mr Mhlonhlo and Ms Africa and the evidence from Mr Mhlonhlo has been that he signed a settlement agreement and he was paid an ex gratia 6.6 million rand which was equivalent to 24 months of his salary plus a bonus of 1.6 million rand.

Did you also have that brought to the board's attention for your consideration and approval?

MR MANTSHA: Correct.

10 **ADV KENNEDY SC:** And he of course had not litigated although the attorneys who were acting on his behalf, expressing concern if there were delays with the disciplinary inquiry etcetera.

MR MANTSHA: Correct.

ADV KENNEDY SC: So all of that issue was settled with Mr Mhlonhlo to the tune of 6.6 million rand plus the bonus, and then we also know that Ms Africa also had a settlement concluded with her. Were you made aware of that at board level as well?

20 There was a settlement on the basis that Denel and she agreed that she would then take early retirement and then apart from whatever benefit she may have had under her retirement or pension fund, she was paid a settlement amount of 1.6 million rand equivalent to 12 months' remuneration in her case, plus accrued leave, plus 75% of

an incentive bonus.

Were you aware of that settlement ...[intervenes]

MR MANTSHA: Ja.

ADV KENNEDY SC: On those terms?

MR MANTSHA: Approved by the board.

ADV KENNEDY SC: Yes. I am not going to take you to those settlement agreements. You are comfortable with the point that I am putting to you. So there were very substantial amounts that were paid to these various
10 executives.

Mr Mhlonhlo appears to have got perhaps the most, but bearing in mind, his senior position and also the fact that he was a permanent employee whereas Mr Saloojee was not, he was on a fixed term contract. So it was 6.6 million plus another 1.6 million for Mr Mhlonhlo, you know.

It was about 2.4 million in the case of Mr Saloojee in addition to what he had already been paid for about 17 months, and then Ms Africa was 1.6 million in addition to accrued leave, etcetera. In relation to those two other
20 executives, with whom there were settlement agreements, is the reason why the justification why they, the board approved those settlements, is the justification effectively the same as the justification you have already given in relation to Mr Saloojee's settlement or were there any different factors?

MR MANTSHA: Well Chairperson, as I said there were proper presentations.

ADV KENNEDY SC: Yes.

MR MANTSHA: To motivate the settlement of the two executives.

CHAIRPERSON: I am sorry, just start afresh ja.

MR MANTSHA: Well, the to start with I did not give the details of the motivation here. I just highlighted certain points which were primary drivers to those settlements, but
10 I am saying the documents which have been submitted to motivate those settlements, and of course the, those documents would have given reasons for both Mr Saloojee and both Mr Mhlonhlo on those amounts that were finally agreed and the submission would have given reasons why Ms Africa there must be settlement the way it was.

Yes, it would contain all those reasons. I might not say all of them here.

ADV KENNEDY SC: Oh, of course. I accept that.

MR MANTSHA: Ja.

20 **ADV KENNEDY SC:** Accept that. Now may I just go and I want to be very brief on this, because it has been traversed in some detail already, particularly in questioning from the learned Chairperson. I just want to give you a final opportunity to reflect on this question and give an answer.

If we accept your logic, if we accept your facts and your logic, then there were very serious charges against all three of these individuals. You have suspended them you say for good reason that you have explained. You had them charged for good reason that you have explained.

You had an unanswerable case as you have explained. They should have been, they could have been fired on the spot, because your evidence is a few weeks back, and if you have done that, you could have terminated
10 their employment.

You are very confident about that result and you would have then not needed to settle anything. The settlement appears to have been of the order of almost ten million rand. We are talking here not of Mr Mantsha's personal money but of Denel which was a public corporation, a state owned entity having public funds that are now being spent in terms of settlement agreements and public funds held by a state corporation that was in dire straits as you and many other witnesses were given.

20 I just want to give you a last opportunity to try to explain what I perceive as a logical problem, because if we accept all of your logic, at the beginning you had a perfect case, you had great evidence, you had the law on your side.

You suspended them for good reason, you were

disciplining them for good reason and you could have done it and it was not done. Instead you paid them out settlement amounts that you did not even need to pay. In Mr Saloojee's case you said we want to fire you now and you did not discipline him.

You then said via Mr Patel, the attorney, you said we do not have to employ you past January next year so we do not need to discipline you in the meantime, so we paid you out until the end of that. Mr Saloojee then could
10 have been left on the basis your contract has come to an end.

Instead he is paid another six months and so I can go on with Mr Mhlonhlo and Ms Africa. You understand the logical difficulty that I have when I were to invite you to explain, if you could have done it and you should have done it at the beginning, why did you not when it actually meant that you were paying approximately ten million rand in that sort of ball park, the public funds that Denel desperately needed.

20 **MR MANTSHA:** Okay. Let me deal with what you term your logical difficulties. I am called here as a witness in my capacity as the Chairperson, the then Chairperson of Denel. There are issues raised about decisions of Denel. I mean the decisions of the board.

But there is no attempt to bring the documents upon

which those decisions are made. You are given the information as you are given today. You have listened to my evidence and you have listened to the evidence of many of Denel witnesses, and some of them Mr Kennedy you cross-examined them.

You questioned them.

ADV KENNEDY SC: Yes.

MR MANTSHA: To give you the information, the past and the current, but clearly the evidence that they have told
10 you, that they have told you, objective evidence that they have told you.

ADV KENNEDY SC: Yes.

MR MANTSHA: You should not have that difficulty that you are raising to me.

ADV KENNEDY SC: Why is that?

MR MANTSHA: For the simple reason because your difficulty is based on confusing the substantive nature of the process and the steps which were taken to prosecute the substantive part of it.

20 **ADV KENNEDY SC:** How am I confusing them?

MR MANTSHA: I have already told the Chairperson that we did in fact act as the board. We were not impressed with the delay.

ADV KENNEDY SC: Yes.

MR MANTSHA: We changed the person who was

responsible. I even told you that the letter that you have read to me the last time was in fact leaked to the suspended employee, which to us as a board, seek now that this person is deliberately frustrating this process, not to move.

Not to move. So when you say having such a strong case which we could have dismissed them.

ADV KENNEDY SC: Yes.

MR MANTSHA: And eventually that did not happen, they
10 would have been saving if that process would have been
...[intervenes]

ADV KENNEDY SC: Yes.

MR MANTSHA: Taken forward, but what you also do not say, it is how far the litigation would have gone and at what cost to the company in terms of the money we paid to the lawyers and I think you would appreciate that the law firm that we were using, is one of the biggest law firm in the country.

ADV KENNEDY SC: Undoubtedly.

20 **MR MANTSHA:** So it does not come cheap. So there is a cost here.

ADV KENNEDY SC: Yes.

MR MANTSHA: To the lawyers. There is a cost to whatever we were going to pay. We did not know, as you know the, I mean you know it better than me, that this

litigation can drag a very long time. So there would have been money to be paid there.

But there is also opportunity cost that is difficult to quantify that we wanted to have stability.

ADV KENNEDY SC: Yes.

MR MANTSHA: We wanted to ensure the investors, the lenders, that yes, there is permanent leadership. When you talk to them, the decision that you made with them, they have got five years to see them through. We were
10 trying at that time, to renegotiate the Nedbank loan, and it was difficult.

I remember I have attended, there was a high level meeting which was called at, at Absa where they requested me as a Chairperson. They have raised the issue of stability at the time, and I think there was another meeting where Nedbank representative involved in the matter, came to the company and they have raised this issue.

So the opportunity cost and the cost to litigation and other related costs, where they were going to do a
20 disciplinary hearing, there were costs involved.

ADV KENNEDY SC: Even ten million costs ...[intervenes]

MR MANTSHA: It could have been more. I mean, you know in this profession depending on who you employ. Some would charge you a lot of money per day. So we do not know.

ADV KENNEDY SC: Do you believe that you had an unanswerable defence to those?

MR MANTSHA: Yes. The case is a strong case, not only by my evidence.

ADV KENNEDY SC: Yes.

MR MANTSHA: But by objective evidence that you were told in this commission, that in fact we are taking steps to try to recover the money. So that evidence you were told. So that is the objective evidence. So it does not mean the
10 fact that there was a settlement it was waste of money.

What I am saying to you, you were not in the position of the board. You were not in the positions of those executives. Those executives and the board had to take a decision, given the material condition at the time and that decision was taken informed by a lot of dynamics.

Considering the cost of ten million that you are reading to me, we could have litigated more than ten million. The opportunity cost more than ten million and other related consideration that the board has considered.
20 I do not expect you with the limited information that you have, and not having the sight of deliberation and submissions, which were given to the board to motivate settlement on those amounts, to find it reasonable.

It is difficult for you to ...[intervenes]

ADV KENNEDY SC: Yes ...[intervenes]

MR MANTSHA: Because even the evidence that you are going through here, omit the evidence which was presented to the board.

ADV KENNEDY SC: Ja, but that is why I am debating it with you. You say you are not surprised I cannot understand.

MR MANTSHA: Yes.

ADV KENNEDY SC: I am simply saying to you, I am not putting what I would want written in a report or a judgment
10 or anything, I am simply saying there seems to be a logical disjuncture. If there is not, please tell us why there is not.

MR MANTSHA: In the absence of these documents that I am telling you, of course you would not understand. It is logical, but if you were to take me through ja, this is what was presented to the board as far as the rationality of this settlement and this and this and this, this to you does not make sense.

It is one thing to stand here today and go back five years, and try to decide that no, no that was wrong.

20 **ADV KENNEDY SC:** Yes.

MR MANTSHA: And we were never in the shoes of those people ...[intervenes]

ADV KENNEDY SC: Yes.

MR MANTSHA: Who were making decisions at the time, and that was the time of a serious political time out in this

country.

ADV KENNEDY SC: Right.

WITNESS: There were lots of things happening in this country, we were preoccupied to save the country. We were preoccupied to satisfy the lenders and the investors, to say we are stamped[?], you can deal with us. You are, the agreements we make with you will be honoured, because this executive have got five years term.

ADV KENNEDY SC: Alright, thank you Mr Mantsha. Chair,
10 I am about to, I am going to move away from that whole topic and move to another one.

CHAIRPERSON: Yes.

ADV KENNEDY SC: I am happy to start ...[intervenes]

CHAIRPERSON: I think Mr Kennedy you still have about five minutes or so.

ADV KENNEDY SC: Thank you very much, I am absolutely happy to – you know however long you want me to go on.

CHAIRPERSON: Yes, okay.

20 **ADV KENNEDY SC:** Alright, I want now Mr Mantsha to get to the issue of benefits you may possibly have received from the Gupta family and their business associates.

Now let me just understand if I – if I got your evidence previously. As I understood your evidence in an earlier session with us, some weeks ago, you indicated

that you sometimes travelled overseas during this period that the Commission is looking at, and sometimes we would travel on official business for Denel in which case you're travelling costs would be paid for by Denel, and we have no difficulty with that.

But you also indicated that there were some trips that you would take that were not for official business of Denel and that you always paid for that yourself, personally. Remember, you gave that evidence.

10 **MR MANTSHA:** Indeed Chairperson,

ADV KENNEDY SC: And I am doing justice in my summary to your evidence?

MR MANTSHA: Indeed, Chairperson.

ADV KENNEDY SC: And does that mean that whenever you travelled other than for official Denel business, which Denel would have paid for, whenever you went overseas for other reasons, for a personal reason you would pay for the air travel and the accommodation and related expenses?

20 **MR MANTSHA:** Correct, Chairperson.

ADV KENNEDY SC: Right, now there are some documents in the bundle Chair may I take you Chair and the witness to the bundle specific to Mr Mantsha. It is bundle 8 and it is exhibit W22.

CHAIRPERSON: Are we going to go back to this other

bundle or can they take it away?

ADV KENNEDY SC: No, they can take it away for the time being. I do not think we are going to - come back to it later, but perhaps if it is just kept somewhere fairly close.

CHAIRPERSON: Okay.

MR MANTSHA: You said bundle?

ADV KENNEDY SC: Sorry, it is bundle 8, it should have on the spine to Denel bundle 08.

MR MANTSHA: I have got W4.

10 **ADV KENNEDY SC:** I am sorry; Mr Mantsha I did not hear you. If you have that file, you will find exhibit W22 starts at page 319, and if I can remind you just look at the top left hand corner for those page numbers. It is exhibit W22, Mr Mantsha. Just...[intervene]

CHAIRPERSON: Will your junior assist him to find the file.

ADV KENNEDY SC: Yes, perhaps we should, can someone approach the witness and assists him.

MR MANTSHA: Okay, I see 22 this one?

20 **ADV KENNEDY SC:** Have you got it?

MR MANTSHA: Ja.

ADV KENNEDY SC: Thank you, and if I can take you just to make sure we talking on the same bundle. If you look at the top left hand corner of each page for the page numbers go to page 330, it was your first statement that we went

through on a previous occasion.

CHAIRPERSON: What is the page number?

ADV KENNEDY SC: Three, three zero, Chair.

CHAIRPERSON: Three, three zero, okay.

MR MANTSHA: Three, three zero?

ADV KENNEDY SC: Yes, in your version is that the first page of a statement that you signed?

MR MANTSHA: Maybe if someone can help me.

ADV KENNEDY SC: May my learned junior approach the
10 witness to assist and ensure?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Thank you, I am told by my learned junior that Mr Mantsha had indicated privately to her that he would like a comfort break.

CHAIRPERSON: Oh, ja, then maybe we may as well take the lunch break.

ADV KENNEDY SC: As you please, Chair.

CHAIRPERSON: Yes, so let us take the lunch break and we will resume at 2 o'clock.

20 **ADV KENNEDY SC:** 2 o'clock thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV KENNEDY SC: Thank you Chair, Mr Mantsha may I

just make a request to you that has been passed on to me by the technical people who are doing the televising for the streaming of the evidence. Apparently, sometimes you sit back quite a bit or sometimes turn and I have no doubt what your trying to do is just engage me in eye contact, which is a courteous thing in a way, but it means that sometimes the - particularly the voice does not get picked up.

10 So if you do not mind try and – and I know it is difficult, rather than looking at me try and look rather in the direction of the Chair, because of course, you are giving evidence to him, ultimately, rather than me, if you can try and do that and then hopefully, that will direct your voice towards the microphone. I know it is a bit of a bore to have to sort of remind yourself on that but if you would not mind just doing that that will help.

MR MANTSHA: Thank you.

ADV KENNEDY SC: Mr Mantsha you indicated that we were going to look into issues relating to your travel
20 overseas and who paid them, we have had just over an hour for you to reflect over lunch. Is there anything you want to start with before I take you to individual documents, in relation to your evidence just a short while back, that when you travelled overseas, if it was official business for Denel it would be paid for by Denel, if it was

any other business of your own that would be - that was paid for by yourself?

MR MANTSHA: Well, I think without trying to waste time we can answer document by document.

ADV KENNEDY SC: You want to do that?

MR MANTSHA: As we move - so I will explain the context of what I am taking about.

ADV KENNEDY SC: Sure. Let us start please and Chair we still in bundle 8 from page 465.

10 **MR MANTSHA:** Sorry which bundle are we in?

ADV KENNEDY SC: Bundle 8, page 465 it is the one that includes your statement that we were looking at just before lunch.

CHAIRPERSON: The one that we were looking at just before we adjourned.

MR MANTSHA: Yes, Chair I do have.

ADV KENNEDY SC: Okay, thank you 465 please.

MR MANTSHA: I do have Chairperson.

20 **ADV KENNEDY SC:** Alright, thank you and you see this is an invoice issued by Travel Excellence. They are a firm of travel agents and it is an invoice that reflects some travel details and in particular flights and visas. Now, if you look at the table in the middle, it is headed Emirates/SAA, you see that?

MR MANTSHA: I do.

ADV KENNEDY SC: And then it refers to passenger, there are three passengers referred to in the first column under that heading passenger.

MR MANTSHA: I can see.

ADV KENNEDY SC: The first is the name of Mr Duduzane Zuma, I think it may have been misspelt, but that is Mr Duduzane Zuma, not so?

MR MANTSHA: Yes.

ADV KENNEDY SC: And the route is indicated as a
10 particular flight on a particular date, the dates it appears was the 7th of October and we see from the date of the invoice itself near the top right just below the picture or the logo rather of Travel Excellence. It says date 10th of the 10th 2015, do you see that?

MR MANTSHA: I do.

ADV KENNEDY SC: And so we are talking about October 2015 and then the second passenger is Ms Shanice, is it? I am not sure how to pronounce that, I think it is Shanice Zuma.

20 **MR MANTSHA:** I can see that.

ADV KENNEDY SC: Is that the correct pronunciation to your knowledge?

MR MANTSHA: No I - of course I suffer from the same as you do.

ADV KENNEDY SC: But do you not know her? I do not

know her so that is why I am saying it...[intervene]

MR MANTSHA: Look, I would assume from this, it would be Mr Zuma's wife.

ADV KENNEDY SC: Yes, that is my understanding to.

MR MANTSHA: Ja.

ADV KENNEDY SC: Yes, in fact, I think they were married just a bit earlier in 2015 and the flight details are exactly the same and then the third passenger is your own name, is that right, Lugisani Daniel Mantsha?

10 **MR MANTSHA:** Correct.

ADV KENNEDY SC: Thank you, the same flight details again, except that the dates is different, for Mr and Mrs Duduzane Zuma the date is the 7th of October and in your case, it is the 6th of October, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And then it says Dubai visas times two, and there is a charge for that and a ticketing fee charge for that. Now, this appears to then reflect that a travel agent made bookings for air travel by yourself, as
20 well as Mr and Mrs Duduzane Zuma, on the 6th or 7th of October and also arrange things like, visas. Do you recall having a trip, taking a trip to Dubai?

MR MANTSHA: I do Chairperson.

ADV KENNEDY SC: And that was at the same time roughly as Mr and Mrs Duduzane Zuma.

MR MANTSHA: Correct Chairperson.

ADV KENNEDY SC: Right, and we see that the invoice is made out by the travel agents to Westdawn Investments Pty Ltd, you see that?

MR MANTSHA: I can see that Chairperson.

ADV KENNEDY SC: And are you aware of the fact that Westdawn Investments was a shareholder in VR Laser?

MR MANTSHA: I think just getting back to my evidence I indicated that yes, I knew around the time when we were
10 doing due diligence in VR Asia, as a partner of Denel and this is around 2016, November, December somewhere and then I knew then they are.

ADV KENNEDY SC: You knew then and you confirm now that Westdawn was one of the shareholders in VR Laser?

MR MANTSHA: Correct.

ADV KENNEDY SC: And is it correct that Mr Duduzane Zuma himself personally, was at least at that stage, I do not know about now, but at that stage was a shareholder in West Dawn Investments?

20 **MR MANTSHA:** That Mr Zuma was a shareholder?

ADV KENNEDY SC: Yes.

MR MANTSHA: Well, in 2016, when it appeared he was a shareholder.

ADV KENNEDY SC: Yes, and Mr Salim Essa was also a shareholder, is that correct?

MR MANTSHA: Well, my recollection is Mr Duduzane Zuma and Mr Tony Gupta were the shareholder.

ADV KENNEDY SC: Tony Gupta, himself?

MR MANTSHA: Ja, I am not aware of Mr Salim Essa being a shareholder of West Dawn.

ADV KENNEDY SC: Okay, alright thank you and what was the purpose of this trip to Dubai?

MR MANTSHA: Well, as I indicated, this was a personal trip.

10 **ADV KENNEDY SC:** Personal as in a holiday or is it personal as in you were doing business but not Denel business, you were doing personal business?

MR MANTSHA: I was not doing Denel business it was my personal business.

ADV KENNEDY SC: Were you doing any other business, was it a holiday or were you doing any other business?

MR MANTSHA: Well, I was doing my own personal business at the time.

ADV KENNEDY SC: So it was for business reasons?

20 **MR MANTSHA:** It was for my personal business.

ADV KENNEDY SC: Right, run, non-Denel business reasons?

MR MANTSHA: No, not Denel.

ADV KENNEDY SC: Yes.

MR MANTSHA: And may I add this Chairperson? I have a

family, brother, direct after me, who lives in that country probably 10 years now or more.

ADV KENNEDY SC: Your own brother?

MR MANTSHA: My own brother who comes after me.

ADV KENNEDY SC: Yes.

MR MANTSHA: And we have been talking about a lot of things and this trip was undertaken in pursuant of some of the things that I have been talking to him about.

ADV KENNEDY SC: Sorry, in pursuit of?

10 **MR MANTSHA:** This trip has been undertaken, in pursuance of a lot of opportunities that myself and my younger brother have been talking about.

ADV KENNEDY SC: Business opportunities?

MR MANTSHA: Yes, business opportunities.

ADV KENNEDY SC: I see, so those were business opportunities that you enjoy younger brother were pursuing that those business opportunities also involved Mr Duduzane Zuma?

MR MANTSHA: Not at all.

20 **ADV KENNEDY SC:** Not at all, so why is it that Westdawn were invoicing sorry, why is it that the Travel Excellence, travel agents were invoicing Westdawn Investments for tickets that were bought for firstly Mr Duduzane Zuma, secondly, his wife and thirdly yourself?

MR MANTSHA: I think I explained myself Chairperson, I

used Mr Ashu arrange a trip.

CHAIRPERSON: You used Mr?

MR MANTSHA: Mr Ashu.

CHAIRPERSON: You used Mr Ashu Chawla?

MR MANTSHA: Yes, yes.

CHAIRPERSON: Okay.

MR MANTSHA: Yes, I have got difficulties to pronounce properly.

CHAIRPERSON: Yes, yes.

10 **MR MANTSHA:** So I have used him to arrange this and I have given the background before, why I used him. So of course, when you engage a person to arrange this, I did not know which account he was using to pay to travel. But the arrangement between me and him, he arranged, and he tells me how much it is, and then I settle, so this was the arrangement here.

He did indicate to me that Mr Zuma would be undertaking the trip, more or less the same time as ours. So I knew that Mr Zuma would be going to that place, I
20 think we all know that Mr Zuma is actually based in that part of the world.

ADV KENNEDY SC: Yes, and did...[intervene]

CHAIRPERSON: I am sorry, you said you did explain previously I think that is why you used Mr Chawla, is that right?

MR MANTSHA: Yes.

CHAIRPERSON: Please refresh my memory because I cannot remember.

MR MANTSHA: What I did say Chairperson was that the first engagement I had with him is when I travelled to India.

CHAIRPERSON: When you found?

MR MANTSHA: When I travelled to India.

CHAIRPERSON: Oh, okay.

10 **MR MANTSHA:** He was doing some sort of a side business or side show to try to facilitate this kind of arrangement. So for convenience sake, so I used him here, and I used him in other things as well, as to arrange for the trip. That is why this happened.

ADV KENNEDY SC: Now let us just, Chair I can take the witness to exactly that if you are asking who is Mr Chawla?

CHAIRPERSON: No, I just want to get this out of the way. He was not a travel agent, he was not owning a travel agency, is that correct or did he Chawla?

20 **MR MANTSHA:** Well, owning a travelling agency in which sense?

CHAIRPERSON: No, I am just - when you say, you asked him to organise as I understand your travelling.

MR MANTSHA: Yes.

CHAIRPERSON: So I am just trying to find out whether

the reason you asked him may be connected with the fact that he had the running, he had a travel agency anyway, so apart from other reasons.

MR MANTSHA: No, no Chairperson, the first engagement was when I went to India, and he said, look in future if you have got this kind of things, contact me I will arrange your visa, whatever you need to save, to be convenient.

CHAIRPERSON: You talking about if you were travelling?

MR MANTSHA: If I am personally travelling, I can ask him
10 to arrange because I am sure he was doing a lot of these things for a number of people, and he was able to secure whatever...[intervene]

CHAIRPERSON: Discounts, benefits.

MR MANTSHA: ...discounts for others.

CHAIRPERSON: Okay, Alright, Mr Kennedy.

ADV KENNEDY SC: Thank you. Now Mr Chawla was in fact at that time the chief executive officer of Sahara Computers, correct?

MR MANTSHA: I am not sure whether his position was
20 chief executive but what I am sure of he was working in one of the entities where the Gupta families were the owners or shareholders.

ADV KENNEDY SC: Yes, he was a very important part of the Gupta family business structures, correct?

MR MANTSHA: Well, it seems so.

ADV KENNEDY SC: Yes, and he of course, has also been implicated in other issues relating to the Estina Dairy Farm, the way in which the Gupta's obtains naturalisation from the Home Affairs when Minister Gigaba was in office. And yeah, so his name has come up in this Commission a number of times previously.

Now, I just like to explore with you why you considered it appropriate to take up Mr Chawla's suggestion that when you doing travel, travel trips
10 overseas for your own personal business either family, recreation, holidays, whatever or family business like you were going to do with your with your younger brother, why would you use the CEO of a major company in the Gupta Empire to arrange your travel?

If you wanted - if you could not do your own bookings online, or you could not get a secretary to do that, or somebody like that, would not the obvious thing have been to go to a travel agent? Instead you go to Mr Chawla who presumably is – and certainly my information
20 is that he was at the time group CEO of Sahara. In any event, he was a prominent businessman. Why would you be using him to make your own personal travel arrangements? Why not, why did you not go to a travel agent like Travel Excellence? We know he did not do it himself, he did not sit late at night, on his computer going

into Emirates websites and make the bookings, he used travel Excellence.

MR MANTSHA: Well, Chairperson, we are entitled to arrange your own affairs and whatever information you have about Mr Chawla who he is, how he is implicated on other things, I am not here to talk about.

ADV KENNEDY SC: Okay.

MR MANTSHA: But there was nothing wrong and I do not see anything wrong for an individual like myself at the time
10 when there was convenience, and I took the convenience.

ADV KENNEDY SC: I, see.

MR MANTSHA: So I am not going to get into who he is or who his all that.

ADV KENNEDY SC: Very well.

MR MANTSHA: It was convenient for me at the time to actually take the offer, he has done it before and there was no reason for me to say I cannot deal with him, I do not have.

ADV KENNEDY SC: Can I suggest a reason why it may
20 have been considered inappropriate, not prudent, not sensible and that is you had recently taken over Chairperson of Denel which is great deal of this entered into Denel as Chairperson. Did you not at least feel or with a bit of hindsight, do you not feel now that perhaps it was a bit unfortunate. I take your point that at least

people run their lives to see fit but when you are occupying a very prominent able position, a person of the Board saw potentially of Denel we are talking hundreds in terms of that were rewarded to VR Laser.

Did you know at least that used to be showing that he was linked to the Gupta's rather than picking up the phone and chatting to when I have to go to Dubai will you sought out the travel arrangements. Do you not understand or do not appreciate now, at least for the benefit of hindsight, that the perception is not a fortunate one, it does not tell the nation out their good things, if you behind the scenes, or making private arrangements with Gupta executives.

MR MANTSHA: Well with respect, Chairperson, I think let me put the context correct. VR Laser got the contract with Denel way before my Board and myself were appointed as non-executive directors of Denel. Already there were in the so called West Star Project, which I think evidence before you estimated how much they were going to get out of it.

ADV KENNEDY SC: Sorry, which project, the Hoefyster?

MR MANTSHA: The Hoefyster.

ADV KENNEDY SC: Sorry I did not hear you.

MR MANTSHA: And I think there was another one Platform halls or whatever.

ADV KENNEDY SC: Platform Hulls, that is correct.

MR MANTSHA: So those contracts were entered before we were even appointed. So the question that you are trying to say that does not dawn on me that asking such a person to arrange this while this person is linked with the Gupta's family who were a shareholder of VR, that is what you are saying to me.

Let me explain this to you. I have always known VR as Mr Salim Essa's business until...[intervene]

10 **CHAIRPERSON:** Sorry you have always known who?

MR MANTSHA: I have always known VR as owned by Mr Essa, at no stage until the due diligence on VR SA in preparation of the Denel Asia, then reveal some, I think was 15% whatever, that Tony Gupta and Duduzane Zuma has/

So I was surprised and I remember I did ask, I did ask Mr Tony Gupta I said Well, I did not know you part of VR South Africa. Mr Tony Gupta told me and just said to me look, we are not interested in the defence business but
20 happened Salim Essa borrowed money from them and when he borrowed money from them as he was struggling, then there was an agreement to take some shareholding.

And they said, look, we did not even want to talk to you about this because we do not want to interfere with what you do. So, just in short, I did not even know that

they had some percentage in VR SA, I did not know until the due diligence revealed that, and I did ask a question and I was given an explanation.

ADV KENNEDY SC: May I just ask again, I am speaking on behalf the technicians who have asked me to ask this one, quite often you keep moving your face away from the mic, and I see you also tapping something a little, I do not know if it is the desk or the or the book or whatever, if you can try not to tap.

10 **MR MANTSHA:** My apologies Chairperson, in my upbringing, I am told when a person is talking to you must look at him to show respect. So I am very sorry...[intervene]

CHAIRPERSON: Ja.

MR MANTSHA: ...but when I turn my back on you and you are talking it is disrespect.

ADV KENNEDY SC: Mr Mantsha I actually credited you with good manners earlier for doing that and that is a natural human instinct as well. But may I just suggest in
20 your...[intervene]

CHAIRPERSON: Just keep on trying.

MR MANTSHA: I will try.

ADV KENNEDY SC: Yes, I just want to suggest the President here is not me it is the Chairperson of the inquiry who has to be addressed, but thank you for that.

But in fact you right that there were certain contracts between VR Laser and Denel before you took up the position of Chairperson of the Board but there were also a number of major contracts that were awarded to VR Laser after you took up the Chairpersonship, not so?

MR MANTSHA: I do not have recollection or knowledge of those contracts. I see on the papers, you know, before this Commission, they were contracts between DLS and VR and those contracts, they serve in the DLS board, they do not
10 serve in the main Board.

So I was not even aware that there were those contracts until I see these documents and I have read Mr Stephan Burger, the then CEO of Denel Line System how he explained those contracts. I have read various statements, how people were involved, explain those contracts but none of those contracts served before the main Board, which I was Chairing.

ADV KENNEDY SC: But did you not give approval for one of those contracts where Mr Mlambo the head of
20 procurement at the Denel group level that refused to sign it off?

MR MANTSHA: Well, with respect Chairperson, I have never dealt with procurement people. My Board has never dealt with procurement people. We have never dealt with any contract between VR SA to any entity of Denel, the

only matter that we have dealt with VR related, is VR Asia in partnership with Denel. That is the only VR matter which served before the Board.

ADV KENNEDY SC: Now, during your trip to Dubai, on this occasion we are talking about early October 2015. Did you socialise with or have any meetings or encounters with Mr Duduzane and wife?

MR MANTSHA: Of course, of course, yes I did socialise with them.

10 **ADV KENNEDY SC:** I am not suggesting it is necessarily wrong, I am just asking about the fact. So why were you socialising with him, if I may ask, were you friends from before this?

MR MANTSHA: Well, Mr Duduzane Zuma, is well known to me. It is somebody that I have known for quite some time. We were in the same place of course we did socialise, I do not remember how many times, how many minutes we met but we did socialise because I think we were even staying in the same place if I may remember.

20 **ADV KENNEDY SC:** Is that...[intervene]

MR MANTSHA: So I did socialise with him.

ADV KENNEDY SC: I am sorry to have interrupted, sorry are you finished?

CHAIRPERSON: He say at some stage they stayed in the same place.

ADV KENNEDY SC: Yes, I heard that I interrupted him and I just wanted to make sure I completed his sentence.

CHAIRPERSON: Oh, okay.

MR MANTSHA: No, no I have completed it.

ADV KENNEDY SC: You have completed it thank you, and what was that same place was that a hotel or his private residence or somebody else's private residence, your brothers perhaps?

MR MANTSHA: Well look, I am speaking under
10 correction, but I was staying in a hotel, I think I am speaking under correction, that he was also staying the same hotel but I am speaking under correction because it is quite a while ago.

ADV KENNEDY SC: He at least at a certain stage, owned his own property residential property in Dubai, not so?

MR MANTSHA: Well, Chairperson with respect, I do not know whether Mr Duduzane Zuma owns a place in Dubai...[intervene]

ADV KENNEDY SC: You do not know.

20 **MR MANTSHA:** ...or he does not.

ADV KENNEDY SC: Okay, thank you. If you do not know, you just simply have to say that, thank you.

CHAIRPERSON: He has given evidence about property that he lives in, in Dubai. I am saying Mr Duduzane Zuma has given evidence before the Commission about property

in which he lives in Dubai, ja.

ADV KENNEDY SC: Yes, that is what I was referring to but the witness as I understand that you do not have personal knowledge of that, yourself?

MR MANTSHA: No, I am not aware.

ADV KENNEDY SC: Okay, now did you say that your arrangement with Mr Chawla was that he would do the arrangements, make the arrangements and then presumably send you the travel tickets and so forth, is that
10 right?

MR MANTSHA: Ja, he would he would do the arrangement and tells me how much it is going to cost and then I settle.

ADV KENNEDY SC: So would he contact you each time to say, I can get you a flight on the 6th as you want and the cost is going to be X, number of rand's, is that okay can I go ahead, how did he do it?

MR MANTSHA: No, of course he would, I would speak to him and he would go around and he would come back to
20 me with some arrangement and if we agree, and then we pursue it.

ADV KENNEDY SC: Okay now, I see that your travel tickets the airfare was R28 860 with airport taxes of just over R4 000 which then gave just for your air ticket, presumably a return R33 280.

I am going to leave out of account for a moment, the visas and the ticketing fee, because it is not clear exactly which of the two individuals whether you are one of them, let us simply look at the airfare. So he would have got confirmation from you that he could proceed to make this booking?

MR MANTSHA: Yes, of course.

ADV KENNEDY SC: Did he make those inquiries with you or did he get the travel agency to do so?

10 **MR MANTSHA:** The inquiries about cost and everything?

ADV KENNEDY SC: Yes.

MR MANTSHA: No remember, I had asked him that was his responsibility.

ADV KENNEDY SC: Right, you see what I find interesting, and I would like to give you a chance to comment on it, is that when the arrangements were made, and an invoice was made out, it was made out by the travel agents not to you, not to Mr Duduzane Zuma, either.

20 It was made out to Westdawn Investments. Why were you not invoiced? It was going to be your travel; it was your personal business with your brother. You were not going on a business trip with Mr Duduzane Zuma, correct?

MR MANTSHA: Well, I think the logic is very simple the invoices directed to the party that Mr Chawla indicated to

the - whoever was arranging these. These are the details and that is something not within my knowledge. Whoever he was asking where the invoice should go that was his own arrangement.

ADV KENNEDY SC: But is it not, surely again, with the benefit of hindsight now that you know that the Gupta Empire and their dealings have become matters of huge public and media interest and controversy, and have been the subject of many days of very lengthy evidence before
10 the learned Chairperson who is the Commissioner.

With the benefit of hindsight do you not appreciate that it may be regarded by the public when they see evidence like this that you were travelling at about the same time as Mr Duduzane Zuma and his wife to the same city. You have now said you were staying in the same place; you think it was a hotel where you stayed with him. And the arrangements were not only made by Mr Chawla, CEO of Sahara, which is a part well you may not be sure about that, but he was an executive of the Gupta Empire.
20 And that, not only the arrangements, but actually invoicing and payment has been done by West Dawn Investments. Do you not understand that, it is not exactly the Gupta's and their empire.

MR MANTSHA: Well - look with respect Mr Kennedy I – it of course depends where you stand.

ADV KENNEDY SC: Yes.

MR MANTSHA: It depends where you stand and where I stood then at the time of arrangement there was nothing sinister to make this arrangement. I think I have explained what I knew at the time and what I did not know.

Where we sit today there are many allegations against this family and their associated businesses.

ADV KENNEDY SC: Yes.

MR MANTSHA: I am certainly not here to talk about the
10 merits or the merits of those.

ADV KENNEDY SC: Absolutely.

MR MANTSHA: All I can say is this arrangement was made and there was nothing wrong that says to me in my private capacity as a non-executive chairperson of Denel by then with the knowledge that I knew with the knowledge I had there was nothing wrong to do this.

ADV KENNEDY SC: I am asking you with the knowledge you have now.

MR MANTSHA: And whether the perception – I think again
20 when you in a decision of authority and when you are – when you are in a position of authority and when you are in a position where you have to decide certain matters before you yes you can consider to settle but you do not necessarily have to make a decision on this.

As I am saying to you what perception would these

made that as you said I am not acting in I am 00:01:56

ADV KENNEDY SC: Yes.

MR MANTSHA: And what I am saying to you is as far as I sit here that perception whereas and where I am it has to be based on certain factors and certain knowledge.

ADV KENNEDY SC: Yes.

MR MANTSHA: I did not have the facts to base that perception, I did not have the knowledge to raise this.

ADV KENNEDY SC: But that you have the facts and
10 knowledge now. Where – let us assume in your favour that at that time you were not aware that the Gupta's and Salim Essa were actively involved in a company called VR Laser in doing business with Denel. Let us assume that that is right.

But that is what you knew at the time. You did not know at the time on your version. Now you do know. That is why I am asking for you with your current knowledge not just simply your knowledge at the time.

So I can fully understand if you said to us yes at the time I am – I had no reason to feel that this might be
20 regarded inappropriately but with the benefit of hindsight now that what has come out is that VR Laser actually was very much involved in doing business with Denel not just before but very much after as well and there have been huge allegations before the learned Deputy Chief Justice and the commission that the procurement regulations and so forth

were flouted and where procurement officials left in despair that their advice to try and keep the – the Denel procurement process legal. All of that has led to a number of controversial aspects.

Do you not feel say well at the time I think it was fine based on my knowledge then but with the knowledge I now have I do accept that it could be perceived by reasonable people as – as having a – a disturbing connotation.

You know the expression that justice must be done, it
10 must be seen to be done. Well independence objectivity, a lack of bias by a chairperson of an inquiry must not only be done but also be seen to be done.

And that is why surely as a chairperson of a major corporation you should be keeping it absolutely at arm's length. You not agree with that?

MR MANTSHA: Well absolutely I do not agree from the premise you knew.

ADV KENNEDY SC: Yes.

MR MANTSHA: Because I see contradiction in what you
20 were asking me earlier and what you saying now. What you are saying to me now is then as the former chair this VR which I knew it was owned by Mr Salim Essa was irregularly appointed into Denel in various forms before and after I was aware. I have answered you.

I said as far as after my appointment the contract

with DLS the only time I saw that it was when I received the papers of the commission. And the contract with the 00:05:15 contract and the whole platform contract those contracts were made before my appointment and I think I have indicated earlier Chair that in terms of the transformation in 00:05:36 and Denel being a defence company where in that space we were of course told that there was no company, a black owned company that is getting business from Denel on the core business therefore
 10 the VR Laser which was by the way owned before Mr Essa was owned by some white people and then Mr Essa bought this company from these white people. When he bought this company the company of course became a black owned company.

When the company become a black owned company we were told of course in terms of what Denel was expected to do to transform the defence industry in the country that VR helps Denel to achieve that.

So it has been a plus from the information we
 20 received that the relationship between Denel and VR was founded on the basis that VR is black owned, VR does supply Denel on the main business because they were building some 00:07:17. So – so that was the case of VR.

ADV KENNEDY SC: Yes I understand Mr Mantsha I am sorry to interrupt but you asking a different question that you

would like me to ask perhaps and that is was it – was it a good idea for Denel to do business with VR Laser and you suggesting that well because of black economic empowerment objectives which obviously are not just good objectives but in fact part of government policy and legislation all of that is telling us what you have already told us a number of times which is that it was important that Denel should transform and give business to black people within the economy not just simply white people. All of that
 10 you have said a number of times and – and that obviously does answer the question.

Was it a good idea for Denel to do business with VR Laser? That is simply not the question. The question was simply this when the company was doing business with VR Laser which is related to – connected to the Gupta's and Mr Duduzane Zuma and Mr Salim Essa who is – was part of – very much of the Gupta Empire – was it not – was it not perhaps inappropriate for you to be taking the assistance of Mr Chawla of the Gupta Corporate structure because that
 20 could give rise to wrong – in your view wrong perceptions. Mr Saloojee of course has said you were basically far too closely aligned with the Gupta interests and you interfered and that is why you got rid of him.

Now I am not expecting you to admit that he is being truthful there but the Chairperson has had that evidence.

With respect the Chairperson will probably want to consider whether there is any substance in Mr Saloojee's evidence and this is your chance to show why there is no substance.

And I just want to invite you again to focus your answer on the specific simply question.

MR MANTSHA: Ja look Chairperson I am focussing my answer. When I started to answer I said I disagree with the premises upon which you based the assumption of this allegation. And I then went further to say what you telling
10 me is contradiction from what you were asking me before. Because I would – I would expect the commission to probe certain things without contradicting itself.

ADV KENNEDY SC: Mr Mantsha I am sorry to interrupt you but may I just ask you to exert a little discipline on your own evidence. With respect you are here to give evidence not to criticise the commission or its evidence leader in how we may or may not arguably have been contradicted. With respect that is – we are not at a stage of legal argument here and perhaps one you must just forget for a moment that
20 you are an attorney and maybe your instinct maybe as many lawyers is to try and find the contradictions and so forth. All I am asking you for is a simple answer to the simple question. Not to be criticising how I have put the question. You would not mind.

MR MANTSHA: Without offending you Mr Kennedy all I

was...

CHAIRPERSON: And maybe...

MR MANTSHA: I was ...

CHAIRPERSON: Just hang on Mr Mantsha. Just repeat your question Mr Kennedy I just want to follow the answer.

ADV KENNEDY SC: Yes.

CHAIRPERSON: Just repeat the question.

ADV KENNEDY SC: Leave aside the issue of whether it was a good idea for Denel to do business with VR Laser the fact
10 was that it was doing and continue to do major business with VR Laser. Would it not have been better with the benefit of hindsight to not accept the assistance of Mr Chawla of the Gupta's in relation to your personal dealings because otherwise it could give rise to the reasonable impression of people out there that you were not at arms' length that there was a cosy relationship between you and the Gupta's and their associates. That is the question.

MR MANTSHA: I disagree with that Chairperson. I repeat my answer is no. Mr Chawla was an employee yes I agree
20 but whether – you see a perception Chairperson depends where you stand and I am not here to try to talk about what someone should have perceived. I am just here to explain the basis of my arrangement and my knowledge and the basis upon which Mr Kennedy says perception can be formed here that there is a cosy relationship.

Well I disagree with that. I mean my arrangement with Mr Chawla does not mean any cosy relationship with the Gupta family. Here I am as a chairperson of the Denel he then was already at that time given I think over R200 million contracts to VR Laser. So what I have done with Mr Chawla had nothing to do with either VR or anything else.

CHAIRPERSON: Well he...

MR MANTSHA: Mr Chawla – sorry Chairperson.

CHAIRPERSON: Hm – ja continue.

10 **MR MANTSHA:** Mr Chawla was doing this in his personal capacity not as an employee of the Gupta Company.

CHAIRPERSON: Okay hang on one second. Mr Kennedy has put a proposition that at that time Denel was continuing to do business with entities associated with the Gupta family. You accept that?

MR MANTSHA: Well I think let us be specific was doing business with VR Laser.

CHAIRPERSON: VR Laser.

MR MANTSHA: Yes.

20 **CHAIRPERSON:** Ja - yes that one. Are you saying you as you sit there see nothing wrong with the chairperson of an – of the board of an SOE which is doing business with a certain entity having what Mr Kennedy calls a cosy relationship with let us say somebody closely associated with that entity let us start just there then we – I just – just

testing the – the general proposition.

As – if somebody said to you let us say now you are being interviewed for a position to take the position of chairperson of one of – of the SOE's now you are asked is it proper for the chairperson of a board of an SOE to have a cosy relationship with somebody closely associated with an entity that is doing business with the SOE. Would your answer be there is nothing wrong with that or would your answer be there is something wrong with that?

10 **MR MANTSHA:** Well my answer will be there is nothing wrong. Because that person that we talking about I am specific on ...

CHAIRPERSON: Ja general.

MR MANTSHA: I am not talking in general.

CHAIRPERSON: Ja.

MR MANTSHA: I am specific on my matter. He is not a shareholder of the company. He is not the company himself. He does that in his own personal capacity. So if we then see it and say if you relate to somebody in his personal
20 capacity who works for XYZ you might be perceived to be having a cosy relationship. Yes I understand somebody can come with that perception but another person might say well what is the basis of that perception? I do not agree with that perception. So what I am saying as I answer now I do not see anything wrong with that arrangement because it had no

bearing with my work, it had not bearing with...

CHAIRPERSON: Yes but hang on.

MR MANTSHA: With which I with...

CHAIRPERSON: At this stage I am not talking about the specific situation you were involved in. I am just testing the general proposition because as a director of a board and as chairperson of a board it would be important to understand what you understand as acceptable relationships for board members to be involved in as well as for management,
10 CEO's of your company.

So are you saying if you were – if you were the chairperson of the board of Denel today and VR Laser continued to have – to do business with Denel you would have – you would see nothing wrong with you having a cosy relationship even if in your personal capacity with somebody closely associated with VR Laser?

MR MANTSHA: Well a correction point here Chairperson. I never had cosy relationship with him.

CHAIRPERSON: Yes but you – but you...

20 **MR MANTSHA:** Yes.

CHAIRPERSON: You talk about your case I am talking about the general.

MR MANTSHA: Well I think ...

CHAIRPERSON: Let us not say you let us say Mr X, let us say Mr X.

MR MANTSHA: Yes. Chairperson I appreciate that intimation from the Chairperson. But again Chairperson I am talking to a Chairperson who comes from a background that its case depends on its own merits.

So it is one thing for me here to sit and talk in general terms. I think Chairperson I would refrain from talking in general terms. I would only speak to explain what I knew at the time, what were my reasons at the time and how I conducted my affairs in certain areas.

10 But in general terms Chairperson I would not want to sit here and say because when we getting to the area of perception there are so many perceptions about everything that we do.

CHAIRPERSON: But you see Mr Mantsha talking in general terms to test – talking in general terms is – has an important place because it enables me to know what values you subscribe to. If for example I am looking for the chairperson of an SOE board I must be looking for somebody who has certain values and those values you start testing by in
20 general then you can – when you have a specific situation you test that specific situation against the general values to say well if somebody subscribes to these values then they will not do ABCD when such a situation arises because they believe in these values.

So that is why I am putting the general because when

you put the general that is when it is going to be easy to say okay let us go to a specific situation. You might say in terms of the general – you might say the one I put to you.

As long as I am acting in my personal capacity with somebody closely related to – or associated VR Laser I see nothing wrong but if I am acting in my capacity as chairperson of Denel and Denel is having businesses with – business dealings with VR Laser I can see a problem. Or you might say well whether I am acting in my personal
10 capacity or in my capacity as chairman of Denel it is problematic to have that cosy relationship with that person.

MR MANTSHA: I really appreciate that question Chairperson and of course my values are you cannot place yourself as the non-executive in a position of conflict. I subscribe to those values and I subscribe to the values that exercise your fiduciary responsibility in a transparent and for the interest of the company.

Those are the values that I subscribe to. And that is in general terms what I subscribe to and what I conducted
20 my affairs as the chairperson at the time did not place myself in a conflict situation where I had to decide about certain transactions with the people that I have one way or the other an association with. That I subscribe to.

CHAIRPERSON: Mr Kennedy you want to take it from there?

ADV KENNEDY SC: Thank you Chair I think – I think I

would like to just take the witness if I may to a couple of more page references.

CHAIRPERSON: Ja.

ADV KENNEDY SC: If I can you ask you please to turn to page 434. That is the act...

MR MANTSHA: 4?

ADV KENNEDY SC: 434 that is the actual travel itinerary from Travel Excellence it seems for the same trip specific to you, is that right?

10 **MR MANTSHA:** 434?

ADV KENNEDY SC: 434 yes Mr Mantsha.

MR MANTSHA: Just bear with me Chairperson.

ADV KENNEDY SC: Yes if you can find 434 that is.

CHAIRPERSON: No that is fine.

ADV KENNEDY SC: That is all I am asking you.

MR MANTSHA: Yes I do have 434.

ADV KENNEDY SC: Right so that is the travel itinerary for your own trip, correct?

MR MANTSHA: Yes Chairperson.

20 **ADV KENNEDY SC:** And now 449.

MR MANTSHA: 449.

MR MANTSHA: That is an email from Mr Chawla to Galiema Malana at Travel Excellence. You see that?

MR MANTSHA: 449?

ADV KENNEDY SC: Yes.

MR MANTSHA: Ja I do.

ADV KENNEDY SC: Yes. And it is headed under the subject Mr Mantsha's passport and then he says:

"Please buy Dubai Visa"

And then we see attached it seems that what may have been attached to that was your passport copy from the previous page. Is that right?

MR MANTSHA: It appears so.

ADV KENNEDY SC: Okay. Right. And then if we can go to
10 453. There is an email from Travel Excellence the travel agents to Mr Chawla in fact we see his email address is ashu@sahara.co.za and the attachments refers to your name and then it says:

"Dear Ashu please see attached tickets."

So all of this seems to have been part of the transactions relating to that 00:23:59, correct?

MR MANTSHA: It appears so.

ADV KENNEDY SC: Thank you. Now you said your arrangement with Mr Chawla was that you – that he would –
20 he would make the arrangements, he would do so in his personal capacity and then you would pay him back.

MR MANTSHA: Yes.

ADV KENNEDY SC: Is that right? Why then is the invoice not in his name, Mr Chawla's name? Why was it in the name of Westdawn Investment?

MR MANTSHA: Well I think that is for Mr Chawla to explain.

ADV KENNEDY SC: Yes obviously I mean what – do you know why?

MR MANTSHA: Of course I do not know why.

ADV KENNEDY SC: You do not know why? Okay.

MR MANTSHA: When you – sorry can I explain this?

ADV KENNEDY SC: Yes sure.

MR MANTSHA: When you ask a travelling agent or somebody to arrange the travel you of course do not know
10 from you know the pre-existing or the prearrangement travels. You do not know from which account they will pay the people they are dealing with. So I do not know Mr Chawla can explain that.

ADV KENNEDY SC: Okay. Did you actually pay back the...

MR MANTSHA: I did pay back.

ADV KENNEDY SC: The R38 000.00 (talking over one another).

MR MANTSHA: I did pay him.

ADV KENNEDY SC: Did you pay him?

20 **MR MANTSHA:** Yes.

ADV KENNEDY SC: Okay because it was invoiced not to him but to Westdawn – did you pay back Westdawn or did you pay back Mr Chawla?

MR MANTSHA: I would assume that he would not use the money that was not his and not pay it. So I would assume

when he received the money he paid whoever he was supposed to pay.

ADV KENNEDY SC: Do you recall how you paid him back?

Was it in cash or an EFT or what did you do?

MR MANTSHA: I paid him in cash.

ADV KENNEDY SC: In cash?

MR MANTSHA: Yes.

ADV KENNEDY SC: R38 000.00 in cash that you had lying around?

10 **MR MANTSHA:** I am not sure exactly whether it was 28 that but I think there were some little bit – maybe just little bit over that.

ADV KENNEDY SC: Yes that is right. We have seen I am rounding it off for convenience. I do not want to have to repeat the full - last – down to the last rand.

CHAIRPERSON: Was – I am sorry Mr Kennedy. Was any invoice sent to you and if so by whom? Westdawn or Mr Chawla?

MR MANTSHA: No, no invoice was sent to me. He would
20 then say to me this is the cost and then I would settle him. So that was the arrangement.

CHAIRPERSON: He would tell you over the phone or something or you could be meeting or something?

MR MANTSHA: We would sometimes talk face to face.

CHAIRPERSON: Yes.

MR MANTSHA: I do not know in this instance.

CHAIRPERSON: Yes.

MR MANTSHA: How did we communicated it could have been face to face.

CHAIRPERSON: Ja.

MR MANTSHA: So I – I do not have recollection.

CHAIRPERSON: Okay but what you confirm is that you never received any invoice?

MR MANTSHA: No it was all verbal from him. This is how
10 much it costs and then I would give him the money.

CHAIRPERSON: Okay. Mr Kennedy.

ADV KENNEDY SC: So because it was in cash if I asked you to produce proof that you made payment for example a bank statement for an EFT or whatever you could not come up with that presumably?

MR MANTSHA: Well Chairperson I do not understand what the question is supposed to mean.

ADV KENNEDY SC: Sorry just answer the question rather than puzzle over what it is supposed to mean unless you say
20 it is not clear in which case I am quite happy to explain what I think was a very clear question but I am happy to repeat it.

CHAIRPERSON: The question is do you have proof that you paid him?

MR MANTSHA: Well I have the proof that I have paid him as I am telling to you I have paid him. And if you then asking

me how I paid I told you that I have paid him in cash.

CHAIRPERSON: Yes.

MR MANTSHA: If you then ask me produce where you got that cash. I mean we do business we do receive cash. And – so at any given time then there is the cash that I have and I used that.

CHAIRPERSON: You did not make him sign any receipt of that money?

MR MANTSHA: Well Chairperson these personal
10 arrangements and...

CHAIRPERSON: No, no, no I ...

MR MANTSHA: And this is – this is not anybody to crook you.

CHAIRPERSON: Ja.

MR MANTSHA: So you know when we act as ordinary people out there if I come to you as a friend and say look I am short with R5000.00 to pay the school fees. You said my friend here is R5000.00 you are not going to get me to sign a loan agreement that I will pay you at the end of the month
20 when I get paid. That is not how you know loosely we relate to one another.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: But in this type of situation it did not just involve Mr Chawla it also involved the Westdawn. So what would have happened if Westdawn's accountants or

auditors had come to you and said we see that our company Westdawn has paid R28 000.00 odd for a business ticket for you to Dubai and we have been told within Westdawn that it has nothing to do with Westdawn business it was just a private arrangement between Mr Chawla and you can you pay it back? You would not have anything to show him not so – the auditor?

MR MANTSHA: Well of course I would have relied on the bona fide of Mr Chawla.

10 **ADV KENNEDY SC:** Mr Chawla.

MR MANTSHA: Yes.

ADV KENNEDY SC: And if he was run over by a bus or immigrated? You would have nothing to prove that is my simple point.

MR MANTSHA: Well all I am trying to say to you with the example that I have given to you.

ADV KENNEDY SC: Yes.

MR MANTSHA: I borrow money for school fees from you. I get run by the bus, no agreement.

20 **ADV KENNEDY SC:** I understand your logic.

MR MANTSHA: So of course it is your loss.

ADV KENNEDY SC: I understand your logic yes.

MR MANTSHA: Yes.

ADV KENNEDY SC: Yes. May I now look at another travel arrangement that appears to have been made by Mr Chawla

on your behalf? Can I take you please to page 429. You have that?

MR MANTSHA: I do. Ja?

ADV KENNEDY SC: On this page 429 and the next few pages, there are number of emails that relate to a flight that was been arranged on the air service called Freedom Air Services. Now I understand, correct me if I am wrong, but this is a private charter company that provides charter planes to those who can afford it. Is that your
10 understanding too?

MR MANTSHA: Yes.

ADV KENNEDY SC: Right. And it appears from this, if we look, for example, halfway down on page 429. It is an email from Ashu Chawla. Now Ashu, we know is the first name of Mr Chawla. And his email address, we see is ashu@sahara.co.za. So halfway down, you see there is a – it says: Thanks, Ashu. And then it says: From Ashu, sent 05 August 2015. Do you see that?

MR MANTSHA: I can see.

20 **ADV KENNEDY SC:** And it is addressed to Freedom Ops. Subject: Updated passenger list for owner.

MR MANTSHA: Yes.

ADV KENNEDY SC: I am not sure how to pronounce the name. Mitten(?) G.

“Here is the final passenger list arriving

tomorrow with ZSOK...”

Which presumable is a flight number or a flight –
or rather, a plane registration number.

“Ms Angoori Gupta, Mr Rajesh Gupta...”

Now I understand Mr Rajesh Gupta is known,
generally, as Mr Tony Gupta. Is that right?

MR MANTSHA: Correct.

ADV KENNEDY SC: Yes.

10 “...and together with him, Ms Ati(?) Gupta,
Mr Shashank(?) [00:01:51] Singala...”

And there has been evidence that Singala is
actually part of the wider Gupta family. Do you confirm
that or do you not know?

MR MANTSHA: I did not.

ADV KENNEDY SC: The Singala’s are part of the Gupta
family.

MR MANTSHA: Ja, I think the person you are referring to
is the son of one of the Gupta brothers.

ADV KENNEDY SC: Right.

20 **MR MANTSHA:** Ja.

ADV KENNEDY SC: And then there is another person,
also with the surname Singala. That is Mr Amand-Khand(?)
Singala. And then also Mr Salim Essa. And then also
yourself, Mr Lungisani Daniel Mantsha. And then also Mr
Gysbert van den Bergh. So are you – do you recall

actually going on a plane trip operated by a private charter company?

MR MANTSHA: Yes.

ADV KENNEDY SC: Organised by the Gupta's?

MR MANTSHA: Yes.

ADV KENNEDY SC: And with the Gupta's?

MR MANTSHA: Yes.

ADV KENNEDY SC: And arranged by Mr Chawla, the very same Chawla we have just ...[intervenes]

10 **MR MANTSHA**: Yes.

ADV KENNEDY SC: Right. And that was where to?

MR MANTSHA: This was to India.

ADV KENNEDY SC: To India?

MR MANTSHA: Yes.

ADV KENNEDY SC: Right. And what was this trip for, personal or business?

MR MANTSHA: Personal trip.

ADV KENNEDY SC: Personal trip?

MR MANTSHA: [No audible reply]

20 **ADV KENNEDY SC**: And is it correct that they paid for your ticket?

MR MANTSHA: Chairperson, this was a lift that I got from them because this was, in my understanding, their flight.

ADV KENNEDY SC: Their flight?

MR MANTSHA: Yes.

ADV KENNEDY SC: Yes. When you say you mean their flight, do you mean that they owned the plane or that they organised this flight on a plane that they charter ...[intervenes]

MR MANTSHA: No, my understanding is they owned this flight.

ADV KENNEDY SC: I see. And so, why were you getting a lift from them? It is not that common that one accepts a lift from somebody with a charter jet to take on to India.

10 Why were you favoured by this arrangement?

MR MANTSHA: Well, firstly, as I said. This was not a charter plane. This was, according to my knowledge, a plane they own. And in the course of interaction, as I said, I have interacted with them. I expressed the desire to visit this part of the world just to explore for myself and then they said to me: Look, we will be going there sometime and we can give you a lift.

So, of course, I was fine with that. And I think if you just look at the documents, I think the business was
20 made sometime for the trip kept on, I think, being postponed for one reason or the other but this was the flight they owned. And the background of it. We had discussion sometime.

I expressed interest to visit this place for my own and there was a lift. They said: When we go there,

we will invite you. And the opportunity came and I took it.

CHAIRPERSON: When you say it was a lift. My understanding of a lift is that you do not pay. It is free. Is that correct?

MR MANTSHA: Chair, that is correct.

CHAIRPERSON: Okay.

MR MANTSHA: This was a lift. The arrangement was that: Look, when we travelled that side, we will let you know and give you a lift.

10 **CHAIRPERSON**: H'm. Okay.

MR MANTSHA: And indeed when they travelled that side, they indicated to me: We are travelling that side. The lift is here. So I took it and then I went.

CHAIRPERSON: Do you have a recollection of how long before that trip you might have indicated to them you had a desire to go to that part of the world?

MR MANTSHA: I think ...[intervenes]

CHAIRPERSON: Was it 2015? Was it earlier?

MR MANTSHA: No I think it is as early as 2014.

20 **CHAIRPERSON**: Oh, as early as 2014?

MR MANTSHA: Ja, as early as 2014.

CHAIRPERSON: Okay. Before or after you became chairperson of the board?

MR MANTSHA: Before I became the chairperson.

CHAIRPERSON: Before you... Yes. I am might have

forgotten something you might have told me previously.
How long have you known the Gupta's or Mr Salim Essa
prior to being part of the Board of Denel?

MR MANTSHA: I have known them as from 2014. I mean,
we had direct contact.

CHAIRPERSON: Oh, okay.

MR MANTSHA: Yes.

CHAIRPERSON: Okay. Early part of 2014?

MR MANTSHA: It should have been around May/June.

10 **CHAIRPERSON:** Around May/June 2014?

MR MANTSHA: Ja, somewhere there.

CHAIRPERSON: Okay. And who in particular were you
dealing with at that time that you had met or had contact
with in the Gupta family or...?

MR MANTSHA: At that time, the person who was mainly
of – in the media business was Mr Tony Gupta.

CHAIRPERSON: Ja.

MR MANTSHA: And of course, my interaction started with
him being a stakeholder in the portfolio where I was... a
20 Minister.

CHAIRPERSON: Oh, okay. It is ...[intervenes]

MR MANTSHA: And you know, interacted with issues
relating to, you know, the media landscape.

CHAIRPERSON: Yes.

MR MANTSHA: Ja.

CHAIRPERSON: Okay alright. Thank you, Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. And when you went to that – on that trip to India, thanks to free lift that you have got from the Gupta's in their privately owned plane, did you in fact travel around as a tourist in India?

MR MANTSHA: Yes, when I got there, I moved around to see. I think I have visited a lot of places, you know, around the cities where I was.

ADV KENNEDY SC: Yes.

10 **MR MANTSHA:** I was in Mumbai. I was ...[intervenes]

ADV KENNEDY SC: I do not think we need all the details.

MR MANTSHA: Yes, I ...[intervenes]

ADV KENNEDY SC: I am just asking generically.

MR MANTSHA: I visited the place.

ADV KENNEDY SC: And were you taken around by the Gupta's to show you the tourist spots or did you go without them?

MR MANTSHA: No, I went on my own.

ADV KENNEDY SC: On your own?

20 **MR MANTSHA:** Yes.

ADV KENNEDY SC: You see, it is significant that, it seems, that on this passenger list there is a whole large number of Gupta's and Singala's, all part of that – of the overall Gupta family and then somebody called Mr Mantsha and you do not have family with you. Was it your habit to

travel on your own, as a person completely on his own travelling a foreign country?

MR MANTSHA: I think on one of the occasions, I think probably we were in Delhi. I think two of their youngsters, I think accompanied me to some place.

ADV KENNEDY SC: Two of the Gupta youngsters.

MR MANTSHA: Ja.

ADV KENNEDY SC: I see.

MR MANTSHA: They were trying to give me
10 ...[intervenes]

ADV KENNEDY SC: Yes.

MR MANTSHA: ...because it is quite a very – a very congested place. It is very highly densely populated. I think on one occasion, yes, they walked around with me. But more often, you get your own movement. I moved alone.

ADV KENNEDY SC: I see. And did you declare to Denel? Because by this stage, of course, you were recently – you had recently assumed office as the Chairperson of Denel.
20 Did you disclose to Denel as a benefit, the fact that you have received a free flight from the Gupta's?

MR MANTSHA: Well, firstly, it depends on where you sit. I did not ...[intervenes]

ADV KENNEDY SC: Sorry, where who sits? I am asking you. You sat as the Chairperson of Denel.

MR MANTSHA: Well, I am saying this was a personal trip.

ADV KENNEDY SC: Yes, I am sorry Mr Mantsha. Really. I do not want to go into another day of evidence, please.

MR MANTSHA: Yes.

ADV KENNEDY SC: We really need to try and focus on the questions. Simply... I did not ask you where you sat or where anybody sat. I said, you, by this stage, had recently taken up office as Chairperson of Denel. Did you declare it as a benefit? The answer would be either: Yes,
10 I did. Or: No, I did not.

MR MANTSHA: No, of course, I did not.

ADV KENNEDY SC: Sorry, please let me finish. And then if you say no, one can accept or should not as witness be try to anticipate everything but you can know what I would then ask is: Why not? Did you not think it appropriate? And you might say: Well, no, I did not think it appropriate. That is why I did not and this is the reason.

MR MANTSHA: Well, to start with. This was something undertaken in my private capacity as a non-executive.

20 **ADV KENNEDY SC:** Did you declare it Mr Mantsha?

MR MANTSHA: Of course I did not. It was not necessary ...[intervenes]

ADV KENNEDY SC: ...I do not know. That is why I am asking.

CHAIRPERSON: I am sorry. I am sorry. I am sorry. He

did say earlier on but I think the two of you were talking at the same time.

ADV KENNEDY SC: Yes.

CHAIRPERSON: He did not declare it. Is that right?

MR MANTSHA: Yes.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: I am sorry I did not hear you, Chair?

CHAIRPERSON: He did say earlier on.

ADV KENNEDY SC: Yes?

10 **CHAIRPERSON:** But I think at that time, you might not have heard him because the two of you were talking at the same time.

ADV KENNEDY SC: Yes.

CHAIRPERSON: He did say he did not declare it.

ADV KENNEDY SC: He did not declare it?

CHAIRPERSON: Ja.

ADV KENNEDY SC: Then I missed it. I am sorry.

CHAIRPERSON: H'm.

20 **ADV KENNEDY SC:** I apologise. But I am just trying to keep answers a little shorter if you would not mind. You will be aware that the Chairperson is under huge pressure to finish the huge work of the Commission and we cannot – we really cannot have yet another day having to hear your evidence.

So you did not. Now in a sentence or two,

please try and keep your answers brief. Why did you feel that you did not need to? You started by saying and then I interrupted you. You started by saying: Because this was a personal thing. Just please finish the answer.

MR MANTSHA: Ja, but Chairperson, can I also say this? I understand the urgency of the Commission to finish. I also do not want to keep on coming but at the same time, I think I must be given an opportunity to explain what I think it is appropriate as I am giving the answers. It is up to you
10 to decide otherwise.

CHAIRPERSON: Yes.

MR MANTSHA: Whether ...[intervenes]

CHAIRPERSON: Maybe I could say this. What does help Mr Mantsha is when a question requires a yes or no, is to start by saying yes. Or if you say no, you say no. Even if you might have an explanation because when you start with an explanation before you can say yes or no, it does create a problem. But preferable, if you can just say yes, it is yes. If you would like to explain, you can say: I would like
20 to explain.

MR MANTSHA: Chairperson, what I am explaining here is. I did not declare because I did not see any conflict or possible conflict of it. I did not declare it. And my understanding is, you declare where there is conflict of interest.

ADV KENNEDY SC: Well, we could debate that, the legality and the business ethics and so forth. I am not proposing to that this afternoon. We are here to just deal with facts. The next page I would like you to go to, please. Sorry, Chair. It is page 478.

CHAIRPERSON: We have an indication somewhere Mr Kennedy or are you going to deal with it at some stage what the monetary value of that lift was?

ADV KENNEDY SC: I have not dealt with that but perhaps
10 I should do that.

CHAIRPERSON: Ja, okay.

ADV KENNEDY SC: On your guidance.

CHAIRPERSON: H'm.

ADV KENNEDY SC: Mr Mantsha, it would cost – if you have not taken that lift with – on the private owned jet of the Gupta family, how much would you had to have paid if you paid like the rest of us normal airfare with a normal commercial airline?

MR MANTSHA: I do not know.

20 **ADV KENNEDY SC:** Well, we know that your ticket to Dubai, it is very roughly the same sort of distance from South Africa to Dubai as it is to India. Do you know that cost about R 28 000,00? Do you agree that it would be in that sort of ballpark, not precisely?

MR MANTSHA: Chairperson, I will not speculate. I do not

know.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Can I take you now, please, to page 478?

MR MANTSHA: [No audible reply]

ADV KENNEDY SC: This, again, is a series of emails in which Mr Chawla is an active participant and this refers, as I understand it, to a reservation at the Oberoi Hotel in Dubai. You see the subject about five lines from the top.

10 You see that?

MR MANTSHA: Yes, I do.

ADV KENNEDY SC: The date of that email was the 2nd of January 2016 and this appears to be, if one looks at the text – I am not going to read it all out – but it seems to be an email from or between Mr Chawla and the hotel in question to confirm the booking for you to stay at the Oberoi Hotel in Dubai. Do you recall? Did you have a trip to Dubai in January 2016 and did you stay at the Oberoi Hotel?

20 **MR MANTSHA:** I think I did, ja.

ADV KENNEDY SC: You think you did?

MR MANTSHA: Ja.

ADV KENNEDY SC: And it refers to, at the foot of the page... In fact, the bottom email, there are a whole lot of different lines which do not always makes sense. They are

sort of electronic jargon, as it were. But there is an email about three-quarters of the way down. It says:

“Dear Mr Mantsha. Thank you for choosing the Oberoi Hotel in Dubai.

We are pleased to confirm your reservation and look forward to welcome you to the Oberoi Hotel in Dubai.

From Room Reservations...”

And then at the foot of the page, it gives arrival
10 date, Sunday, the 3rd of January 2016. Transfer, please
advise. And then departure date, the 6th of January. So it
was a three or four day trip that you took to Dubai or at
least stayed at the Oberoi Hotel during the trip to Dubai.
Is that correct?

MR MANTSHA: Ja, that is correct.

ADV KENNEDY SC: And again, these arrangements were made by Mr Chawla on your behalf. Is that correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: As a personal favour to you?

20 **MR MANTSHA:** No, not as a favour.

ADV KENNEDY SC: No?

MR MANTSHA: I paid for the arrangements.

ADV KENNEDY SC: You paid for this?

MR MANTSHA: Yes.

ADV KENNEDY SC: But I mean the actual making of

arrangements was done as a personal favour to you?

MR MANTSHA: No, it was not a personal favour.

ADV KENNEDY SC: So why did Mr Chawla do it at all? He was not doing it in his capacity, you told us earlier, making arrangements for you as an executive in the Gupta family business empire.

MR MANTSHA: I think to repeat myself, Chairperson. I said he was running a side-show, a side-business for himself.

10 **ADV KENNEDY SC:** Side-show?

MR MANTSHA: Yes.

ADV KENNEDY SC: Even though, travel excellence ...[intervenes]

MR MANTSHA: So it is not like he was doing favour to me. He was not only arranging this things only for me.

ADV KENNEDY SC: Did you not tell him we reimburse him but also reward him for his troubles? In other words: I will pay you back the twenty-odd thousand or whatever it might be and I will put in an extra five thousand to pay you
20 for your trouble?

MR MANTSHA: Well, there was a smaller extra fee to him.

ADV KENNEDY SC: I see. And so you paid for this?

MR MANTSHA: I paid for this.

ADV KENNEDY SC: And how did you – did you reimburse

him?

MR MANTSHA: I reimbursed him?

ADV KENNEDY SC: Personally?

MR MANTSHA: Personally, yes.

ADV KENNEDY SC: Why did he pay the hotel for you to reimburse? Why did he not just make the arrangements and when you get to the hotel or before you get to the hotel, like the rest of us in normal bookings, we pay? We are the traveller. We are the person who is going to reside
10 in the hotel. We pay the hotel, either before or at the end of the stay. Why did you have to pay Mr Chawla to do that?

MR MANTSHA: Because he was making arrangements ...[intervenes]

ADV KENNEDY SC: Yes.

MR MANTSHA: ...as good as your travelling agency do, all the arrangements, and pay whatever has to be paid for you and they give you the invoice and you pay them.

ADV KENNEDY SC: I see. And ...[intervenes]

20 **CHAIRPERSON:** Did you pay cash ...[intervenes]

MR MANTSHA: I did ...[intervenes]

CHAIRPERSON: ...again?

MR MANTSHA: [No audible reply]

[Parties intervening each other – unclear]

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: And so, presumable, you cannot prove that you have paid him back?

MR MANTSHA: Well, I do not understand when you say prove? I can prove. I paid.

ADV KENNEDY SC: Well, you – with your oral testimony, I understand you are giving evidence, but is there any other evidence that you can put forward to show that the Chairperson can place trust in your word?

MR MANTSHA: Except that he can confirm it.

10 **ADV KENNEDY SC:** He could confirm it?

MR MANTSHA: Ja.

ADV KENNEDY SC: Of course, he is overseas. We know that Parliament tried to have him give evidence and he seems to have been overseas for some considerable time. So the suggestion that you make... Thank you very much for the suggestion. We had thought about that but, of course, we would like to have the evidence of Mr Chawla. And if he is watching this online. Please, Mr Chawla, you know where to contact us. We would like to hear your
20 evidence inter alia on whether you received the reimbursement.

And then we see on the following pages 482 and 483 further emails. It appears that Mr Chawla, actually, organised for a vehicle, a chauffeur vehicle to pick you up to – at the airport to take you to this hotel in Dubai. Is that

correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: Do you recall that?

MR MANTSHA: [No audible reply]

ADV KENNEDY SC: And did he pay for the travel cost of that as well and you reimbursed him?

MR MANTSHA: I did.

ADV KENNEDY SC: Also in cash?

MR MANTSHA: Yes.

10 **ADV KENNEDY SC:** What these document show is very detailed. Email came back and forth, back and forth about all of these arrangements. Nowhere in these emails have I found any reference to the amount that was – that you were expected to reimburse Mr Chawla, how you would do it, when you would do it and whether you did it, and if so, any detail.

MR MANTSHA: Can I answer that Mr Chair?

ADV KENNEDY SC: Yes, well, I am putting it to you.

MR MANTSHA: Well, firstly, I do not know where these
20 emails come from. I have explained how I transacted with him, how we have dealt with one another. So I am sure, as the Commission, you know where these emails – I mean, do not know where these emails are coming from. And of course, I can only confirm what I have done. I cannot go beyond what I have done ...[intervenes]

ADV KENNEDY SC: I have already *shared(?)* that with you.

MR MANTSHA: Yes. So for you to put it to me that you cannot find an email that confirm what I am saying.

ADV KENNEDY SC: Yes.

MR MANTSHA: As if I know where these emails are coming from. I do not know.

ADV KENNEDY SC: Do not worry about emails ...[intervenes]

10 **MR MANTSHA:** I am saying...[intervenes]

ADV KENNEDY SC: ...in my mind.

[Parties intervening each other – unclear]

MR MANTSHA: I am saying to you, Mr Chair. We can confirm what I am talking about.

ADV KENNEDY SC: I see. Do you have any emails of your own? I mean, you must have access to your own emails and/or phone messages? You, presumable, have your phone here? Is there no evidence that you can come up with, either right now or else, perhaps after this hearing
20 is over, you can send it to us as the Legal Team to say: Here we are, Chairperson.

I have actually got an SMS or Whatsapp message or an email or whatever. To say: Thank you for seeing Mr Abul(?), yesterday. I confirm you told me I owe you R 28 000,00 odd for this air ticket. Would it suit for

you for me to come around your house on Sunday morning because I have got a whole lot of cash or whatever.

MR MANTSHA: Ja, but ...[intervenes]

ADV KENNEDY SC: Can you find anything like that?

MR MANTSHA: Mr Kennedy, we can sit and assume.

ADV KENNEDY SC: No, I am asking you if you have anything like that?

MR MANTSHA: Of course, I was dealing with this person, more often face-to-face.

10 **ADV KENNEDY SC**: Yes.

MR MANTSHA: I would talk to him.

ADV KENNEDY SC: Yes.

MR MANTSHA: When I pay him, I would pay him interest.

ADV KENNEDY SC: I understand.

MR MANTSHA: So ...[intervenes]

CHAIRPERSON: The answer is you do not have?

MR MANTSHA: No, but again Chairperson, without being accused of trying to delay.

CHAIRPERSON: H'm.

20 **MR MANTSHA**: If a person then assumes that for certain things to be proved there should be an email, there should be a telephone call.

CHAIRPERSON: H'm?

MR MANTSHA: I gave you an example of what we do every day with people that we know. I come to you, I

borrow money.

CHAIRPERSON: No, no. I understand that and I am sure he understands it.

MR MANTSHA: Yes.

CHAIRPERSON: He understand that part. You might just have something and that is why he was asking, do you have anything. So the answer is: No, I do not have.

MR MANTSHA: No, I will not give you like that. We were not dealing like that.

10 **CHAIRPERSON**: Ja. Mr Kennedy.

ADV KENNEDY SC: Thank you, Chair. May I now move on to another transaction from the same bundle, page 428?

MR MANTSHA: [No audible reply]

CHAIRPERSON: Did you say 428?

ADV KENNEDY SC: Yes, Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Ja, 428. It is a municipal account. You see by the City of Johannesburg Municipality?

MR MANTSHA: [No audible reply]

20 **ADV KENNEDY SC**: Is that correct?

MR MANTSHA: Ja, correct.

ADV KENNEDY SC: And that is an invoice in your name. Is that correct? L D Mantsha, P.O. Box 1127, Randburg. Is that your name and postal address at the front?

MR MANTSHA: Correct.

ADV KENNEDY SC: And it relates, it seems if we look at the right-hand portion near the top. It refers to an address in... I am afraid my eyes are too bad to read it. I think it is... Is it Main Street in Bordeaux?

MR MANTSHA: Yes, correct.

ADV KENNEDY SC: And there is – and this seems to be a municipal account. It says previous account, et cetera, interest on arrears, et cetera. And it comes to R 14 000,00 odd. R 14 238,00 it seems. Now did you own at that time
10 or do you still own the property in Main Street, Bordeaux?

MR MANTSHA: Yes, I do.

ADV KENNEDY SC: You do?

MR MANTSHA: Yes.

ADV KENNEDY SC: And you did at this time. And was this an invoice issued by the municipality for your personal account for amounts owing in respect of that property?

MR MANTSHA: I think without anticipating your question.

ADV KENNEDY SC: Yes.

MR MANTSHA: These proof of residence ...[intervenes]

20 **ADV KENNEDY SC:** Sorry ...[intervenes]

MR MANTSHA: ...was supplied... Was supplied for the purposes of applying for a visa. So it was given ...[intervenes]

ADV KENNEDY SC: Applying for a visa?

MR MANTSHA: Yes.

ADV KENNEDY SC: I see. Thank you. You have not expect(?) my question. I just want to take you to the previous page 427. There is an email from Yvonne and her email address at the top is info@lungisanimantshaattorneys.co.za. That is your official firm's name, not so?

MR MANTSHA: Correct.

ADV KENNEDY SC: Was she a legal professional or was she a PA? What position did she hold?

10 **MR MANTSHA:** She is a PA.

ADV KENNEDY SC: PA. And that then was sent. It says municipal account as the attachment.

It says:

“Please find the attached document for your urgent attention...”

So you are saying that was sent on your behalf by your PA to – you will see it is actually going to Ashu. That is Mr Chawla. For purposes of obtaining a visa.

MR MANTSHA: Correct.

20 **ADV KENNEDY SC:** Not for payment of the municipal ...[intervenes]

MR MANTSHA: No, not at all.

ADV KENNEDY SC: I see. Thank you. I am sorry, Chair. I am just trying to get to my next topic.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Now I just want to deal briefly Mr Mantsha, if I may, with the meeting that took place at the Saxonwold residence of Mr Tony Gupta, that Mr Saloojee gave evidence on, in some detail.

And Mr Saloojee has told the Commission that he had an impression, of course an impression does not necessarily facts, but his impression was that Mr Gupta was unhappy about his perceived resistance.

That is Mr Saloojee's perceived resistance, in particular relating to the Asia joint venture. And you were present at the meeting in Saxonwold. Is that right?

MR MANTSHA: I was present Chairperson.

ADV KENNEDY SC: Yes. What was our impression? Do you have any comment on Mr Saloojee's impression? Because Mr Saloojee has said, his impression was, from what was said and in the tone in which it was said, Mr Tony Gupta was very unhappy about Mr Saloojee apparently resisting the efforts of the Gupta's to pursue the Asia joint venture.

20 **MR MANTSHA:** Well, Chairperson, with respect. It was not in my impression for the following reason. That meeting was not discussing VR related issues. That meeting was discussing the agreement between Mr Saloojee and Mr Essa whereby Mr Saloojee undertook to help Mr Essa to acquire a company called LMT.

LMT is a company which was – I do not know whether they still owe 51% by Denel at the time, and 49% was owned by private shareholders. The agreement between the two, as I understood, was that Mr Saloojee would assist Mr Essa by talking to the private shareholders of LMT to try to secure a sale of their shares to Mr Essa.

So that meeting was a follow-up to some longstanding discussion as it appears to me... And it is the same Mr Essa and Mr Saloojee who together assisted one
10 another to get Mr Essa to buy VR Laser.

What was discussed in that meeting. Of course, Mr Essa saw LMT as a strategic acquisition for himself to be a serious player in the defence spaces. And he was asking Mr Saloojee: How far are you? What is the reaction of the private shareholders? Mr Tony Gupta did not really say much in that meeting. So the person – the people who were talking a lot in that meeting, it was Mr Saloojee and Mr Essa.

I was then asked, at the end: What is your
20 view? So because, at that point, I did not even know what LMT stood for. I was knew. So I did not want to embarrass myself. I then said: No, I have got no comment. And the meeting ended... So in short, I disagree that that meeting had anything to do with the Asia VR or anything like that. It had everything to do with LMT.

ADV KENNEDY SC: Right. Now you have said that in your statement. If I can take you to it, please? It is in the same bundle, page 331.

MR MANTSHA: [No audible reply]

CHAIRPERSON: What is the page number again?

ADV KENNEDY SC: 331, Chair.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Do you have it?

MR MANTSHA: Indeed, Chairperson.

10 **ADV KENNEDY SC:** Now in paragraph 7, your heading is at paragraphs 97 to 99. That is the reference, as I understand it, to Mr Saloojee's initial statement.

MR MANTSHA: Indeed.

ADV KENNEDY SC: Is that right?

MR MANTSHA: [No audible reply]

ADV KENNEDY SC: Because he was specifically asked by the investigators of this Commission to comment on particular features of Mr Saloojee's affidavit. Correct?

20 **MR MANTSHA:** [No audible reply] [Microphone not switched on.]

ADV KENNEDY SC: Oh, you will need to direct your... Are you asking for a comfort break?

CHAIRPERSON: Oh, you would like a comfort break?

MR MANTSHA: [Microphone not switched on.]

CHAIRPERSON: No, that is fine.

MR MANTSHA: [Microphone not switched on.]

CHAIRPERSON: Okay, no, that is alright. We are going to break at four. So let us take it now. Ten minutes? Let us say let us resume at ten to four.

ADV KENNEDY SC: Thank you, Chair.

CHAIRPERSON: Ja. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

10 **ADV KENNEDY SC:** Thank you, Chair. Chair, I believe I was at page 331 of bundle 8 and paragraph 7 is headed at paragraph 97 to 99 and you have confirmed - Mr Mantsha, thank you for that - that this relates to Mr Saloojee's statement, his initial statement.

Now I just want for the record to be fair to you to just record that in a later statement that you gave you made a slight correction of the detail and we thank you for that, how your typed statement reads subject to the amendment that I will deal with in a moment is:

20 "I did not request to meet Mr Saloojee and I did not direct him that the meeting would take place at the Gupta residence. My recollection of the event is that Mr Essa convened the said meeting and he requested me to attend."

Etcetera. Now in your later statement you have changed

this to say:

“I do not recall who requested this meeting.”

So thank you for that correct. But you have confirmed of course now also that there was such a meeting at the Saxonwold residence of Mr Gupta.

MR MANTSHA: Correct.

ADV KENNEDY SC: Now if we look – and here I am going to ask you just to put to one side the file that you are looking at now with your statement, just put that aside for
10 a moment please and now can I just take you to Mr Saloojee’s statement that you are commenting on? It is bundle W4A and while that is being readied for the learned Chair can I just give you the page number, it is RS022. Sorry, Chair, I should have indicated to your registrar a moment ago.

CHAIRPERSON: Ja, no, that is fine.

ADV KENNEDY SC: So here of course there is only one set of page numbers, this time on the right hand side, if you look at RS022. I am just going to give you the digits,
20 22. And if we look at the foot of the page, it says paragraph 95, have you got that?

MR MANTSHA: Correct.

ADV KENNEDY SC: It says this – this is Mr Saloojee speaking:

“On 24 July 2015, Brown...”

That is Mrs Lynne Brown – Ms, I beg your pardon, Lynne Brown the then Minister of Public Enterprises.

“...convened a meeting with the incoming board and presented her strategic intent statement.”

And then he attaches it.

“At this meeting Brown also announced the new members of the audit and risk committee namely Ms Mpho Kgomongoe as Chairperson, Mr Msomi, Mr Mahumapelo and Ms Ntshaveni”

10 Did you attend that meeting where the incoming board including you, as Chairperson attended?

MR MANTSHA: Yes.

ADV KENNEDY SC: Right. And then he says, Mr Saloojee, paragraph 96:

“Sometime in early September 2014, Mantsha...”

That is yourself.

“...requested a briefing meeting with me in Johannesburg.”

Is that correct, you were about to take office or you had
20 just taken office as Chairperson and you requested a meeting with Mr Saloojee for him as Group CEO to provide a briefing, is that right?

MR MANTSHA: Well, Chairperson, Mr Saloojee approached me.

ADV KENNEDY SC: I see.

MR MANTSHA: I think on two or three occasions before I started the work and we met I think at Park Hyatt or wherever the case may ...[intervenes]

ADV KENNEDY SC: I am sorry, where?

MR MANTSHA: I think we met at Park Hyatt or wherever.

ADV KENNEDY SC: Park Hyatt, the hotel?

MR MANTSHA: Yes, the hotel.

ADV KENNEDY SC: Yes?

MR MANTSHA: And it was trying to find one another.

10 **ADV KENNEDY SC:** Okay, but presumably it made sense, that you needed to get to know each other and he needed to inform you what was going on in Denel as CEO to you as Chairperson so that you could find your feet, as it were.

MR MANTSHA: Yes, but what I do not remember, it is where I called it or he called it.

ADV KENNEDY SC: Okay, that is fine. But do you recall it was early September 2015? Before the first board meeting?

MR MANTSHA: I think before the first board meeting we
20 did meet – you see, normally the CE would meet the Chair.

ADV KENNEDY SC: Of course.

MR MANTSHA: And, you know, canvass certain issues and say well, Chair, I need this resolution, I need that resolution.

ADV KENNEDY SC: Yes.

MR MANTSHA: To be made and, you know, I think we did meet in preparation of the board meeting.

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

CHAIRPERSON: I think also – I am sorry, Mr Kennedy, I think a few minutes ago you said before you started work as Chairperson of the board.

ADV KENNEDY SC: Ja.

MR MANTSHA: You did meet with him about three or so times, is that right?

10 **ADV KENNEDY SC:** I think two times also.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Thank you. And that obviously makes sense because you want to get some inside knowledge before you start sharing your first board meeting where you might not know what is going on but the important bit is that I would like to focus on now is how this came about and where the meeting happened because Mr Saloojee's version is that you requested a briefing meeting, you of course have said that he requested some
20 of the meeting and he says you indicated that the meeting would probably be at your office, at his office, that is yourself. Where was your office at that stage, was that when you had reopened your attorney's practice.

MR MANTSHA: Ja, my office has been always in Craighall.

ADV KENNEDY SC: In Craighall?

MR MANTSHA: Yes.

ADV KENNEDY SC: Okay. And then he says this.

“He said...”

That is yourself said.

“...he would confirm the venue when I was on my way. He did not specify the nature of the meeting and I did not think anything untoward about such a meeting. On my way to the meeting...”

10 This is paragraph 97, which is the first part of the passage that you have commented on in your statement that we have just looked at.

“On my way to the meeting he called and directed me to the Gupta residence in Saxonwold. I was not surprised.”

Now what I would like to ask you is this. Is that correct that you phoned him or you said to him let us have a meeting and I will tell you where the meeting will be once you are on your way and while you were on your way he
20 said meet me at the Saxonwold residence of Guptas.

MR MANTSHA: Well, my answer to this, Chairperson, as far as his specific meeting is concerned, the answer is no and it is no because I had no contact of what was going to be discussed. I did not even know who LMT was but I had a deal with Mr Saloojee to say wherever there is pressure

– because when you hold this position, you know, business people lobby their business interest so you are always under constant pressure as the CE. I said I will put a cover on you so that you focus on what you have to do without interference of, you know, all this pressure. So this meeting I would not have called for it because I had no knowledge of the issues to be discussed.

ADV KENNEDY SC: Yes, but you have confirmed that one meeting which you and Mr Saloojee attended took place at
10 the home of Mr Tony Gupta in Saxonwold.

MR MANTSHA: Yes, true.

ADV KENNEDY SC: Now this was before you had chaired your first board meeting, correct?

MR MANTSHA: Well, again, Chairperson, I cannot tell you the date of that meeting at the Gupta's residence.

ADV KENNEDY SC: Yes.

MR MANTSHA: But all I can say, I was very new, I was trying to read everything about Denel. I had not – at that time came across the subsidiary of Denel that is called
20 LMT.

ADV KENNEDY SC: Yes.

MR MANTSHA: So I was fairly very new, I cannot tell you when but I was [inaudible – speaking simultaneously]

ADV KENNEDY SC: I understand, I have got you. Thank you. Now but how did it come about then that you

attended the meeting at the Gupta residence in Saxonwold, was that arranged by Mr Saloojee? Is that what you are telling me?

MR MANTSHA: Well, all I am saying, the – where I sit now, the probability is, as much as I say I do not recall, whether it was Mr Saloojee or Mr Essa.

ADV KENNEDY SC: Okay.

MR MANTSHA: But because the issues where between Mr Essa and Mr Saloojee, from where I sit, one of them
10 could have arranged it. I do not know who really arranged it.

ADV KENNEDY SC: Yes. And then what he says is this in paragraph 98:

“Tony and Essa were also present at the meeting.”

You have confirmed that.

MR MANTSHA: Ja, ja, they were present.

ADV KENNEDY SC:

“At the meeting Tony specifically addressed the issue of Denel Land Mobility Technologies”

20 That is the DLM. Sorry, LMT.

“...and said that were interested in acquiring the business. Denel had a 51% stake in the business. Mantsha asked me...”

That is Saloojee.

“...to look into the matter and to give him feedback

on the way forward. I indicated that this would take time and that such a transaction would have to go through several processes. The meeting then ended. I...”

That is Saloojee.

“...left the meeting knowing that I was being instructed to revert on how I would facilitate the sale. I had no intention of doing so. It is also important to point out that the body language and tone of voice of specifically Tony during this meeting gave me the impression that he was extremely frustrated by me. I realised that my strategy of fobbing them off was no longer working.”

He has explained that elsewhere in his statement. He kept resisting attempts by Essa and others to be pursuing projects.

“It was clear to me...”

He says.

“...that my lack of cooperation was becoming problematic with him.”

Now you have indicated earlier you have a different recollection of the meeting.

MR MANTSHA: Well, I do, Chairperson, for this reason. This meeting, the impression I got, they were discussing about longstanding arrangement that they had in trying to –

for Mr Saloojee to assist Mr Essa to acquire the shareholding of LMT in order to increase the strategic capacity of VR Laser. So there was a background to that meeting which I was not privy to and the content of that meeting I was not privy to until such time where they were discussing all of it.

ADV KENNEDY SC: Yes.

MR MANTSHA: And I did not say anything in that meeting. I was asked to say but I not and I have already
10 disagreed that Mr Tony Gupta participated and said the things that Mr Saloojee allegedly said. It was mainly between Mr Essa and Mr Saloojee and the impression, that meeting happened in a very friendly atmosphere. I did not hear anybody raising voice, I did not hear anyone shouting at one another, it might well be that there are issues between Mr Essa and Mr Saloojee that I am not aware of and maybe the history that I am not aware of but it was a very cordial meeting, there was no shouting, there was nothing.

20 **ADV KENNEDY SC:** Right. Can I just ask this. You have indicated earlier you have a different recollection as to who set up the meeting, you are not sure whether it was Saloojee or Essa but you are sure that it was not you. You had not even attended even a single board meeting yet and I do not mean that critically, that is the fact, there was an

orientation type of meeting and so forth before you could have a board meeting.

MR MANTSHA: Yes.

ADV KENNEDY SC: Even before you have convened with your new colleagues of the board at the first formal board meeting, you were being asked by either Mr Saloojee, who was Group CEO now reporting to you or Mr Essa from the Gupta business empire to attend a meeting at Mr Gupta's private residence in Saxonwold to discuss a particular
10 matter that on your own version, you did not really have any background on – and again I do not criticise you, it makes perfect sense because you just new on the job as Chairperson. Why were you invited to the meeting at all? Did it not put you in a bit of an awkward situation? There are now detailed discussions about the acquisition of a company called LMT, you did not even know who LMT, for good reason, and now it is all happening in somebody private residence talking about acquisitions and so forth that you have no background on. It seems strange to me.

20 **MR MANTSHA:** No really strange, Chairperson. In the business environment, you know, business people lobby their interest all the time and as I said to you, Chairperson, the working arrangement that myself and Mr Saloojee opted for was to say because there is constant political pressure, business pressure from, you know, business

people who are pushing their own interest.

So where necessary, when you need a cover, I give you a cover and this was a meeting where I went with him in terms of my working arrangement with him and my role there was just to ensure that there is no undue pressure on Mr Saloojee because business people, they push their business interest and there is some time they push it very, very hard. So I did not see anything out of attending that meeting because here is Mr Essa, who has got existing
 10 relationship with Denel and Mr Essa, in terms of my information, was the only because business person who is black who is operating at the main, the hardcore of the defence industry.

So, I said to you of course I did not know what they were going to do but it was not strange to me that I would go with my CE to a meeting of that nature. We were not going to do anything that we are not supposed to do and for sure, the meeting ended, we left that meeting and of course I would assume that Mr Saloojee explore the
 20 discussion with those private shareholders.

CHAIRPERSON: You know, Mr Mantsha, you may – you may have thought on your version that you were going there to protect Mr Saloojee against pressure from Mr Salim Essa or whoever but did you think about the possibility that you could be – you could have been

brought to the meeting for your presence to act as pressure on Mr Saloojee?

MR MANTSHA: Not all, Chairperson.

CHAIRPERSON: Yes.

MR MANTSHA: Not at all because Mr Saloojee was talking to private shareholders of LMT and there was no pressure I could have asserted to Mr Saloojee because his arrangement was purely with Mr Essa and from the discussion of that meeting there was no hard feeling
10 expressed to Mr Saloojee by Mr Essa or by anyone in that meeting. It was just a follow-up meeting what is happening.

CHAIRPERSON: Ja. Well, let me tell you about some evidence that I have heard which on the face of it may well be interpreted as revealing a way of doing business that was adopted maybe by the Guptas or by the Guptas and their associates or particularly by, I think, Mr Tony Gupta.

The evidence that I have had reveals that in the number of meetings where he was talking to some
20 government person or SOE official, they would bring – he would bring, for example, Mr Duduzane Zuma to the meeting but almost everyone of those person who attended such meetings with Mr Tony Guptas says Mr Duduzane Zuma had nothing of substance to contribute to the meeting, he was, apart from the pleasantries, he would just

be there. Tony Gupta would do most of the talking.

Mr Jonas said so about Mr Zuma in regard to the meeting that he had with a Gupta brother who may well have been Tony Gupta on the 23 October 2015 when he says he was offered the position of Minister of Finance and some money.

Mr Dukwana said the same thing about the meeting that he said he had at the Gupta residence with Mr Tony Gupta and he said Mr Duduzane Zuma was there where,
10 according to Mr Dukwana he was asked to fire his own HOD in the Free State and appoint Mr Richard Seleke and he says he was offered money on that occasion.

Mr, I think, Kona who was Chairperson of the SAA Board at some stage and was Acting Group CEO of SAA at some stage also had a meeting with Tony Gupta at the Gupta residence where he says he was offered money, if I recall correctly. I could be wrong on this occasion, Duduzane Zuma was there too but he did not say much and I think I could have another two or three people, so it is
20 quite interesting.

And then, in regard to Denel, part of the evidence given by Mr Saloojee is that at one of the meetings that he had at the Gupta residence with Mr Salim Essa, they brought in Duduzane Zuma and I think on another occasion they brought in Minister Gigaba who was Minister of Public

Enterprises at that time.

He says even with regard to Minister Gigaba there seem to have been no particular obvious reason why they wanted him to be in that meeting because he did not have much to say, also with Duduzane Zuma, so it gives the impression as if they could bring certain people just to show you these are our connections.

So I am saying I am wondering whether you thought that they might not have brought you as a future
 10 Chairperson of the board to say to Mr Saloojee look, you know, we have influenced the Chairperson of the new board, he is somebody that we know.

MR MANTSHA: Well, I do not think so, for these reasons, Chairperson. Mr Essa and Mr Saloojee had longstanding relationship and Mr Saloojee and Mr Essa had transacted before, long time when they actually acquired VR Laser. Apparently my information was the proposition for Mr Essa to acquire VR Laser came from Mr Saloojee and that is the proposition which Mr Essa went for and they
 20 had a longstanding relationship of assisting one another in the acquisition of strategic business in defence and I had no information of any animosity between the two and I had no any information of animosity between either Mr Tony Gupta and Mr Saloojee and the meeting was not Mr Tony Gupta's meeting, the meeting was Mr Saloojee's meeting.

As I said, it was cordial, it was discussed very well, there was no pressure really that I could exert to Mr Saloojee, Mr Saloojee was talking to private shareholders.

CHAIRPERSON: Okay.

MR MANTSHA: We had no influence as the board of Denel to get those private shareholders to agree to sell the shares to Mr Essa. And Mr Saloojee himself, he had no authority to decide for those shareholders. All he was doing was to handle those discussion on behalf of Mr Essa.

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

ADV KENNEDY SC: Thank you, Chair. Now can I take you back to your own statement where you were responding to Mr Saloojee's affidavit and – sorry, Chair, just give me a moment? So that is bundle 8. Have you got that back?

MR MANTSHA: I do, Chairperson.

ADV KENNEDY SC: Okay, it is at page 332.

MR MANTSHA: I do have.

20 **ADV KENNEDY SC:** Now this is part of your statement and you refer in your statement to – in some detail to the points that you have already referred to that the topic discussed at the Gupta residence was the LMT, the possibility of acquiring the shares – of a shareholding of LMT to be sold to VR Laser but I would like to take you on page 332, the last three paragraphs. You see the

paragraph that starts:

“Mr Saloojee reported to Mr Essa...”

Do you see that?

MR MANTSHA: Mr Saloojee?

ADV KENNEDY SC: Reported to Mr Essa, page 332, third last paragraph.

MR MANTSHA: Yes, I do see it.

ADV KENNEDY SC: Right, if I can just remind you what you said in your affidavit.

10 “Mr Saloojee reported to Mr Essa that he was still talking to them...”

That is the private shareholders of LMT.

“...and would continue to discuss with the said LMT private shareholders to sell their shares to VR Laser. I was asked at the end of the discussion if I had any comment and I replied that I had none since I did not even at that stage know what LMT stood for and what it does, and further, I had no background of the matter.”

20 Now that seems to bear out what you told the Chairperson a little earlier that you were a bit in a situation of some ignorance, and I do not mean that in a critical way, you were so new to the position, you did not even know who LMT were and anything about the transaction. Now what you then say is this:

“On my way out...”

That is presumably out from the Gupta residence.

“On my way out with Mr Saloojee, he then said to me Chair, I need your support. I indicated to him that we would discuss the matter.”

What did you understand his request to mean? Why did he need your support? Support for what?

MR MANTSHA: Well, we had already discussed with Mr Saloojee how we should work. So this statement was of course based on our earlier discussion that I must support him in any instances where there is pressure.

ADV KENNEDY SC: Yes.

MR MANTSHA: Or any instances where there is lobby.

ADV KENNEDY SC: Yes.

MR MANTSHA: Where there is political interference and all sorts of things.

ADV KENNEDY SC: Right.

MR MANTSHA: So of course I understood that statement in the context of the working relationship that we were trying to do that I support my CE.

ADV KENNEDY SC: Try and sit closer to the microphone please?

MR MANTSHA: That I support my CE.

ADV KENNEDY SC: Yes and that is an admirable purpose but what it seems to suggest, I am putting it to you, it

seems to suggest that you are in a way confirming part of Mr Saloojee's evidence which was he gets to a meeting in Saxonwold, he feels he is being pressurised by Mr Gupta, admittedly he does not talk about specific used by Mr Gupta, he talks about voice tone and body language and so forth and the Chairperson will assess what weight can be attached to that but Mr Saloojee's evidence has been I get brought to a meeting in Saxonwold, I am only told at the last minute where I am supposed to go, I land up in a

10 Gupta residence and I am then dealt with in a way by Mr Gupta, Tony Gupta, where he seems to be aggressive and very unhappy and pressuring him - Mr Saloojee – because he is obviously not playing the game as it were and so when you confirm that as he came out of the meeting with you he said to you I need your support, Chair. He was already signalling to you there was a problem of the very pressure that you felt it was your duty to protect him against.

MR MANTSHA: Well, Chairperson, talking as far as that

20 meeting is concerned, I did not see any undue pressure, I did not see any pressure. So his statement, as I said, it is relating to what we have done before.

ADV KENNEDY SC: Yes.

MR MANTSHA: And as I am saying to you, these parties were known to each other very well.

ADV KENNEDY SC: Yes.

MR MANTSHA: And it was not within the power of Mr Saloojee to force those people to sell their shares to VR, it was just for him to talk on behalf of VR to see if this can be [indistinct – dropping voice]. So the pressure out of it, I did not see it and I wonder on what basis this could have resulted in a pressure for something that was not within the control of either Denel, myself as the Chair and Mr Saloojee and even Mr Essa himself. So I would not
10 understand the basis of any pressure out of what was being discussed at that time.

ADV KENNEDY SC: So was his request to you, Chair, I need your support as something you did not understand?

MR MANTSHA: Well, I understood this in the context of the working relationship that we were trying to build with Mr Saloojee that I have got to support all the way.

ADV KENNEDY SC: But you yourself, a few minutes ago, said a number of times you saw it as part of your role as Chairperson to protect your CEO against heavy pressure
20 from other people.

MR MANTSHA: Yes.

ADV KENNEDY SC: I do not mean from within your organisation, I mean from outside.

MR MANTSHA: You see, Chairperson, the business world, it is cut throat in the sense that the business people

are out there to market whatever products they have and when you are serving in a state or the company where the people of this country have your respect, you have to adopt a particular approach, you cannot close a gate to people who want to engage with the state-owned and that ...[indistinct – dropping voice] a lot of money. There have been many meetings myself that I have attended with various business people who are pushing ...[indistinct – dropping voice] and understandably so because you know

10 business people have to look at their own interests, but you need to have as the Chairperson to draw the line where you go to support and protect your...[indistinct – dropping voice] from not doing a lot of those because it's primary responsibility is to push...[indistinct – dropping voice]. So, this statement is within the context of what we have been trying to devise as working together and every pressure on him, I had to support. Whether himself, internally feels the pressure or I don't see it as a pressure or I see it as a lobby, or he sees it as a lobby but in this

20 context, I wonder what the pressure was. Unless if Mr Saloojee was not – did not tell me other things that were happening between him and Mr Essa and any other thing probably happening between him and other people but the content of this, there was no pressure because everybody knew it was not within his control it was not within my

control, there was no pressure I could give to him. If the private shareholders were not interested to sell, they were not interested.

ADV KENNEDY SC: Now, you've indicated that you had a number of private meetings with Mr Saloojee when you'd just been appointed to basically fill you in on some matters and then we know that you were at the meeting in Saxonwold, you've confirmed it was early September 2015, but you can't recall exactly when, I accept that and then
10 you've confirmed that the very first Board meeting which you Chaired was the 10th of September 2015.

MR MANTSHA: Correct.

ADV KENNEDY SC: According to Mr Saloojee's affidavit, it appears that before you even had the – Chaired the first Board meeting you had attended the meeting at Saxonwold, you confirm that?

MR MANTSHA: You mean this LMT discussions?

ADV KENNEDY SC: Yes.

MR MANTSHA: Yes, I did.

20 **ADV KENNEDY SC:** Yes, now what should the Chair make about this point. Does it not seem, perhaps, odd to you or odd to one that, you've just been appointed as Chairperson and here I'm interested in ...[indistinct – dropping voice], you have – the first thing you do after being introduced by the Minister that you're the new Board, that you're the new

Chairperson and so forth, the first thing you do is to hold a series of meetings with the Group CEO, now that's not at all odd, that seems to me to make perfect sense but then before you even Chair your very first Board meeting, before you're even interacting with your colleagues on the Board in a formal Board meeting you're off to somebody's private residence in a residential suburb of Johannesburg to talk about some transactions about which you know nothing, for good reason because you're just trying to find
 10 your feet about LMT. Does that not, perhaps, give weight to the suggestion some people have suggested like Mr Saloojee, which is that, behind the scenes the Gupta's were having a – and Essa, their associate, were having a massive influence on Denel's affairs, in fact, interference in Denel's affairs. So, before you've convened a Board meeting, you're now having a private meeting with Mr Gupta and Mr Essa at his house, Mr Gupta's house, isn't that, perhaps, a bit strange?

MR MANTSHA: Chairperson, all I can say is the Gupta's
 20 or Mr Essa did not have influence in my Board or in myself. Maybe the Gupta's or Mr Essa had influence on Mr Saloojee because Mr Saloojee had already acquired – assisted them to – assisted Mr Essa to acquire VR Laser and VR Laser was already doing work with Denel at the time. So, maybe he can talk of that influence they had on

him but as far as the influence they had on myself or my Board, there was none whatsoever, there was no influence.

ADV KENNEDY SC: Thank you, now I'd like to deal further with the issue of how it came about that the Asian project, if I can call it that, the Asian venture came before the Board and Mr Saloojee's involvement in it. Mr Saloojee has given evidence that the idea of the Asian joint venture was raised first by Mr Ntshepe who reported to Mr Saloojee and he suggested it to Mr Saloojee and that Mr Saloojee
10 firmly rejected this proposition and I'm quoting here from a statement as provided to the Commission. Now presumably you weren't involved in those discussions, it seems that those took place before you took office as Chairperson of the Board, is that correct?

MR MANTSHA: Well, I'm not aware of those discussions.

ADV KENNEDY SC: I see, now what Mr Saloojee says is that the next time it was raised was at the first Board meeting, by you, Mr Mantsha as Chairperson and Mr Saloojee's evidence has been, and I'm simply putting it to
20 you by way of fairness so that you can be reminded of it and comment on it and if you disagree with it, you'll have that opportunity. Mr Saloojee said he found it strange that where he, as the Group CEO, had rejected the proposition of the Asian venture, it should be the brand-new Chairperson, yourself, who raises it at the Board meeting

and – yes, just comment on that, did you raise it at the Board meeting?

MR MANTSHA: I think, again with respect Chairperson, I think this morning you furnished me with some copy of the minutes.

ADV KENNEDY SC: Yes.

MR MANTSHA: And I think if you just look at the minutes...[intervenes].

ADV KENNEDY SC: I think let's do that.

10 **MR MANTSHA:** That you have furnished to me.

ADV KENNEDY SC: Yes, let's do that, I can take you, right now to the minutes.

MR MANTSHA: So that matter was not raised by me.

ADV KENNEDY SC: By you?

MR MANTSHA: And let me go back, around February or so, there was a trip by Denel business Executives to India to try to explore that – the possibility of entering into that market...[intervenes].

ADV KENNEDY SC: Possibility of?

20 **MR MANTSHA:** Of setting up...[intervenes].

CHAIRPERSON: Entering that market.

MR MANTSHA: Entering the Indian market and of course at the time Mr Ntshepe was the head of Business Development at Denel, he was an Executive and this was the gentleman at the time of our appointment had bailed a

book – an order book of round about 20 to 26million. So, Mr Ntshepe was, from the evidence we had, a reputable business developer who was, at all times, exploring new markets within ...[indistinct – dropping voice]. So, if that was raised by him, it is illogical that, Denel, under the leadership of Mr Saloojee would send a team to India in February to something that he, himself disagreed with.

ADV KENNEDY SC: Yes, may I just – I want to try and assist, firstly to keep your evidence short but to show that,
10 in fact the minutes is a good idea to look at the minutes and we have actually obtained these minutes for the 10th of September 2015 and in fact they seem to bear out your version, obviously it's for the Chairperson to make a decision in that regard but if I may just find it. In Bundle 8, do you still have Bundle 8 in front of you?

CHAIRPERSON: It must be one of the two in front of you.

MR MANTSHA: Yes.

ADV KENNEDY SC: Right, so it's Bundle 8 and if I can ask you please, to turn to page 483.4.

20 **MR MANTSHA:** 483.4?

ADV KENNEDY SC: That's right, do you have it?

MR MANTSHA: Yes, I do.

ADV KENNEDY SC: So, that is the first page of the set of minutes that we were able to obtain from Denel, finally for the Board meeting of the 10th of September, that's the first

one that you Chaired and indicates that you were present and that you signed, do you see your name, number one on the attendance register at page 483.4, Mr Mantsha do you have it?

MR MANTSHA: Page?

ADV KENNEDY SC: I'm going to give you the page number again, 483.4.

MR MANTSHA: 483.4?

ADV KENNEDY SC: Yes, top left-hand numbers.

10 **MR MANTSHA:** Yes, I do.

ADV KENNEDY SC: Do you have it, is that headed attendance register Board meeting 10 September 2015?

MR MANTSHA: Correct.

ADV KENNEDY SC: And I asked you, is that your name and signature, item number one?

MR MANTSHA: Correct.

ADV KENNEDY SC: Right, then we have the actual minutes that start from the following page, 483.6, you see that Mr Mantsha?

20 **MR MANTSHA:** Point?

ADV KENNEDY SC: 483.6.

MR MANTSHA: Yes, I do have.

ADV KENNEDY SC: Right, now this is a lengthy minute of that Board meeting and it seems to have had a sort of open session as it were, later followed by a closed session in

which members of the Board sat so-called in committee if I can take you to page 483.27, do you see that?

CHAIRPERSON: You said we should go to 483.7.

ADV KENNEDY SC: 483.27 Chair.

MR MANTSHA: Yes, I see.

CHAIRPERSON: Oh, okay.

ADV KENNEDY SC: And that is headed minutes of the in-committee Board meeting and again your name is one of those present as Chairperson, correct?

10 **MR MANTSHA:** Yes.

ADV KENNEDY SC: Right, now I want to take you to the passage which, as I've indicated – in fact, it seems to bear out that it wasn't you that raised the Asian project. If I can ask you now to turn to page 483.31 and if I can just read that to you in 6.2,

20 "Partnership in South East Asia, under discussion deliberation, the Board discussed the recommendation from the CEO to give the Executive a mandate to negotiate a partnership in South East Asia to explore the establishment of a stronger foothold in the region. In summary, the Chairman indicated that as the GCEO had explained during the preceding Board meeting, the business of defence in the South East Asian region was a good market and given the geopolitical issues, one which

would be profitable to explore. The Board discussed the fact that a relationship with a well established partner was a good model to follow and also referred to various issues relating to Denel's IP in similar relationships such as in the UAE, Malaysia etcetera,

I won't go through the rest of that column, the next column, headed, action resolution,

10 "The Board resolved to approve a mandate to the Executive to explore possibilities to establish a footprint in South East Asia subject to the conditions set",

So, this appears to support your evidence that, in fact, it was Mr Saloojee who was raising this, not yourself, in the Board meeting, correct?

MR MANTSHA: Correct, Chairperson.

ADV KENNEDY SC: Right, now – but Mr Saloojee has given evidence that, in fact, what happened was a little more complicated than the minutes might suggest, I don't
20 think the minutes were at that stage available to him but what he's evidence has suggested is this, the person who first raised it in the Board meeting on the 10th of September was in fact you not him and he found this strange and in effect really undermining, I think, was his suggestion. He seemed to feel it was undermining his

position. Mr Ntshepe had come to him, Saloojee, behind the scenes and said, I propose we get involved in Asia. Mr Saloojee responded to Ntshepe, no we don't, I'm not impressed with that, I don't think it's a good project at all and then he comes to the very first meeting that you're Chairing as the new Chairperson and you raise it and he says, well he didn't want to raise it, he didn't raise it, in fact he felt it was inappropriate but you raised it there was a lengthy discussion and at the end of it, you, under your

10 leadership, the Board said, give Mr Saloojee a mandate to pursue the Asian venture. In other words, overruling Mr Saloojee's own view as CEO that the Asian venture shouldn't take ...[indistinct – dropping voice], what do you say about that?

MR MANTSHA: That is contrary to what the official records of company is saying, the official records of the company says, we presented a report, he asked for a specific thing and the Board gave him. So, whatever he said, whether Mr Ntshepe, whether myself, it's not correct

20 in terms of the records of the company it is not, I deny. He gave a report he presented a discussion and we discussed, and it made good business sense to us to do it and we resolved, and we gave them the mandate.

CHAIRPERSON: Do you remember whether meetings of the Board of Denel were also electronically recorded?

MR MANTSHA: Ja, they record the...[intervenes].

CHAIRPERSON: The proceedings.

MR MANTSHA: Ja, the proceedings.

CHAIRPERSON: Yes, okay.

ADV KENNEDY SC: Now, what Mr Saloojee says again, and again, it's just his version and you must be given an opportunity to be directed to his version and given an opportunity to respond to it. He says, that he was against the idea, he was basically, overruled, partly by yourself
10 and also partly by the other Board members and it was apparent that he was not happy with this and it was because of that, in other words, his resistance to the idea that the Asian venture should go ahead that, lo and behold, just two weeks later, less than two weeks later, on the 23rd of September he is then suspended and it was because of that, that is his evidence, your comment?

MR MANTSHA: Chairperson that is absolutely not true he presented and requested the Board to approve for the Executive to explore to go to that market...[intervenes].

20 **ADV KENNEDY SC:** Are you saying it was – I'm sorry to have interrupted, are you saying that Mr Saloojee was in support of the Asian project or he was uncertain, or he was against it but said, look I accept it...[intervenes].

MR MANTSHA: No, he was in favour...[intervenes].

ADV KENNEDY SC: Just don't interrupt me, but Mr

Saloojee's attitude was, well I know Mr Ntshepe is keen on it and if the Board is keen on it, I will accept that mandate and carry it out.

MR MANTSHA: No, he was keen on it, he submitted a report.

ADV KENNEDY SC: He was keen?

MR MANTSHA: Yes.

ADV KENNEDY SC: And – ja – and of course, once he was suspended, Mr Saloojee was suspended on the 23rd of
10 September he was replaced by Mr Ntshepe on an acting CEO basis, correct?

MR MANTSHA: Correct and the rationale Chairperson, was the following, Mr Ntshepe was the person who led Denel, marketing drive over the years and he built an impressive order book. This business depended on Denel going into the foreign market, for these reasons that a domestic consumption of defence material by South African Defence Force has increased significantly. One can see all the budget vote of the Department of Defence; they keep
20 on reducing the allocation to the defence for various reasons. So, the survival of the company remains, outside the board of South Africa Mr Ntshepe was leading that and successfully managed to build a very impressive order book. He was, I think at that stage, he was already at Denel for, close to 20 years, he was even at Denel before

Mr Saloojee. He knew the marketing of the business by far more than Saloojee and my information was, when Mr Saloojee was appointed as the Group Chief Executive, Mr Ntshepe was in the running, he was amongst the three names which was submitted to the Cabinet to pick who the Chief Executive Officer. So, this was somebody who had already a very impressive record at Denel and a very senior Executive at the time, he was even senior, more than Mr Saloojee himself. So, it was a logical choice to
 10 put somebody who has got a reputation in the international market as the marketer because all the clients of Denel overseas, they knew him more than anybody else because he was the one interacting with them. So, that was a logical choice to make.

ADV KENNEDY SC: Thank you. Now, while we are at these minutes, I'm going to take you to another passage in a moment, I just want to take you back to your earlier evidence that you were, if I recall correctly and I'm sorry it's late in the day I may be unsure of the exact detail that
 20 you gave, if I understood your evidence correctly, you said before the first Board meeting you happened to be in London and Mr Saloojee asked you please too help to make sure that he didn't lose his job, that he was feeling under pressure, is that...[intervenues].

MR MANTSHA: Correction Chairperson, it was after our

first Board meeting.

ADV KENNEDY SC: It was after the first Board meeting?

MR MANTSHA: Yes.

ADV KENNEDY SC: When was that?

MR MANTSHA: I think the London trip was towards the end of September.

ADV KENNEDY SC: But that must have been before he was suspended.

CHAIRPERSON: Because he was suspended around 23
10 September.

ADV KENNEDY SC: Correct.

CHAIRPERSON: So, it must have been between the 10th of September and the 23rd of September.

MR MANTSHA: The London trip – he was not yet suspended because that was the time when I raised the issue of Audit and Risk Committee not having access to the committee room. I think we departed to London immediately after the first Board meeting.

CHAIRPERSON: The meeting of the 10th?

20 **MR MANTSHA:** The meeting of the 10th but the investigation about this transaction was going on.

ADV KENNEDY SC: I see, thank you and so it was after the first Board meeting but before the second Board meeting because at the second Board meeting, as the Chair points out on the 23rd of September, that's when he

was suspended.

MR MANTSHA: Correct.

ADV KENNEDY SC: Mr Mhlontlo and Ms Africa.

MR MANTSHA: Correct.

ADV KENNEDY SC: Okay now, can I just ask you to clarify, why was he raising concern that he might be facing dismissal, he might lose his job? Had you told him that, he's job is now on the line, that you were unhappy with him or that other people were making allegations against him or
10 what?

MR MANTSHA: Well, I did not tell him his job was on the line, but he was clever enough to know that, for him to proceed with the acquisition of LLSA contrary to the approvals given by Minister of Finance, Minister of Public Enterprise and that Audit Committee was investigating the matter as mandated by the Board. He actually saw that, that moment was bound to happen for him to be taken out of Denel, so he could see himself.

ADV KENNEDY SC: Now that, of course, must have taken
20 place before the Audit and Risk Committee meeting of the 22nd of September, correct?

MR MANTSHA: In the meeting of the 10th of the Board, there was a very serious debate when the Board realised that they're saying we must pay four hundred and fifty in two weeks are you guys serious about this, how did it

happen that it comes to this, you know...[intervenes].

ADV KENNEDY SC: I'm not asking about who said what.

MR MANTSHA: Yes.

ADV KENNEDY SC: I'm trying to get the sequence, simply the dates that I'm asking you.

MR MANTSHA: Yes.

ADV KENNEDY SC: So, your London discussion with Mr...[intervenes].

CHAIRPERSON: Okay, Mr Kennedy, I'm sorry, I think I can
10 assist. In his affidavit Mr Saloojee says he arrived back from London on Saturday 19 September 2015, so you must have gone there around...[intervenes].

ADV KENNEDY SC: Thank you and with respect that point seems to bear out the basis of the question. That must – your discussion in London must have been before the Audit and Risk Committee met on the 22nd and then gave them an order, the Audit and Risk Committee gave them an order to submit representations why they shouldn't be suspended the next day, is that right?

20 **MR MANTSHA:** Now, if I can recall correctly, the Executive had already met, the Audit and Risk Committee, I think even prior to the first Board meeting, it's normally the case because you need to have sub-committees of the Board to meet before the main Board.

ADV KENNEDY SC: Don't you, at your first Board

meeting decide who's going to be appointed to the sub-committees like the Audit and Risk Committee?

MR MANTSHA: No, the sub-committees are appointed during the induction.

ADV KENNEDY SC: I see.

MR MANTSHA: So, when there was a Board induction, so the committee was set-up and of course the Audit and Risk Committee is the committee which in terms of the shareholder ...[indistinct] gets appointed by the Executive
10 authority.

ADV KENNEDY SC: Right.

MR MANTSHA: So that committee was...[intervenes].

ADV KENNEDY SC: Sorry, that is the Minster?

MR MANTSHA: The Minister, that committee was in existence.

ADV KENNEDY SC: Right.

MR MANTSHA: And that committee had met the Executive in preparation of this specific ...[intervenes]

ADV KENNEDY SC: Yes.

20 **MR MANTSHA:** And that committee, after the first Board meeting, was mandated to, by all means, ensure that there is no default by Denel in two weeks time.

ADV KENNEDY SC: Yes.

MR MANTSHA: So, they were making all the efforts...[indistinct – dropping voice] and in the process to

investigate the conduct.

ADV KENNEDY SC: Of Mr Saloojee?

MR MANTSHA: Of Mr Saloojee...[intervenes].

ADV KENNEDY SC: I'm sorry to interrupt, that's where they came to the view that he had misled the first Board meeting?

MR MANTSHA: Exactly.

ADV KENNEDY SC: Okay, so we've got the sequence clear. Now, at the meeting of the 10th of September, do
10 you recall if there was any discussion about Mr Saloojee's performance thus far, was there, at that stage, your very first Board meeting, any discussion that Mr Saloojee had been acting inappropriately?

MR MANTSHA: No, of course that matter never arose.

ADV KENNEDY SC: Okay, now if I can take you in the same minutes to page – and I'm sorry the numbers are a bit complicated, 483.34, do you have that?

MR MANTSHA: Yes, I do.

ADV KENNEDY SC: Paragraph 8 in the second column
20 under, items, says, "Extension, contract of the Group Chief Executive Officer", do you have that?

MR MANTSHA: I do.

ADV KENNEDY SC: And then under, discussion deliberation it says,

"The Chairman, that's yourself, it's in the neutral in

the minutes so it's the minute taker who's possibly worthy of criticism here, the Chairman indicated that the GCEO's contract was set to expire in 2017",

Now that is factually correct, we know from our earlier evidence that you gave that, it in fact ended 31st January 2017.

MR MANTSHA: Correct.

ADV KENNEDY SC: And then it says,

10 "Although this was some time away, because of course here we're dealing with September 2015, given the seniority of the position it was necessary to commence with the process now, he, that's presumably yourself Mr Mantsha, mentioned the following in this regard. The GCEO had done well thus far and has turned the company around",

Do you recall, in fact, saying that?

MR MANTSHA: H'm I did.

ADV KENNEDY SC: How were you able – I'm not trying to be critical or funny but how were you able, at your very
20 first Board meeting that you were Chairing, where you'd only been appointed just a few weeks before and had only a few meetings with Mr Saloojee, privately and also the one at the Gupta residence, how were you able to form a view as to how well the GCEO had done thus far?

MR MANTSHA: As I said, I had one on one's with Mr

Saloojee.

ADV KENNEDY SC: Yes.

MR MANTSHA: Him taking me through the milestone, I think I've just indicated here that, at the time of our appointment the order book was in the region of, either twenty five or whatever 30 billion and this was a group - Mr Ntsepi was the head of marketing. So of course you have to go - to credit them for that.

ADV KENNEDY SC: You go to?

10 **MR MANTSHA:** You go to credit them for that.

ADV KENNEDY SC: Right.

MR MANTSHA: For building such an order book, and the example here Chair, I have already indicated to you that me and Mr Saloojee go together very well. We liked one another. We agree on the way of working. When this matter was being raised, I was trying to save the board to see what we are trying to achieve between myself and Mr Saloojee.

20 So you can see these statements are verifiable to him.

ADV KENNEDY SC: Yes, that is why I have raised them.

MR MANTSHA: And it is exactly what I was trying to say, to say I liked this man. I wanted to see this man continue to work with him because I think we struck a very good note of working together. I really liked him. So, and I

even told you earlier today that even when he cried to [indistinct].

I never slept at night because I really liked him and where necessary, I promised to support him and this statement from me, is informed of that strong relationship that we were trying to build together and the discussions that I had had with him, and at this time you know, from the induction you are given a full pack of the annual reports and all the other activities.

10 So by this time, before we even go to the first board meeting, we had a picture of what was happening and here I am trying to say look, this is the right guy. So his contract is going to expire. So you know, let us try to in a way indirectly, let us try because you see the Chairman was to follow up with the minister on the matter.

Because he had told me that there was like some verbal arrangement of some sort that it would be extended.

ADV KENNEDY SC: Sorry, verbal arrangement between him and?

20 **MR MANTSHA:** And the minister.

ADV KENNEDY SC: I see.

MR MANTSHA: So that is why there is a statement to say the Chairperson is going to follow up the matter with the minister.

ADV KENNEDY SC: Yes.

MR MANTSHA: So this is just an indication of how believing I was in him, that I would have been the last person to want Mr Saloojee out of Denel. I tried all I could but it was not possible, given the fact of what he presided on before we came into Denel.

ADV KENNEDY SC: On the LSSA transaction?

MR MANTSHA: Indeed.

ADV KENNEDY SC: Right. I am not going to take you through the text on the next page. I am just going to
10 summarise it. Page 483.35, the next three bullet points. But basically what you seem to be recorded as saying, and sorry is that your signature further down?

MR MANTSHA: Ja, it is.

ADV KENNEDY SC: To confirm the approval of these minutes. You confirm to the fact that the board has sufficient time. You had about 16 months left before the end of his contract, but were you referring to the fact that we have still got time to consider it, but we must get the process going earlier rather than later.

20 We do not want to leave it too late, is that right?

MR MANTSHA: Ja. This is one of the matter that he [indistinct] as his Chairperson individually to say look Chairperson, I need to be sure about my future as we work together and he then asked me to try to resolve this matter as early as possible.

ADV KENNEDY SC: Yes.

MR MANTSHA: And of course I did not see any reason not to at the time.

ADV KENNEDY SC: Yes. If I can take you back to the last bullet point on the previous page, you were referring not so much necessarily to Mr Saloojee's own desire to have some certainty in his life, which would obviously make sense to him and to you. That if you can get some sort of plan going it would be good to have.

10 But you also made an additional point that was incumbent on the board to prevent disruption in management and to retain the skill set required.

MR MANTSHA: Yes.

ADV KENNEDY SC: So may I sum up my understanding of what you were saying there? You were saying he only has a termination looming in 16 months' time, end of January 2017. But we do not want to be in a situation where suddenly his contract ends and we do not know who is going to be appointed and maybe we lose the continuity
20 and his skill set and so forth, which will have a disruptive effect on the management of the corporation.

Particularly at a time where it was under some stress. Is that a fair reflection of what you are saying?

MR MANTSHA: Well, what is meant here is that the stability of the leadership of the company is important to

investors, to people we do business with, to the lenders. I was actually making a call here that this matter needs to be resolved well in time.

In terms of my private discussions with Mr Saloojee, I was convinced that he has to be supported to continue to serve beyond the expiry of the contract, meaning he should get another five years or so after 2017. So earlier I told the commission that from the investor point of view and the lender point of view, and the market that a company like
10 Denel operated, it is very critical that you have got this kind of strategy, and I was actually trying to promote what we had discussed privately.

ADV KENNEDY SC: Thank you. As I understand the minute, effectively what was decided was simply that you would take the process forward with the minister. You would set in motion this process that you were recommending.

There was no decision there and then let us appoint Mr Mantsha, sorry Mr Saloojee for another term from 1
20 February 2017. You were far from that date and you did not need to take that decision then. Is that right?

MR MANTSHA: No, what was right is that Mr Saloojee informed me and informed us because this is the board, that there was a verbal arrangement. I think he alluded to it somewhere in these papers, that he would continue

beyond the expiry of his contract, and that verbal arrangement was made between him and the executive authority.

ADV KENNEDY SC: Yes, but I am sorry to interrupt. I am not asking about his arrangement with the minister. I am asking about what the ultimate outcome of this board meeting was, simply did you decide we are definitely committing to having him re-appointed subject to a minister's approval from 2017 or did you decide instead it
10 looks like we are going to be going to a favourable decision for him and but let us not leave it too late, let us start the process and you would then discuss it with the minister.

MR MANTSHA: That is correct.

ADV KENNEDY SC: Is it the latter?

MR MANTSHA: Yes.

ADV KENNEDY SC: Right, because the very last bullet point on page 483.35 in this item, says:

20 "The board appoints the CEO subject to the minister's approval."

As I understand that, it was not that you were saying we are now appointing him from February 2017, it was simply recording no doubt you must have told your colleagues, when we appoint we do not have the final say.

MR MANTSHA: Correct.

ADV KENNEDY SC: It is always subject to the minister's approval, and let us start the process going with the minister to see whether he will approve an extension from February 2017.

MR MANTSHA: Correct.

ADV KENNEDY SC: But that will take some time.

MR MANTSHA: Correct.

ADV KENNEDY SC: Okay, thank you. Now you have made the point to the Chair a moment ago that this bears out
10 that you had no animosity to Mr Saloojee at that stage. In fact you spoke highly of him based on your limited exposure to him already.

MR MANTSHA: Correct.

ADV KENNEDY SC: Right, and but of course we know that 13 days later, not even two weeks, almost two weeks later you had a very different view of him. In fact you were satisfied by the audit and risk committee you had convened the previous day in addition to what process had been followed previously, where they recommended to the board
20 and you accepted the recommendation to suspend Mr Saloojee, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And on top of it what you have said in evidence a number of times on the previous occasions and you mentioned it again today, when the Chairperson raised

it with you, that you said in fact on the 23rd we could have actually fired the three including Mr Saloojee on the spot, because they had done some terrible things.

MR MANTSHA: Ja.

ADV KENNEDY SC: So what I would like you to comment on is what, why did you change your view of him quite radically and I am not criticising you here, on the 10th of September you are saying Saloojee is a great guy. It really looks like we should appoint him for a further period after
10 his term ends in January 2017.

Two weeks later on the 23rd you were saying with your board colleagues he is terrible, we could have fired him on the spot but let us follow a process and suspend him and subject him to a disciplinary inquiry. What was the radical change in view?

MR MANTSHA: So Chairperson, this shows the objectivity that the Chairperson has and the objectivity which the board has. So the question is what had changed from the 10th of September to the time on the 23rd, when we then
20 suspend him.

What was changed of course was Mr Saloojee presided on a transaction which brought Denel to its financial means without following the approval protocol. He opted for a brazing finance for six months without an approval and that meant that myself and my God we will

then be blamed for triggering a gross default across the state owned company because we could not mix our financial obligations in truth.

That was catastrophic. That of course changed my position towards him. it did not mean I hated him, it only mean I look at the matter objectively and I said as much as I support this man, but for him to get into this transaction without authorisation, to a point where we are now on the financial brink, it was not correct for him to do and
10 therefore action had to be taken against him.

ADV KENNEDY SC: Thank you Mr Mantsha, and we do not need you to repeat your evidence earlier. I just want to confirm it for the record, that what Mr Saloojee has said to the commission was that what changed your mind to act against him, what he believes was unfairly on the 23rd of September was that by then it had become apparent to you that he was resistant to the idea of the agent venture.

You have denied that fact, correct?

MR MANTSHA: I deny it Chairperson.

20 **ADV KENNEDY SC:** Now in the same bundle can I ask you please to turn back to page 422? Chair, may I just ask so that I do not use up too much time or whatever, I mean I am trying to be as quick as I can.

CHAIRPERSON: Ja.

ADV KENNEDY SC: But I am aware that you apparently

have scheduled another session to ...[intervenes]

CHAIRPERSON: Yes.

ADV KENNEDY SC: Once we are finished. May I just indicate where I am.

CHAIRPERSON: Yes, please.

ADV KENNEDY SC: I think I am very close to the end.

CHAIRPERSON: Yes, no ...[intervenes]

ADV KENNEDY SC: It is just a couple of bits and pieces that I am wrapping up.

10 **CHAIRPERSON:** Ja.

ADV KENNEDY SC: I am going to ask you please to allow us just five minutes for me and my learned junior to confer because I would like her input on any points that we may still need to wrap up. So I think that we should finish probably by about quarter to six.

Will that then be in order for you with your other commitment?

CHAIRPERSON: The other work stream is here already I think. I see hands and I think I have seen Mr Anoj Singh's
20 counsel and attorney. Can they hear me where they are? Are they outside? I would like also that we finish with him especially when we are left with so little ...[intervenes]

ADV KENNEDY SC: Yes.

CHAIRPERSON: I would like, I think let us take the five minutes break for you to confer with your team.

ADV KENNEDY SC: Yes.

CHAIRPERSON: And then when we come back, they will be in and then I can also just talk to them.

ADV KENNEDY SC: May I ...[intervenes]

CHAIRPERSON: But I think I would like us to finish with him.

ADV KENNEDY SC: Thank you.

CHAIRPERSON: Ja.

ADV KENNEDY SC: May I just suggest I take him to this
10 page now because ...[intervenes]

CHAIRPERSON: That is fine.

ADV KENNEDY SC: It seems to follow on from the earlier discussion.

CHAIRPERSON: That is fine, ja. Okay.

ADV KENNEDY SC: And that I promise will just be a minute or two and then ...[intervenes]

CHAIRPERSON: That is fine.

ADV KENNEDY SC: We can take the adjournment. Thank you. Mr Mantsha, do you have 422?

20 **MR MANTSHA:** 422, yes.

ADV KENNEDY SC: Yes, and that is on the South African government letterhead or logo, and it in fact seems to be a media statement.

MR MANTSHA: Correct.

ADV KENNEDY SC: And that is issued by the then

Minister Lynne Brown. It says:

“Minister Lynne Brown appoints the new board of Denel.”

We see at the bottom of the following page, 423, that it was issued by the Department of Public Enterprises, from her department. Now this is the notice that actually announced to the public the confirmation that you had been appointed as part of the new board.

You as Chairperson and the others are mentioned
10 as well, and their biographies are summarised as well there.

MR MANTSHA: Correct.

ADV KENNEDY SC: Now what I am interested in, pursuant to what we ... I am sorry, I should have mentioned under the heading it is dated the 24th of July 2015. What I am interested in just to conclude the line that we took you through earlier, about the performance prior to your arrival, you see that the fourth paragraph of the text on page 422 starts with the quotation I would like to thank.

20 You see that?

MR MANTSHA: “I would like to thank the outgoing for ...”

ADV KENNEDY SC: Yes, you do not need to read the rest, I will do that.

MR MANTSHA: Ja.

ADV KENNEDY SC: Have you got that paragraph?

MR MANTSHA: Yes, I do.

ADV KENNEDY SC: Right, I would like to read it to you:

10 “I would like to thank the outgoing board led
by acting Chairperson Martie Janse Rensburg
for an outstanding job. They handed over a
company that is truly on a path to positive
sustainability. I commend them for their
professionalism and ensuring the handover
report was of such a quality that it will be a
critical guide to the new board. I encourage
the new board to continue working closely with
the executive team, to solidify the company’s
operations with a strong emphasis on issues
relating to transformation within the company,
skills development and strategic partnerships
in South Africa.”

20 Now there are a couple of points I just want to
extract from that. The one is it bears out your very point
that it was government policy to try and improve the level
of transformation in the arms industry within the country,
correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And, but what I am particularly
interested in, is that the minister gave in glowing terms a
tribute to the outgoing board before you then took over as

Chairperson and commended them for their professionalism and then asked you as the new board to work closely with that same, with the executive team that of course remained once the board's composition was changed.

Correct?

MR MANTSHA: Ja, it appears so Mr Kennedy.

ADV KENNEDY SC: Alright, thank you and then we have heard, the commission has heard the evidence of Mr Saloojee as to why Denel than in the following two years
10 reached a position of difficulty. You have given a completely different version and no doubt you stand by that.

MR MANTSHA: Can I just explain this Chairperson?

ADV KENNEDY SC: Yes.

CHAIRPERSON: Yes.

MR MANTSHA: The minister was not even aware of these circumstances around this transaction, because she was never told that the terms of five years were changed and now we have to pay in, so she did not know. So I think
20 with the information which she had, and less I am saying to you with the information which I have, everything appeared okay.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Chair, may this be an appropriate time to take the five minute adjournment?

CHAIRPERSON: Yes, maybe before we do I see they are in, that is counsel for Mr Singh and the evidence leader, Mr Seleka. I just want to share this with you, both of you and you, and of course your client and your instructing attorney.

We wish to finish with Mr Mantsha. He has been to the commission to give evidence I think on at least no less than two previous occasions if I am not mistaken or is it one? I think it is more than one. This is the third
10 occasion.

We would like to finish with him. Mr Kennedy thinks that he might need up to quarter to six to be able to finish, because we have your work stream coming up I thought I must consult you. Is it fine if we finish before we start with your side, with your work stream?

Yes. Mr Seleka, it is fine with you? Okay, alright. No, that is fine. So let me just adjourn for five minutes.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Ja, we adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV KENNEDY SC: Chair may I thank you for the opportunity to confer with my learned colleague Ms Mokoene I want to pay tribute to her for all the – what she has given

and particularly with the last two issues that he is prompting me quite rightly to raise with the witness. I also want to thank my learned colleagues for the next hearing for their patience.

CHAIRPERSON: Yes.

ADV KENNEDY SC: I still think that quarter to six will hopefully suffice.

CHAIRPERSON: Yes.

ADV KENNEDY SC: Subject to how long the witness wants
10 to talk.

CHAIRPERSON: Ja.

ADV KENNEDY SC: Mr Matsha I want to deal now with the topic of the PFMA process for getting approval from the relevant Minister or Ministers for the – the transaction that was aimed at generating business in Asia which you obviously required specific approval.

And if I can start please with the same bundle 8 that we were looking at just a moment ago at page 468.

CHAIRPERSON: 468.

20 **ADV KENNEDY SC:** Yes. Now Mr Mantsha do you have 468?

MR MANTSHA: Ja I am getting there – 468. Yes Chairperson.

ADV KENNEDY SC: Now that is a letter on the Denel letterhead sent – addressed to the then Minister of Finance

Mr Nene, is that right?

MR MANTSHA: Correct.

ADV KENNEDY SC: And then if we go for a moment to page 473, the last page of the letter we see your name as the Chairperson of the Denel board and is that again your signature and it seems to have been dated on the 30th I believe it is of October 2015, correct?

MR MANTSHA: Yes it seems so 30th.

ADV KENNEDY SC: Do you recall sending this letter to the
10 Minister of Finance requiring specific approval or giving her pre-notification for purposes ultimately of getting approval under Section 54.2 of the PFMA?

MR MANTSHA: Correct.

ADV KENNEDY SC: Now I just want to draw your attention to a couple of paragraphs that you have given. Presumably you would have given – sent this notice benefiting from the input of – of senior executives at the time. Correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And at that stage of course by then
20 October 2015 Mr Saloojee as CEO, Mr Mhlontlo as CFO for the group were on suspension.

MR MANTSHA: Correct.

ADV KENNEDY SC: Correct. Now you give the – at page 469 you give a rationale as we see at the foot of the page 469 the rationale for the formation of Denel Asia and this

includes on the following page 470 a reference to operation access to operational funding. The very top bullet point. You see that?

MR MANTSHA: Yes I do.

ADV KENNEDY SC: And that was an important point that you felt needed to be stressed as one of the reasons why it was – made sense for Denel to be forming the venture for the Asian project, correct?

MR MANTSHA: Ja I think the topic where you reading.

10 **ADV KENNEDY SC:** Yes.

MR MANTSHA: Is actually the motivation of the ...

ADV KENNEDY SC: Sorry could you just sit closer to the microphone.

MR MANTSHA: 00:04:19 with VR Laser.

ADV KENNEDY SC: Yes.

MR MANTSHA: Ja so I think it is flows from that heading.

ADV KENNEDY SC: Indeed.

MR MANTSHA: Ja.

20 **ADV KENNEDY SC:** So where – thank you for that clarification and in fact when one sees that bullet point that I have just taken you to access to operational funding there you were referring to VR Laser Asia being able to provide some operational funding which would mean that Denel itself would not have to fund at least the initial part of the project you had the assistance, the input of VR Laser in that regard.

Is that right?

MR MANTSHA: In terms of the agreement VR Laser was putting R100 million on the deal.

ADV KENNEDY SC: Yes.

MR MANTSHA: Denel was putting its manpower, its scientists, its engineers and the intellectual capacity to build.

ADV KENNEDY SC: Yes.

MR MANTSHA: Whatever would be required yes.

10 **ADV KENNEDY SC:** Yes. And in fact you seem to make those points that you have just referred to under the heading a few lines down Financing.

MR MANTSHA: Yes.

ADV KENNEDY SC: You see that?

MR MANTSHA: I see Chairperson.

ADV KENNEDY SC: And what you have said to the Minister Nene in the first bullet point:

20 “VR Laser Asia will be responsible for all
 operational costs for a period of five years
 estimated at R100 million.”

MR MANTSHA: Correct.

ADV KENNEDY SC:

 “Project funding as and when required will be
 provided by shareholders.”

 Am I right in saying that you were submitting to the

Minister a justification for why this Asian venture made sense operationally and financially and one of the important points was that the operational costs – the entire operational costs for the period of five years was already committed by – to by VR Laser Asia, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And then of course project funding would be provided by shareholders which would include Denel as and when required, correct?

10 **MR MANTSHA:** Yes I think after five years.

ADV KENNEDY SC: Right.

MR MANTSHA: Of the initial period.

ADV KENNEDY SC: And then you deal in this – on the same page.

CHAIRPERSON: I am sorry Mr Kennedy I just want to understand the distinction between project funding and the R100 million. I assume in the execution of any project there would be operational costs and those would not be borne by VR Laser Asia.

20 **MR MANTSHA:** No those – Denel...

CHAIRPERSON: Those would be borne by...

MR MANTSHA: Denel will not pay.

CHAIRPERSON: Ja.

MR MANTSHA: The project – the execution of the project for the first five years.

CHAIRPERSON: So those operational costs that fell out by the execution of that particular project would be borne by VR Laser Asia – those that fell within the execution of the project then by the shareholders which included Denel.

MR MANTSHA: No Chairperson it is not correct. What this is trying to explain is that for the period of five years there is R100 million committed by VR and thereafter the – the project financing will be done by shareholders which of course included Denel.

10 **CHAIRPERSON:** So does that mean that VR Laser would be responsible for all operational costs for the first five years?

MR MANTSHA: Yes.

CHAIRPERSON: And after five years the shareholders which included Denel would be responsible then for all operational costs?

MR MANTSHA: Yes the – the understanding to inform this is after five years because every time when we entered into this we were chasing some you know big deals which were happening and in terms of our assessment done within the
20 Indian market the intelligence were there was within this five years. Denel Asia would have been a success story on its own and it would be able to fund its own operational costs.

CHAIRPERSON: Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. And can I take you on the same page 470 to the next paragraph which is headed

Financial Viability you say:

“In light of the R100 million investment by VR Laser Asia and Denel Asia over a five year period for operating costs the operation financial – operational financial risks to Denel are minimal, correct?”

MR MANTSHA: (no answer).

ADV KENNEDY SC: And then you say it will – can I just ask on that point – would it be safe for us to assume that without
10 the investment from Denel – sorry from VR Laser your operational finances would have been at risk?

MR MANTSHA: Well without finance from VR Asia Denel was not even going to go to contemplate to have Denel Asia.

ADV KENNEDY SC: Yes.

MR MANTSHA: We did not have money to do so.

ADV KENNEDY SC: Indeed. But what seems to be the other side of that very coin is that if it had not been for VR Laser’s input Denel’s operational finances would have been impacted seriously.

20 **MR MANTSHA:** Look if VR Asia not VR Laser.

ADV KENNEDY SC: Right.

CHAIRPERSON: Denel finances would never have been impacted because Denel would not have made a decision.

ADV KENNEDY SC: Yes.

MR MANTSHA: To go there without financial.

ADV KENNEDY SC: Because if you did not have their financial sponsorship Denel would then be committing itself to operational costs that it did not have available.

MR MANTSHA: I am saying to you Denel was under my leadership. The board was never going to make a decision to go to India without having a financial partner.

ADV KENNEDY SC: Yes.

MR MANTSHA: There is no money to do that.

ADV KENNEDY SC: Sorry can you just indicate whether the
10 answer is yes or no to the proposition I had put. If it was not for VR Laser's commitment for this R100 million funding Denel would have been exposed to financial risk.

CHAIRPERSON: No, no, no. I think – I think you misunderstanding Mr...

ADV KENNEDY SC: Maybe I do.

CHAIRPERSON: Kennedy yes. If VR Laser did not – VR Laser Asia did not come on board the – you would – Denel would not have gone into this market.

ADV KENNEDY SC: Yes.

20 **CHAIRPERSON:** And therefore it would not have exposed itself to any costs.

ADV KENNEDY SC: Indeed – precisely - precisely because it could not have exposed itself to more costs because it was financial constraint, correct?

MR MANTSHA: Yes.

ADV KENNEDY SC: Right. And was it not necessary to first ensure that the financial investment was secured?

MR MANTSHA: Well Chairperson in the business world how you transact you sit down, negotiate transaction, every party is there to support their own interest in the transaction, then said look I am committing R100 million, we sign, you default to put R100 million, there is no deal. So that is how it is done.

ADV KENNEDY SC: Right. Was there in fact provision for
10 the financial investment to be secured?

MR MANTSHA: Of course yes.

ADV KENNEDY SC: Right.

MR MANTSHA: The whole process of Denel Asia was based on the fact that there must be that R100 million.

ADV KENNEDY SC: Exactly.

MR MANTSHA: That would enable us to fly.

ADV KENNEDY SC: And was that secured in terms of the agreement that you were – that you had made provisionally subject to the statutory approval?

20 **MR MANTSHA:** Yes there were in agreement to that.

ADV KENNEDY SC: Right. Okay thank you and then the next point that you make in under financial viabilities:

“Overall there is currently potential business amounting to US Dollars R9.2 billion – US Dollars 9.2 billion over the next five years

that offers Denel lucrative opportunities
within this region.”

Now do you again with benefit of hindsight stand by the
indication that you gave to the Minister of Finance at that
stage that in fact there was...

MR MANTSHA: Correct.

ADV KENNEDY SC: There was potential business of almost
10 billion US Dollars.

MR MANTSHA: Correct Chairperson. You see how this –
10 this submission of course it is crafted by the 00:13:32.

ADV KENNEDY SC: Yes.

MR MANTSHA: They craft these submissions after a proper
due diligence is made – after they have discussed in their
management committees the business development has
made input and as you know business you take a chance.

At that time that market was the most growing market
in the world.

ADV KENNEDY SC: The Asian arm market.

MR MANTSHA: The Asian market specifically the Indian
20 market.

ADV KENNEDY SC: Right.

MR MANTSHA: They were spending and their requests for
information in terms of lot of the equipment that Denel
produced. So we – there was a business case to say this is
going to happen I stand by it what is written.

ADV KENNEDY SC: Thank you. Now what I would like you to turn to now please is page 445. Have you got that?

MR MANTSHA: I do.

ADV KENNEDY SC: That is a letter we see from the Ministry of Public Enterprises and in fact signed on page 446 by Minister Lynne Brown.

MR MANTSHA: 4426?

ADV KENNEDY SC: 446 ja that is where you find the signature.

10 **MR MANTSHA:** You said 445?

ADV KENNEDY SC: No I asked you to start with the letter. The letter is two pages long it starts at 445.

MR MANTSHA: Yes I have it.

ADV KENNEDY SC: And you confirmed you had that and then I took you to 446 the next page of the letter where it is concluded with a signature apparently from Minister Lynne Brown. Correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And so this was a letter addressed to
20 you by the Minister of Public Enterprises because you are the addressee on page 445, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: Now I just want to take you to – so it is headed PFMA Section 54.2 Pre-notification on the Proposed Formation of Denel Asia. This is part of the process leading

up to the pursuit of a project which will involve a joint venture with the company which will involve overseas transactions and possible financial implications. Is that right?

MR MANTSHA: Correct.

ADV KENNEDY SC: And now the Minister you will see at the foot of the page there is a paragraph that starts just before abcd, you see that?

MR MANTSHA: Before abcd?

10 **ADV KENNEDY SC:** 445 last paragraph there is some sub-paragraphs abcd, do you see that?

MR MANTSHA: Ja.

ADV KENNEDY SC: Just above that the preamble reads this:

“In order to protect Denel’s status as the holding company the application should include amongst other things

a.A comprehensive detailed business case to enable the Minister to express an opinion on
20 the joint venture transaction.

b.A comprehensive due diligence report on the financial regulatory legal requirement and regulatory laws governing foreign owned entities in Hong Kong.”

Let us just stop for a moment. That is of course is

because the corporate vehicle that was to be used for this joint venture must be registered in Hong Kong, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC:

“ c. Funding plans all the transaction documents including the MOU and cooperation agreements.

d. The process followed to select VR Laser as a partner of choice.”

And then there are a whole number of other requests that the
10 Minister is made to you as Chairperson. Do you recall receiving this request?

MR MANTSHA: I did.

ADV KENNEDY SC: And was this series of information that is requested in those paragraphs that I have just read to you was this in fact provided? Was – was...

MR MANTSHA: Correct.

ADV KENNEDY SC: The additional information...

MR MANTSHA: It was provided.

ADV KENNEDY SC: That was provided by you or who?

20 **MR MANTSHA:** By the board.

ADV KENNEDY SC: By the board. Fine. Now please turn to page 391.

MR MANTSHA: Yes.

ADV KENNEDY SC: This is a further letter from Denel and you seem to be the person who signs it at the foot of the

page, correct?

MR MANTSHA: Correct.

ADV KENNEDY SC: And that is dated the 11th December 2015.

MR MANTSHA: Correct.

ADV KENNEDY SC: And that is addressed to the Minister of Finance who by that stage was Mr Des Van Rooyen, correct?

MR MANTSHA: Correct.

10 **ADV KENNEDY SC:** And we say the dates of the letter at the top typed 10 December but you signed it on the 11th of December and you say in paragraph – sorry and that is accompanied by the formal application that we see from page 392. Correct?

MR MANTSHA: This is a summary.

ADV KENNEDY SC: It is a summary right.

MR MANTSHA: Yes it is not the formal application. The formal application included.

ADV KENNEDY SC: Right.

MR MANTSHA: A lot of documents.

20 **ADV KENNEDY SC:** Okay. And then in paragraph 2.1 on page 392 this is what you say you give reasons why the transaction was not proposed in the 2015/16 corporate plan and these include Denel's previous back – blacklisting in India. Correct?

MR MANTSHA: Yes.

ADV KENNEDY SC: Now in light of the financial risks that were prevalent and in the absence of the financial investment promise in other words a VR Laser Asia not come up with the money that it has promised where this opportunity has sufficed for concluding the transaction in circumstances where it was not budgeted.

MR MANTSHA: No I have – I repeat my answer.

ADV KENNEDY SC: Okay.

MR MANTSHA: If there was no money from VR Asia.

10 **ADV KENNEDY SC:** Yes.

MR MANTSHA: We were not even going to propose this.

ADV KENNEDY SC: Yes. Now where there was no provision in the corporate plan for this transaction would it not have been more reasonable to ensure that a proper financial due diligence was conducted?

MR MANTSHA: Well Chairperson a proper financial due diligence was conducted. The Minister of Finance and the Minister of Public Enterprises they were given due diligence reports which would 00:20:18 by parties here and parties in
20 that jurisdiction. But let me repeat what I said in my opening Chairperson.

We dealing with a business that has to survive on its own. It has got no guarantee of state work so it is not like we all pay Eskom for electricity so there will be revenue coming from all of us. No not even South African Defence

Force is obliged to buy material from this company.

So these are some of the things that I have highlighted to say the regulatory environment in which a business like this operates where it has to go and fight with many different companies with big budgets.

The regulatory environment is also contributing to 00:21:18 the company development. So what we trying to explain here is to give a rationale why this was not in the previous corporate plan and the rationale was we were
10 banned so we could not have gone to a market where we were blacklisted because we were declared that we were corrupt. We were using corrupt means to enter into that market.

So we were banned we tried to get into that market for be – I mean 20 – 25 years before I even came there. And that ban was just resolved. As I indicated on my evidence earlier so that is why there was this decision.

CHAIRPERSON: But you say the due diligence report was – I mean due diligence was conducted and a report was
20 furnished to the two Ministers?

MR MANTSHA: Yes Chairperson when you do the PFMA process it is a very elaborative process. So you have to satisfy the two executive authorities because you are asking a permission. So all the documents and things that the Minister requested to have she had all of it.

CHAIRPERSON: But let me just ask at some stage you made an – your board made an application to the High Court would that report have been included in those papers there by any chance? Do you remember or is that something you do not remember?

MR MANTSHA: No I think – I think some of the reports of due diligence reports I think the – in the evidence of Mr 00:22:59 .

CHAIRPERSON: Ja.

10 **MR MANTSHA:** I think some of it is included.

CHAIRPERSON: Ja.

MR MANTSHA: But again Chairperson this is – this is the information within the company and with respect to the process Chairperson I am not here to make judgments on anything. I expect that this information will be before here and we talk on the basis of the document. That is why in some of my replies I attempted to attach some documents which I had.

CHAIRPERSON: Ja.

20 **MR MANTSHA:** So in short what I am saying to you this is a very elaborative process where you have to satisfy the executive authority with documentation. The technocrats in the Treasury and then the Department of Public Enterprises to go through it and satisfy themselves that yes you make a case or not.

CHAIRPERSON: No, no that is fine it is just that I was under the impression that one or other witness had said the – they had no such due diligence conducted. I may have been mistaken but I was under that impression.

MR MANTSHA: No thorough due diligence was ...

CHAIRPERSON: Which was done.

MR MANTSHA: Yes.

CHAIRPERSON: Okay.

ADV KENNEDY SC: Why was the then litigation? If you
10 satisfied all of these requirements to the satisfaction of the then Ministers of Public Enterprises and Finance why did you – why did you find it necessary to litigate?

MR MANTSHA: Well the basis of the litigation Chairperson was with respect to National Treasury and the basis of that litigation was that if you read the PFMA Section 54 I think the last provision it then says to you if you submit this document – the request and 30 days expires and you do not have the answer you must assume that permission is given. But as a diligent board because Treasury was not coming
20 back.

We then decided to have a declaratory order to say in terms of that Section there is full compliance because there was just no engagement from National Treasury. And as I sit here today I now know why there were no engagements just listening to the evidence which was given to this

commission.

This was the time of in terms of the evidence before this commission offers to certain people, changes of Ministers and all of that and unfortunately we were viewed within that context because of their association with the parties who are implicated in those kind of activities. I now understand why there was just a dead silence.

CHAIRPERSON: Well maybe something – I think something that may have been mentioned by one or other witness or is
 10 that – it was interesting that Minister Nene was dismissed on the 9th of December 2015 and on the 10th you wrote that letter to the new Minister – Minister Mr Van Rooyen the letter that we were looking at dated the 10th of December 2015. I think some witness quite of – kind of find – found that interesting because – oh Nene is dismissed the following – the previous day and then the first day of the new Minister here is a letter sent. But...

MR MANTSHA: But...

CHAIRPERSON: I say nothing more than just that.

20 **MR MANTSHA:** Ja. Chair with respect I suppose that thinking is not objectively made because this chronology of this history of this transaction when it is done so it did not start when Minister Van Rooyen was appointed and as you know you know the work of these companies, the work of government has to go on whoever the Minister is. So it had

nothing to do with Minister Van Rooyen.

CHAIRPERSON: Hm. Mr Kennedy.

ADV KENNEDY SC: Thank you Chair. Then if we can turn please to page 391 – sorry I think we have already done that – yes sorry it is 413. Just a point of clarification this is part of the submission that you made to the Minister and you provide an income statement in 12.4. Now what we would just like clarification on please is whose income statement is that? Is that Denel's income statement? Is it VR Laser
10 South Africa's? Is it of VR Laser Asia? Is it something for the – reflecting an income statement on income and expenditure in the past or projected for the future? What is it?

MR MANTSHA: Well Chairperson I think if you read this page start by saying Denel Asia forecast probabilities and market interests are promising. The business opportunity in deduce risk via partnership constitute a logical next step to them for entry into a new market. See Appendix F which sets out market end of the 00:29:24.

20 **ADV KENNEDY SC:** Yes

MR MANTSHA: So when you read in terms of the norm I am speaking under correction.

ADV KENNEDY SC: Right.

MR MANTSHA: It seems these were probably the projection of income.

ADV KENNEDY SC: Yes.

MR MANTSHA: That the business was going to happen.

ADV KENNEDY SC: Because normally an income statement is a statement reflecting income that you have received and expenditure that you have incurred for a particular period in a past but this you are explaining is in fact what would be projected as the expected or likely income and expenditure of the Asian Joint Venture. Is that what you are saying?

MR MANTSHA: Chairperson I am not – yes.

10 **ADV KENNEDY SC:** Okay.

MR MANTSHA: As we speak, I am trying to read what is here ...[intervenes]

ADV KENNEDY SC: No, that is fine.

MR MANTSHA: ...to make what it is.

ADV KENNEDY SC: Fair enough. We just want your clarification on that.

MR MANTSHA: Ja.

20 **ADV KENNEDY SC:** And then on this submission that you made to the Minister. It does not appear that there is any clear indication of the point at which VR Laser would make its investment or first injection of the operational costs, money. Can you recall if that was in fact submitted?

MR MANTSHA: With respect, Chairperson. The agreements between Denel and VR Asia was submitted to the respective authority and those agreements spell out

how that investment would be made by VR and the obligation that Denel had towards Denel Asia. So all of those documents were submitted.

ADV KENNEDY SC: Yes. The Commission, of course, has heard evidence in relation to other controversial transaction on which you, no doubt, have no personal knowledge but for example the – the example that has been given to me, it relates to Estina where assurances were given to the Minister there that there would be huge
10 benefits to be derived but ultimately, of course, the outcome may have been very different.

Is that not something that is a matter of concern to you here that assurances were given in very broad terms in the submission to the Minister and ultimately you did not persuade the Minister to approve the transaction based on those assurances?

MR MANTSHA: Well, Chairperson, I think we are venturing into a very dangerous area. What was said by other people about certain... has got nothing to do with
20 the decision we have made. We have made the decision based on thorough work that was done and we were convinced that this was the best way to go and we concluded on that. So ask me about Estina. I have no detail of Estina.

ADV KENNEDY SC: No, I am not asking you about the

facts of Estina.

MR MANTSHA: I do not know what was agreed with Estina. And Mr Salim Essa, as far as I hear, he is not part of the ...[indistinct]. And Mr Salim Essa was the only shareholder of VR Laser. So, to ask me, to say: Look, certain promises were made in certain projects and in certain transactions and was not made. I think – I cannot deal with those matters.

ADV KENNEDY SC: Mr Mantsha, I think you may have
10 misunderstood my question or perhaps I put it badly but what I indicated was that you presumable could not deal with that.

The reason why I raised it is simply that the Commission in its wider scrutiny of various allegations, it seems to us to have a concern, a possible concern, as to or would like to have satisfactory evidence as to assurances that were given to the ministers at the time in relation to projects on the basis that they looked incredible promising but ultimately they never materialised.

20 Your evidence, as I understand it is. When you gave projections, assurances or – yes, projections or assurances to the Minister in relation to the Asian venture, you believed that they were properly motivated and would have been vindicated in due course, would have been achieved later if the transactions had been approved and

then implemented. Is that right?

MR MANTSHA: Well, it is correct Chairperson.

ADV KENNEDY SC: Thank you.

MR MANTSHA: I sit here. I am talking to the Chairperson of the Commission. As I have indicated a number of times, the Chairperson is experienced in matters like this. The Chairperson will listen to the evidence and will follow that evidence.

The mere fact that certain things were said by
10 other people, I do not see it as a basis of making
conclusion without looking at this specific evidence that I
am talking about. So I think that would be unfortunate.

CHAIRPERSON: Ja-no, no, I... That is... There is
nothing wrong with what you say but I think Mr Kennedy
may be saying what he says about Estina, knowing that you
might not be able to comment but simply because, for
example, the Commission might be hearing that suggests
that certain persons seem to have featured in various
transactions under different work streams and sometimes it
20 might appear as if a pattern can be seen.

To say: Oh, this is what happened and how it
happened there. Here, maybe it looks like there are
similar features and you can see certain personalities that
are common. But you yourself might be able to say: Look,
I do not know anything about that. We made our decision

based on what was before us.

MR MANTSHA: Indeed, Chairperson.

CHAIRPERSON: Ja.

MR MANTSHA: I made a point that Mr Salim Essa, as far as I know, is not related to the Estina matter.

CHAIRPERSON: Ja.

MR MANTSHA: And this is the person we are dealing with here.

CHAIRPERSON: Ja. Mr Kennedy.

10 **ADV KENNEDY SC:** Thank you, Chair. Mr Mantsha, just a couple of further points in the papers. Can I ask you to turn, please, to page 443?

MR MANTSHA: Indeed, Chairperson,.

ADV KENNEDY SC: Now this, halfway down is an email from Keromomong(?) Umshlongo(?) [spelt phonetically], paragraph – and some fair justice to the pronunciation of her first name, and that, according to her email address, shows that she is from – in fact, further down, it says she is from the Registry – her or she is from the Registry for
20 the Ministry of Public Enterprises. Do you see that?

MR MANTSHA: Yes, I do. Are you on 44?

ADV KENNEDY SC: 443, second half of the page.

MR MANTSHA: 443, yes, yes.

ADV KENNEDY SC: And it is an email sent by Mr or Ms Mshlongo on the 23rd of November 2015 and it is

addressed to yourself. Is that right?

MR MANTSHA: Correct.

ADV KENNEDY SC: In fact, at your attorney's firm email addresses as well as an email address at Denel and there are copies to Denel officials such as Mr Ntshepe. Do you see that?

MR MANTSHA: Correct.

ADV KENNEDY SC: And what she says is:

10 “On behalf of Minister Lynne Brown, Minister
of Public Enterprises, kindly find attached
letter on the above-mentioned subject for your
attention...”

And the subject we see in the heading, subject,
FMA Section 54(2), pre-notification on a proposed
formation of Denel Asia. So that was the process that we
were looking at a moment ago, not so?

MR MANTSHA: Correct.

ADV KENNEDY SC: When you were making a submission,
the Minister Brown then sent a letter back to you saying I
20 need the following information. Is that right?

MR MANTSHA: Correct.

ADV KENNEDY SC: Right. Now the question is. Look,
please, at page – the previous page 442.

MR MANTSHA: [No audible reply]

ADV KENNEDY SC: The very top email in this chain. You

appear to have forwarded the Minister's correspondence with yourself which was copied to various Denel officials. You appeared to have forwarded a copy. You see the top email? It is from Dan, info@lungisanimantshaattorneys.co.za, et cetera. That is from yourself.

MR MANTSHA: I see Chairperson, yes.

ADV KENNEDY SC: And it appears from this, that you forwarded the Minister's letter to you, which was a letter
10 from the ministry responsible for Denel as a state-owned enterprise, concerning your application to the ministry for approval authority or pre-notification as a preliminary step under Section 54(2) of the PFMA. You forwarded that to, again, the very same Mr Ashu Chwala that we were discussing earlier.

And of course, we have seen from the earlier evidence was part of the Gupta business enterprise. Can you explain why you forwarded a Minister's official letter to you in our official capacity as Chairperson of a state-
20 owned enterprise, Denel, to a senior official of the Gupta business empire?

MR MANTSHA: Well, Chairperson, this letter was forwarded as per the instruction of Mr Essa, who at the point, he was with this individual. So he asked us to forward to that address because he was at that address.

And the reason why it was forwarded to Mr Essa via Mr Chwala's email address.

It was simply because this matter relates to the partnership that as Denel we were making(?) with him. There are direct questions from this letter from the Minister which require his input to us in order to satisfy the Minister.

He had interest in the matter. He was a partner in the matter So he had every right to see what was
10 happening and to assist in reply. So it was forwarded to that address as per his instruction for his attention.

ADV KENNEDY SC: I see. Was it not the Gupta business of – involving particularly Mr Essa? That was not part of the process to give pre-authorisation notification to the Minister under the PFMA. The PFMA places the obligation on a state entity concerned, in this case Denel.

MR MANTSHA: Well, the – if you look at the provision that we are talking about. When you enter into a partnership you must request for a permission from the
20 Executive Authority. And what is happening here? You have got Denel and you have got VR Asia entering into the partnership.

So Denel had every right to know what the Minister was saying as much as the potential partner had every right to know what the Minister was saying at the

time. And to try to do everything possible to satisfy the Minister's request.

ADV KENNEDY SC: If I can take you now, finally, to page 468. That is your letter to Minister Nene, the then Minister of Finance that we looked at earlier. Correct?

MR MANTSHA: [No audible reply]

ADV KENNEDY SC: Do you recall we dealt with that earlier?

MR MANTSHA: Yes.

10 **ADV KENNEDY SC:** And that was dated the 29th of October 2015. That appears also to have been forwarded to Mr Chwala if one looks at the emails that you sent on pages 466 and 467. Would your explanation be the same that this was all part of correspondence that they should have been privy to?

MR MANTSHA: Yes, Mr Essa.

ADV KENNEDY SC: So you would deny any suggestion that this is an indication that Mr Essa part of the Gupta empire was unusually involved and played a very active
20 part in what should have been, in one perspective, a matter just between the state entity concerned and the department and the Minister of Public Enterprises?

MR MANTSHA: No, it is not correct. This matter related to Mr Essa, Denel Asia. So he had every right to know about this matter.

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

CHAIRPERSON: [No audible reply]

ADV KENNEDY SC: Thank you, Chair. And I thank Mr Mantsha for giving evidence and also for his legal team for their role in this. Thank you very much.

CHAIRPERSON: Thank you. Thank you very much Mr Mantsha for availing yourself. And to your attorney as well for being able to come and to be here until this time.

10 **CHAIRPERSON:** Thank you very much. You are now excused.

MR MANTSHA: Well, thank you very much Chairperson. I would have loved to, probably, do a re-examination on one or two issues but I understand Chairperson that the people are waiting outside. But I think I have made the point ...[intervenes]

CHAIRPERSON: Yes.

MR MANTSHA: ...relating to, you know, the payments of the settlement ...[intervenes]

CHAIRPERSON: Yes.

20 **MR MANTSHA:** ...what was considered. I think it is up to the Chairperson ...[intervenes]

CHAIRPERSON: Okay. No, no. If you would like that, I am sure that would not take long and then and that we could arrange maybe for a very brief time. Do you have any idea how long you may be?

MR MANTSHA: No, I – it was just specifically one issue when I said, the potential ...[intervenes]

CHAIRPERSON: Oh.

MR MANTSHA: We are also trying to... potentially ...[intervenes]

CHAIRPERSON: Okay. Do you want me to ...[intervenes] that just now?

MR MANTSHA: ...which could have paid a lot of money ...[intervenes]

10 **CHAIRPERSON:** H'm.

MR MANTSHA: ...which could have paid a lot of money.
[Parties intervening each other – unclear]

CHAIRPERSON: Ja.

MR MANTSHA: And what I raise later was, as explained in the board minutes of detail, was the so-called verbal undertaking by the Minister to renew the contract.

CHAIRPERSON: Yes, Mr Saloojee's one.

MR MANTSHA: So there were a lot of things that we have taken. Unfortunately, the other side of the record is not
20 here but let me take this opportunity Chairperson to thank you and thank you Mr Kennedy.

You see, unfortunately, we could have said a lot here. And of course, to the distinct board members that I served with who have done extremely very well under difficult circumstances and the Executive. But I thank you

for the opportunity.

CHAIRPERSON: Yes, yes.

MR MANTSHA: And thank you very much Chairperson and
...[intervenes]

CHAIRPERSON: Yes, but my ...[intervenes]

MR MANTSHA: ...all the best.

CHAIRPERSON: Yes. What I want to do is. If you do feel
that there are some matters you would have like to clarify,
I would like to make sometime for you to get that
10 opportunity. So I am checking maybe on another day
because my sense is that it would not take long. Is that
right?

MR MANTSHA: Ja, thank you Chairperson.

CHAIRPERSON: Maybe an hour or something?

MR MANTSHA: I will consult with the legal team.

CHAIRPERSON: You will consult. Okay alright.

MR MANTSHA: And if there is any need Chairperson
...[intervenes]

CHAIRPERSON: Ja.

20 **MR MANTSHA:** ...we will ask for you indulgence.

CHAIRPERSON: Yes.

MR MANTSHA: But thank you very much.

CHAIRPERSON: Ja, be in touch with the legal team.
Obviously, there is not much time left. So you would have
to come to them quite quickly. I have a sense that it would

not be a lot of time. Maybe we would not need more than hour. Is that more or less...

MR MANTSHA: No, I think ...[intervenes]

CHAIRPERSON: You will confirm that.

MR MANTSHA: I am a creature ...[intervenes]

CHAIRPERSON: Ja. [laughs]

MR MANTSHA: ...getting advice from my legal team.

CHAIRPERSON: Yes.

MR MANTSHA: So.

10 **CHAIRPERSON**: Okay you will advise the legal team of the Commission and indicate how much time you think might be needed, what issues, if necessary.

MR MANTSHA: Ja, they might well say: Look, you do not need ...[intervenes]

CHAIRPERSON: You might say you are find, you know?

MR MANTSHA: Yes.

CHAIRPERSON: I just do not want you to feel that in the rush to finish everything, something you wanted to clarify, you were not given a chance ...[intervenes]

20 **MR MANTSHA**: No, Chairperson, I am not thinking like that.

CHAIRPERSON: Yes, okay, okay.

MR MANTSHA: Thank you very much.

CHAIRPERSON: No, that is fine. Thank you very much Mr Mantsha. And thank you to your attorney. You are now

both excused.

MR MANTSHA: Thank you very much.

CHAIRPERSON: Thank you Mr Kennedy and
...[intervenes]

ADV KENNEDY SC: Thank you Chair. That completes the
evidence for today for the Denel stream.

CHAIRPERSON: Yes.

ADV KENNEDY SC: There is an indication that the Chair
may want one further witness to be called in due course.

10 **CHAIRPERSON:** Yes, yes.

ADV KENNEDY SC: But subject to that, that is the
evidence that we – the Denel team would want to lead
before you Chair.

CHAIRPERSON: Yes. No, thank you very much. And
thank you very much to your team. The investigators as
well who have been in Denel. Thank you very much. But
as you say, there is a possibility of another witness but for
now this is going to be Denel evidence.

ADV KENNEDY SC: Thank you, Chair.

20 **CHAIRPERSON:** Okay thank you very much. You will be
excused. I will take a short adjournment to enable the next
work stream to set up and then we will continue with the
Eskom work stream.

ADV KENNEDY SC: Thank you Chair.

CHAIRPERSON: Thank you. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good evening, Mr Seleka, good evening everybody.

ADV SELEKA SC: Evening, Chairperson.

CHAIRPERSON: Are you ready?

ADV SELEKA SC: We are ready, Chairperson.

CHAIRPERSON: Good evening, Mr Singh.

MR SINGH: Good evening, Chair.

10 **CHAIRPERSON:** The oath or affirmation you took yesterday will continue to apply today.

MR SINGH: Noted.

CHAIRPERSON: Thank you. Yes, Mr Seleka?

ADV SELEKA SC: Thank you, Chairperson.

MR SINGH: Mr Chair?

CHAIRPERSON: Yes?

MR SINGH: I am not sure what Mr Seleka is going to lead.

CHAIRPERSON: Ja.

20 **MR SINGH:** But I thought we needed to start with the affidavit that we promised to deal with yesterday. Mr Yeboah Amankwah's affidavit.

ADV SELEKA SC: Oh, yes, that is also ...[intervenes]

MR SINGH: We promised to Chair that we had referred this affidavit from yesterday.

CHAIRPERSON: Well, I do not remember the name but I remember there was some reference to some affidavit, ja.

ADV SELEKA SC: Yes. It is a very name, Chair. But what I wanted to do, Chairperson, just before we get to that affidavit was to explain – what my learned friend was saying, it is a redacted statement of Dr Weiss that they got. I have ascertained that that was a different work stream. When Dr Weiss called last year he was called by a different work stream.

10 **CHAIRPERSON:** The money flow work stream, ja.

ADV SELEKA SC: That is correct. And I know that the practice is that you give a witness either the affidavit insofar as he is implicated or you refer them to the relevant paragraphs where they are implicated, so they would have followed that practice. As I indicated to the Chairperson, I do it differently, I give the entire affidavit to the witness to avoid these type of things.

20 So similarly with the affidavit which Mr Anoj Singh is referring to, the affidavit does not implicate Mr Singh but there is evidence in it that I think is relevant to place on record as part of the evidence that the Commission has obtained and my intention was to read certain paragraphs from that affidavit that shows certain information. Whether Mr Singh is able to comment on that or not, it really depends on him and if he wish to deal with it he can do so

in writing by way of an affidavit. I see that he has it opened and he would like to ...[intervenes]

CHAIRPERSON: Well, reference to it must come at the right time.

ADV SELEKA SC: Yes.

CHAIRPERSON: In the context of what the story is.

ADV SELEKA SC: That is correct.

CHAIRPERSON: So that is important.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** So I do not know what the right time is but if now if the right time, all I am saying is, might not have much to refer to it now outside of the context.

ADV SELEKA SC: Yes.

CHAIRPERSON: In which it should be referred to. Or if you set out what the context is, then refer to it, that will happen.

ADV SELEKA SC: Ja. I would prefer to do it in due course.

CHAIRPERSON: Ja, okay.

20 **ADV SELEKA SC:** Because, you know, we have a limited time this evening and we ...[intervenes]

CHAIRPERSON: No, that is fine. I think because of the limited time, if you are able to do it this evening, do it. All I saying it must be – you must have the context when you get to it.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: If it is no possible to do it today within the context in which it must be done, obviously it must be done as soon as possible.

ADV SELEKA SC: Yes.

CHAIRPERSON: I am sure that should be fine with you, Mr Singh.

MR SINGH: Well, Mr Chair, the context of the affidavit, as I understood Adv Seleka's line of thinking yesterday was to
10 close off the corporate plan portion.

CHAIRPERSON: Oh, by the way, yesterday you wanted to close off a certain issue.

MR SINGH: Yes.

CHAIRPERSON: Ja, okay.

MR SINGH: This relates to that.

CHAIRPERSON: You are in a position to do that now today?

MR SINGH: Yes.

CHAIRPERSON: Okay. Well, Mr Seleka, he has just
20 reminded me that you had asked him a question and he was keen to respond to it and, as he put it, close off that issue but his counsel preferred we should not do that, so he seems raring to go but I am not saying do that now, I am just saying remember that you had asked him a question, he was keen to answer it, it was not answered

because his counsel said they needed time.

ADV SELEKA SC: Yes.

CHAIRPERSON: So in terms of the transcript, whoever reads, we come to the point and then they see that now today we go on to something else it will look strange.

ADV SELEKA SC: Yes. Mr Singh you can refer us to the page number there.

MR SINGH: Mr Chair, I have ...[intervenes]

ADV SELEKA SC: You have it loosely?

10 **MR SINGH:** Sorry?

ADV SELEKA SC: You have it loosely?

MR SINGH: Yes.

ADV SELEKA SC: Not in the bundle?

MR SINGH: No, no, not in the bundle.

ADV VAN DEN HEEVER: Chairperson, I think what Mr Singh has done is taken the copy that we got and just have regard to that, so maybe with your permission if you can keep his copy next to him because I think he made his own [indistinct] on it and then make reference to the bundle. If

20 we can work with it in that way.

CHAIRPERSON: Yes, I do not have it here in my bundle, Mr Seleka, is it not?

ADV SELEKA SC: It is in the bundle.

CHAIRPERSON: It is in the bundle?

ADV SELEKA SC: Ja.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Eskom bundle 14(c).

CHAIRPERSON: Eskom bundle 14?

ADV SELEKA SC: 14(c).

CHAIRPERSON: Oh, okay, okay.

ADV SELEKA SC: Page 702.174.

CHAIRPERSON: Mr Safroadu Yeboah-Amankwah, nè? Ja.

ADV SELEKA SC: [indistinct], Chair.

CHAIRPERSON: Challenging. Okay. I guess we start
10 with the question you had put to him that he wanted to
answer and close off the issue.

ADV SELEKA SC: Ja. There was not a specific question
in relation to the affidavit, Chair. What I did for Mr Singh
was to put versions coming from this affidavit.

CHAIRPERSON: Okay.

ADV SELEKA SC: Which then he could comment on them
if he had something to say because the affidavit does not
necessarily implicate him. So the affidavit would show, if I
may, Mr Amankwah would indicate – let us go to paragraph
20 5.2. So Chair, let me start, just for context purposes.
Paragraph 1.4 of Mr Amankwah's affidavit. He says:

"I am a senior ...[intervenes]

CHAIRPERSON: What is the page number?

ADV SELEKA SC: Page 702.176.

CHAIRPERSON: Okay.

ADV SELEKA SC: Mr Singh you are there?

MR SINGH: Paragraph 5.2?

ADV SELEKA SC: Paragraph 1.4.

MR SINGH: 1.4?

ADV SELEKA SC: Yes. So Mr Amankwah tells the reader who he is:

10 “A senior partner at McKinsey company currently based in Washington. From November 2011 to August 2018 I was a senior partner in the South African office. From September 2014 to August 2018 I was the location manager of McKinsey’s South Africa office.”

And then he goes on, mentions certain things about himself. Then on page 702.185, paragraph 5.2, Chairperson, it is under paragraph 5 with the heading:

“The Corporate Plan Project”

And 5.1 says:

20 “In mid-2015 Eskom faced operational and financial challenges that were negatively impacting the South African economy.”

And he gives the examples. And 5.2 says:

“Historically McKinsey had been less involved in drafting Eskom’s corporate plan and annually compiled document that Eskom is required to submit to National Treasury in compliance with its

legislative duties because Eskom had internal resources and personnel who were experienced in such matters.”

So these were some of the things I was drawing to Mr Singh’s attention, then he carries on to say, Mr Amankwah:

“However, McKinsey was asked to become more involved in drafting Eskom’s corporate plan for financial years 2016/2017 and 2017/2018, yes, when Eskom had a new management team with less
10 experience and institutional knowledge about Eskom. The new management team therefore sought out McKinsey’s objectivity and years of experience supporting Eskom to assist them.”

And Chair, when one reads this portion with the affidavit of Dr Weiss, you see that the new management in particular is being referring to Mr Anoj Singh and Mr Brian Molefe.

So the one point from here was that there is acknowledgement on the part of a senior official of McKinsey that Eskom in fact had internal resources and
20 personnel who were experienced in these matter of the corporate plan and so Mr Singh could then comment on this because this does not really implicate him. Should we take it step-by-step like this, Mr Singh? Can I do so?

MR SINGH: Maybe it would better if you...

ADV SELEKA SC: Should I complete it?

MR SINGH: Yes.

ADV SELEKA SC: Okay because – let us go to paragraph 5.8 on the next page, page 702.187.

MR SINGH: What paragraph, Sir?

ADV SELEKA SC: 5.8. So there he says:

10 “The corporate plan was finalised on 26 February 2016. As part of instilling the plan for approval, McKinsey helped draft a presentation about a corporate plan for submission to the Department of Public Enterprises.”

Now hear Mr Singh, that date is significant and it is significant for the reason of the documentation which is a correspondence between you and McKinsey which I shared with you just before we started.

20 Chair, may I introduce the documentation? I had said I may not refer to it today but now that we are dealing with this, maybe it is significant that I do so. I have shared with my learned friend and Mr Singh a letter which Mr Singh had addressed to McKinsey on the 19 February 2016 and McKinsey’s response to his letter. I will refer to it now for a different purpose because of the significance of that date of the 26th and I beg leave to hand it up. I see the orderly is not here.

CHAIRPERSON: Well, let me give approval for your junior to bring it.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: I said your junior can bring it. Ja. He could come straight – oh, she, here she is. That is what happens – just the whole day whenever you are needed you are here and you are out for one minute then you are needed. Okay, now what is this, Mr Seleka?

ADV SELEKA SC: Thank you, Chair. The first page of this document is a letter on Eskom's logo or letterhead, it is a letter dated 19 February 2016, it comes from Mr Singh.
10 It is addressed to Dr Alexander Weiss of McKinsey and company. In this letter, Chairperson, the subject line is:

“Top Consultants Programme, Risk-Based Contract Proposal and Negotiations.”

Now that specifically relates to this MSA that we started going into last night. The letter reads:

“Eskom understands that the intended BEE partner to McKinsey and Co is Regiments Group. We also further note that Regiments Group is in the process of transition and that the ultimate BEE partner
20 would be Trillian Group. Eskom would like McKinsey to provide a response relating to an article published on page 9 of the Financial Mail regarding allegations associated with Mr Mohammed Bogart, a former employee of Regiments. Further to the above, Eskom seeks a

response to key issues raised by myself at a meeting with McKinsey that took place on 9 February 2016 relating to the objectives of the abovementioned proposed contract. The issues are as follows.”

Now you would see Chair that proposed proposal are used in this letter which is the on the 19 February 2016. I have told Mr Anoj Singh that on the face of this letter – I am saying this just to get it out of the way and Mr Singh will
10 deal with it, on the face of the letter dated 19 February 2016 it shows that he would have known that the MSA was not yet signed, on the face of the letter. And then he deals with – he sets out the issues that he wishes to have addressed, they are number 1 to 5 and then on the next page he says:

“Your urgent response within 7 days on the above issues will be appreciated. The signing of the proposed contract...”

There is the word again.

20 “...is contingent upon the receipt of satisfactory responses to the above request and he signs that letter.”

On the next page, Chair, is a response from McKinsey. That response is dated 25 February 2016. The letter addressed to Mr Anoj replies specifically to his letter of the

19 February 2016. Now this date then is what is significant for what we have just read in Mr Amankwah's affidavit because one, Mr Amankwah's version, by the 26 February 2016 the corporate plan is finalised and he would go on to say in this affidavit that by the end of the month it was approved by the Eskom board and National Treasury. Here in this letter of reply on the 25th, the day before the finalisation of the corporate plan the Chairperson would see that McKinsey is still saying we are not prepared to
10 subcontract with Trillian until we have certain criteria met because they are still subjected to a global review assessment, they cannot deal with us yet and that what you see in this letter. So it says:

“Dear Mr Singh, Top Consultants Programme. Many thanks to you letter dated 19 February regarding our proposal to serve Eskom on this critical programme and your request that we respond to the Financial Mail article referring to Regiments Capital.”

20 And that is important again because that state entity they were dealing with at the time.

“We have also described our overall thinking on involving BEE firms in our support to you on the Top Consultants Programme. Our approach to involving supply development partners on our support to

you.”

Is says:

“As discussed with you and set out in our proposal to you we are committed to working with site development partners on the Top Consultants Programme. Our partnering approach which is grounded in our professional practices and risk management philosophy is designed to ensure that...”

10 The he gives three bullet points. In the interest of time I want to move on, Chair. The last paragraph on this page says:

“We will put in place checks that ensure that assurance on each of these dimensions was maintained through the implementation of the programme with an option to modify or terminate arrangements of material issues arose.”

Then you turn the page:

20 “Reflections on issues raised in Financial Mail article.”

I will skip that because that deals with – well, let me read it, Chair, let me read it. It says:

“We have been informed by Mr Eric Wood that Regiments Capital Management advisory business is transitioning ownership to Trillian Capital

Partners. Our diligence processes for partnering and subcontracting include, amongst others, that we are fully apprised of the composition of our partners including with respect to.”

Now, Chair, that statement is important, written on the 25 February 2016. They are only then being informed that there is a transition to take place. Then he says:

“Partner including with respect to shareholding of holding companies, ultimate beneficial
10 shareholders, related parties and ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry. Well, they do not say who the – they only record that they have been informed but they do not say when they were informed, is it not?

ADV SELEKA SC: Yes. No, they do not say exactly when.

CHAIRPERSON: Ja.

ADV SELEKA SC: The have been informed.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** They are writing this on the 25th but you will see how they deal ...[intervenes]

CHAIRPERSON: What would be true...

ADV SELEKA SC: Yes, Chair?

CHAIRPERSON: Is that they put the actual transitioning in the present tense.

ADV SELEKA SC: Yes.

CHAIRPERSON: So that one could justifiably understand that irrespective of when they had been informed at the time of writing the letter.

ADV SELEKA SC: This letter, yes.

CHAIRPERSON: They understood the transitioning to be still in the process and not to be completed.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

- 10 **ADV SELEKA SC:** There is an aspect which becomes even more significant, Chair, if we carry on. It says:

“This is to provide assurance that...”

Oh, I was reading:

“...that we are fully apprised of the composition of our partners including with respect to shareholding of holding companies ...[intervenes]

CHAIRPERSON: Where are you reading now?

ADV SELEKA SC: I am now on the first bullet points on the second page.

- 20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Under the heading:

“Reflections on issues raised in Financial Mail article.”

CHAIRPERSON: Okay, alright.

ADV SELEKA SC:

“... shareholding of holding companies, ultimate beneficial shareholders, related parties and group companies, future significant lenders, executive management team and other key main dependencies for both the company and group companies. This is to provide assurance that among other considerations neither Eskom nor McKinsey have exposure to politically exposed persons. In the case of supply development relations in South Africa we are additionally required to ensure that partners/subcontractors meet three additional criteria, majority black ownership, majority black management and staff or a clear and committed plan to deliver this outcome, capability and capacity to execute work and deliver benefits that commensurate with the share of the fees earned. We can confirm that we will not be able to commence...”

Not to continue, but to commence.

“...a relationship with Trillian or any other partner/subcontractor until these criteria have been met and approved by our global risk and legal teams. We have requested the above information from Trillian and have been assured that this will be made available to us before 1 March 2016. We

have also expressed our concern to Mr Wood about the article and he has assured us that he will issue a satisfactory response to the above date.”

Now the important part again, Chair, is that that statement which they made:

“We can confirm that we will not be able to commence a relationship with Trillian or any other partners until these criteria have been met and approved by Global Risk and Legal teams.”

10 And ultimately the letter which we read last night, the one of the 30 March 2016, makes reference to this too, correspondence. And then they finally informed Eskom that they are terminating relationship with Trillian. So when – on the face of this documentation and specifically the dates, with the date of the 26 February 2016 which Mr Amankwah says was the final date or the date when the corporate plan was finalised, the picture emerges quite clearly that one cannot make the conclusion that Trillian was involved in the corporate plan when McKinsey was
20 writing at this stage saying we cannot commence a relationship with them until they have met this criteria and Mr Singh of course can comment on that. Let me carry on. Back to the affidavit of ...[intervenes]

CHAIRPERSON: Mr Singh, are you still fine with him carrying on before you comment?

MR SINGH: No, no, it is ...[intervenes]

CHAIRPERSON: You want him to finish?

MR SINGH: Yes.

CHAIRPERSON: Okay, alright.

MR SINGH: I am making notes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Then, Chair, we go to page 702.212.

CHAIRPERSON: Sorry, when McKinsey says in this letter
that they will not have partnership or relationship with
10 ...[intervenes]

ADV SELEKA SC: Trillian.

CHAIRPERSON: Do they say Trillian or Regiments? Oh,
it is Trillian.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON:

“We can confirm that we will not be able to
commence a relationship with Trillian or any other
partners until these criteria have been met and
approved by Global Risk and Legal teams.”

20 Is this meant to say they would not have that relationship
with them under the MSA or does this also refer to the
corporate plan?

ADV SELEKA SC: This refers to the MSA, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: To the MSA.

CHAIRPERSON: Okay, alright. Okay, continue.

ADV SELEKA SC: And if you turn the last page you will see that the letter is signed at the very last page by Alexander Weiss and another gentleman who is the Managing Partner, being Africa.

CHAIRPERSON: Yes.

ADV SELEKA SC: So but Chair, and Mr Singh will explain this Chair because we have gathered the evidence from various affidavits that show that there was no partnership
10 between the two companies, McKinsey and Trillian, while McKinsey was subjecting Trillian to this global review assessment.

CHAIRPERSON: H'm.

ADV SELEKA SC: And that also will impact on the Corporate Plan as said by other witnesses.

CHAIRPERSON: H'm.

ADV SELEKA SC: Then I was going back to the affidavit ...[intervenes]

CHAIRPERSON: Are you going to go there before Mr
20 Singh comments, or ...

ADV SELEKA SC: Ja, he was saying I should proceed.

MR SINGH: Please proceed.

CHAIRPERSON: Okay.

ADV SELEKA SC: Is that – ja you will have a mouthful to deliver. Are you – it is better you do it as and when I raise

a point, not raise a point but put a version.

CHAIRPERSON: Ja, but all that which you want to read is in support of a particular point business, is it not?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: So one point or maybe two?

ADV SELEKA SC: Well, for instance, here we have seen two points.

CHAIRPERSON: Ja.

ADV SELEKA SC: One is that...[intervene]

10 **CHAIRPERSON:** Well maybe Mr Singh comment now if he later on read something else then we can take it from there.

MR SINGH: Mr Chair, the affidavit of Mr Amankwah is structured in such a way that he deals with stuff in the back, so if we are going to deal with it I would suggest we take Mr – sorry Advocate Seleka's points and then I deal with it holistically.

CHAIRPERSON: Okay continue then Mr Seleka.

ADV SELEKA SC: Okay, Chair.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Then I would refer Mr Singh to - should we ...[intervene]

CHAIRPERSON: We need to, you need to me whether you want me to admit this and be slotted in somewhere or you want to do that later about the submission?

ADV SELEKA SC: Can I do so later Chair?

CHAIRPERSON: In due course.

ADV SELEKA SC: In due course, yes.

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Do not forget.

ADV SELEKA SC: Ja.

CHAIRPERSON: We will trust that.

ADV SELEKA SC: You cautioning me?

10 **CHAIRPERSON:** No, she assures us she will not forget.

ADV SELEKA SC: Well I will not Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Then at paragraph and I am trying my best to go to the most relevant ones.

CHAIRPERSON: The only thing bad about not admitting it now is that somebody will read the transcripts and will say that you are quoting written from my document but it is they do not know how to identify that document and where it is to be found.

20 **ADV SELEKA SC:** Indeed Chair, indeed. Let us admit it, let me do it now Chairperson and I will make it part or beg leave to have it made part of this Eskom bundle 14[c].

CHAIRPERSON: Well it is going to be - because if it is two letters, isn't it?

ADV SELEKA SC: It is two letters.

CHAIRPERSON: So it is going to be two exhibits?

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Let me see, and ja.

CHAIRPERSON: Is it possible to arrange for the top one will also be like the bottom one. You see it is horizontal.

ADV SELEKA SC: Yes.

CHAIRPERSON: So it would be vertical then it will be easier, when one is paging through and ...[intervenes]

10 **ADV SELEKA SC:** I will do so. I will beg leave to have them admitted as two separate exhibits for present purposes to be marked the first one Exhibit 33.1 which is the letter dated 19, February 2016 from Mr Anoj, Mr Singh.

CHAIRPERSON: Okay, right and the second one?

ADV SELEKA SC: The second one is exhibit U33.2.

CHAIRPERSON: U30?

ADV SELEKA SC: 33.2

CHAIRPERSON: Oh, so the other one is U33.1?

ADV SELEKA SC: You are correct Chair.

20 **CHAIRPERSON:** I thought you said Exhibit 33.1, and I was not sure whether there shouldn't be ...[indistinct – dropping voice]

ADV SELEKA SC: Oh, Exhibit U33, and we will paginate them accordingly.

CHAIRPERSON: H'm?

ADV SELEKA SC: We will paginate them from the last document in this bundle.

CHAIRPERSON: Ja, they, well where we are going to slot them we should be able to say what pages that will so that will help the whoever reads, so the letter of Mr Anoj Singh, Chief Financial Officer of Eskom to Dr Alexander Weiss of McKinsey and Company dated 19 February 2016 will be admitted as an exhibit and marked Exhibit U33.1 and the letter from Dr Alexander Weiss, Director of McKinsey as
10 well as Mr Georges ...[indistinct] Managing Partner of McKinsey and Company dated 25 February 2016 and addressed to Mr Anoj Singh, Group CFO, Eskom will be admitted as an exhibit and marked as Exhibit U33.2.

Okay, and where should they be slotted?

ADV SELEKE SC: Thank you. They will go into – or they will go S pages ...[intervenes]

CHAIRPERSON: My registrar will note and then she will slot them in, but for the record you can just say where they would go.

20 **ADV SELEKA SC:** As pages 877.156.

CHAIRPERSON: That is the first letter?

ADV SELEKA SC: That is the first letter Chair.

CHAIRPERSON: Which has ...[intervenes]

ADV SELEKA SC: Two pages.

CHAIRPERSON: Two pages.

ADV SELEKA SC: So is point 156 and point 157.

CHAIRPERSON: Ja.

ADV SELEKA SC: And then the next letter will start from page 877.158 to 877.163.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: I see that we are at nearly twenty past seven before Mr Singh answers one question.

ADV SELEKA SC: Sorry.

10 **ADV VAN DEN HEEVER:** Chairperson I think we must try and push as far as we can at this point with this particular issue.

CHAIRPERSON: Ja, but it will depend on the situation, we don't want to ...[intervenes]

ADV VAN DEN HEEVER: No, I think we must try and deal with this particular issue today.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Then, back to the affidavit Chairperson, page 702 went to 12, paragraph 20.

20 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Now paragraph 20.1, oh on 20 the heading is Trillian, 20.1 reads there has been significant public confusion surrounding the interactions between McKinsey and Trillian at Eskom. This is something I would like to put right in the interaction set out below. At the

outset however, it is important to note the following general observations relating to Trillian. First Trillian held itself out in correspondence with McKinsey as the successor to the consulting business of Regiments, which had already undertaken work at Eskom.

Second, McKinsey never made any payments to Trillian and never had a contract with Trillian. The reason why McKinsey never contracted with Trillian as a supplier development partner is discussed further below, is that
10 Trillian failed McKinsey's due diligence in February - March 2016.

And that is that is one significant point, emerging again Chair from - well the outcome of what they say was the global review, risk assessment they were doing in respect of Trillian.

CHAIRPERSON: Yes.

ADV SELEKA SC: Shall I proceed? Third, on the next page?

CHAIRPERSON: I think here the you made first before
20 now, what did you say.

ADV SELEKA SC: The second - it relates to the second point he's making there.

CHAIRPERSON: Where?

ADV SELEKA SC: If you go back to 702 ...[intervenes]

CHAIRPERSON: 20.2?

ADV SELEKA SC: Point two, that is it.

CHAIRPERSON: Ja.

ADV SELEKA SC: Whereas the second, McKinsey never made any payments to Trillian and never had a contract with Trillian .

CHAIRPERSON: Yes.

ADV SELEKA SC: The reason why McKinsey never contracted with Trillian as a supplier development partner is discussed further, is that Trillian failed McKinsey's due
10 diligence process in February, March 2016.

CHAIRPERSON: That on the face of it would suggest that they didn't have a contract with Trillian even in regard to the ...[indistinct] plan.

ADV SELEKA SC: Correct.

CHAIRPERSON: H'm.

ADV SELEKA SC: And he goes to say other things, the next page, third, the third point, a comparison between what Trillian personnel advised McKinsey at the time, and what has now emerged years later, indicates that Trillian at
20 the time repeatedly withheld from McKinsey information about Trillian through ownership structure, and its connections to a Gupta family associate, Mr Salim Essa.

Then the fourth point, the McKinsey did not authorise any payments made by Eskom to Trillian. Any payments by Eskom to Trillian were made by Eskom after

McKinsey informed Eskom that Trillian had failed McKinsey's due diligence, and he refers to a letter that that we have traversed last night, a letter of the 9th of February 2016, with conditions that were not met.

Well, I can read that because he does say that, in brackets he says:

“As discussed further below, McKinsey's 9 February 2016 letter did not provide authorisation for Eskom to pay Trillian as the conditions set out in the letter
10 had not been met. This fact has been acknowledged by Eskom and its Counsel.”

And there they are referring to the litigation that subsequently was instituted between McKinsey and Eskom. So the takeaway home - the takeaway point there Chair is really on the second point Mr Amankwah is making, that there was never an agreement between McKinsey and Trillian.

CHAIRPERSON: But in the next paragraph in 20.1 ...[intervenes]

20 **ADV SELEKA SC:** Yes Chair.

CHAIRPERSON: The talk about having worked with Trillian.

ADV SELEKA SC: Initially it was anticipated that Regiments ...[intervenes]

CHAIRPERSON: So they might not have had a formal

contract, but they seem to have worked together.

ADV SELEKA SC: Yes.

CHAIRPERSON: Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: According to paragraph 20.1.

ADV SELEKA SC: Yes.

CHAIRPERSON: So one does not know exactly what this person is talking about because on the one hand he says they have never had a contract but then now he says we -
10 they worked together Trillian at Eskom.

ADV SELEKA SC: Yes.

CHAIRPERSON: H'm.

ADV SELEKA SC: Chair you will bear in mind the evidence of Miss Goodson in respect of which Trillian had sub-contractors on the 1st of March 2016. And they got involved in certain of the projects that are envisaged under the NSA that was to be continued, and he talked about sub E-gateway, another sub-contractor, but she also mentioned employees or some – some independent contractors were
20 brought from India and Arab Emirates, serving in certain projects of - envisaged in the MSA.

CHAIRPERSON: H'm.

ADV SELEKA SC: So, but what is clear is that there was no formal contract between the two entities.

CHAIRPERSON: Ja.

ADV SELEKA SC: I think I could stop there because the further paragraphs he goes into the details of what he has summarised.

CHAIRPERSON: Ja, okay, alright. Mr Singh?

MR SINGH: Mr Chair, thank you. Mr Chair I think in addressing the first point, we have to go back to page 702.185.

ADV SELEKA SC: Point?

MR SINGH: Point 185, and I will also deal with point 186,
10 at the same time. Mr Chair I think the first point to the note here ...[intervenes]

CHAIRPERSON: Sorry, did you say we must go to page 702.185?

MR SINGH: Point 185.

CHAIRPERSON: That is the page?

MR SINGH: Yes.

CHAIRPERSON: Okay, alright.

MR SINGH: And I have been – advocate Seleka referred us to paragraph 5.2.

20 **CHAIRPERSON:** Okay.

MR SINGH: As being the first issue that he would like us to respond to.

CHAIRPERSON: To postpone?

MR SINGH: No, to respond to.

CHAIRPERSON: Oh, to respond to ja, just speak up a bit.

MR SINGH: Mr Chair the first point that I would like to raise is that Mr Amankwah albeit has given us his brief resume regarding his experience in the McKinsey office in - in Johannesburg, I must record that he actually did not have any hands-on experience at Eskom, because I never - I actually think he may have actually come to Eskom once if I recall, but that is the first point to be made Mr Chair.

In terms of 5.2 Mr Chair, the context within which the point was led by Advocate Seleka I think, loses its
10 merit, because it is read in without the full context.

CHAIRPERSON: Can I say this, Mr Singh?

MR SINGH: Yes sir.

CHAIRPERSON: If you are able to say this is the point I am making, and I am going to the page or paragraph to show support for that point that would help.

MR SINGH: Okay sir.

CHAIRPERSON: Ja, if you are able to do it that way. For example like saying it is not true that there was no agreement between - there between McKinsey and Trillian,
20 here is what I want to refer to in regard to that kind of thing. I mentioned that because in that letter they as McKinsey, McKinsey in their letter to you repeated the - they give the impression or say so expressly that there was no agreement with them and Trillian. So if you say no, you don't accept that, and you want to refer somewhere to

support that, that would help.

So if we know the point first, then we go to the material, that will help.

MR SINGH: Sure sir. The point that, in taking your guidance Chair, the point that Advocate Seleka tried to make was that Eskom had internal resources to develop the corporate plan.

CHAIRPERSON: Yes.

MR SINGH: And I am basically saying I do not agree with
10 that Mr Chair because the comment that has been made, is not read in the context of the rest of the affidavit.

CHAIRPERSON: H'm.

MR SINGH: So if you look at for example the rest of the paragraph 5.5 point 5.2, basically you see that the ...[intervenes]

CHAIRPERSON: [talking over one another].

MR SINGH: Eskom was facing - if I just read Mr Chair it starts with in addition, Eskom was facing a dual challenge of rising costs and load shedding affecting the economy
20 and required a comprehensive strategy on how to deal with these challenges in a way that would support the South African economy.

The corporate plan developed with McKinsey created a fundamental shift in approach for Eskom moving to, from a cost effective path to a designed cost strategy

with a tariff path that would be more supportive of the South African economy.

This required providing global expertise on energy markets, since sharing levers for improvement based on international utility experience, ongoing change management within the organisation and expertise on implementing the plan turnaround.

5.3, McKinsey's mandate under the corporate plan was to develop a strategy that would help Eskom recover
10 from its challenging financial crisis, cost rates and revenue and its precarious operational situation preventing load shedding. McKinsey started work on the corporate plan in October 2015, in close collaboration with the Eskom team, and then Mr Chair in 5.4, paragraph 5.4, 1, 2, 3, 4, 5 and 6, which goes onto the next page he deals with the elements of the corporate plan.

The Corporate Plan Project served as a viable strategic plan to chart a path for Eskom's return to support of economic growth.

20 **CHAIRPERSON:** Are you reading from paragraph ...[intervenes]

MR SINGH: This is paragraph 5.5.

CHAIRPERSON: Ja, just so that I have got, ja. Continue.

MR SINGH: Because it was informed by industry benchmarks and supported by Eskom management,

Eskom's Board and key stakeholders such as Department of Public Enterprises.

5.6 he goes on further to say that there were 47 McKinsey consultants and experts devoted to over 8 300 hours to the project, and he goes on to explain that he interacted with certain key stakeholders within Eskom.

ADV SELEKA SC: Within?

MR SINGH: Within Eskom.

ADV SELEKA SC: So Mr Singh let me ask you before you
10 go further ...[intervenes]

MR SINGH: Can I complete? I have got two more paragraphs.

ADV SELEKA SC: Ja, but I need - you can take your point on point zero, I don't forget.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because you had yours ready.

CHAIRPERSON: Okay, yes, alright, alright.

ADV SELEKA SC: So are you saying you are denying Mr Amankwah allegation that Eskom had internal resources
20 and personnel who were experienced in such matters?

MR SINGH: Yes, sir.

ADV SELEKA SC: Are you denying the allegation that McKinsey started work on the corporate plan in close collaboration with Eskom's teams?

MR SINGH: No sir. Mr Chair the reason why I denied

these allegations, Mr Chair firstly is because of the evidence that I have led before the commission regarding the quality of the previous year's corporate plan, which I have led extensively before the Commission.

Secondly, Mr Chair, if you read - have regard for paragraph 5.9 which states Eskom has also argued in the Eskom review proceeding, that the corporate plan work was done internally at Eskom and that the contract was not entered into lawfully.

10 Let us leave the part around the lawful part but then it goes on to say McKinsey disputes these assertions. Whilst McKinsey worked closely with Eskom personnel on all parts of the Corporate Plan, McKenzie was responsible for the integrating of these inputs and ensuring the plan was completed according to the suggestions of the ...[indistinct – dropping voice], as well as the board as well as the public enterprise.

20 So Mr Chairman, the context of the allegation that Eskom had the resources to conduct or compile the corporate plan, versus what you see at 5.9, is at odds with each other, as well as the way Mr Amankwah sets out the extent to which McKinsey had deployed resources to complete the Corporate Plan.

So that is the point in terms of where we deal with the issue of paragraph 5.2.

ADV SELEKA SC: May I ask you as you proceed where do you - are you going to answer it? Where do you put Trillian in that scenario?

MR SINGH: Mr Chair the allegation was, Eskom had internal personnel to do the work so I address that per the paragraphs I have referred to. The issue of Trillian I think we will now pick up.

ADV SELEKA SC: Okay.

MR SINGH: Then I think you went with paragraph 5.8. Mr
10 Chair. Mr Chair this related to the corporate plan being finalised on the 26th of February 2016, and this issue relates the letter that Mr Seleka had read into the ...[intervenes]

CHAIRPERSON: The letters that we have just dealt with?

MR SINGH: That we have just dealt with Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: Mr Chair in terms of the letter itself, and the implications there, I have been advised that we should request that we should deal with this later, once we have
20 had an opportunity to look at the letter in the context of the rest of the information that that we have been able to ask. But having said that, Mr Chair, I can deal with, very briefly, the issue of the letter, I think the letter makes it quite clear ...[intervenes]

CHAIRPERSON: The letter being the McKinsey letter to

you or your letter to them?

MR SINGH: I think, both Mr Chair.

CHAIRPERSON: Okay.

MR SINGH: That it was an obvious point ...[intervenes]

CHAIRPERSON: This is why I want to specify so that whoever reads if they want to go and look at the letter you talk about they know which one,

MR SINGH: Yes.

CHAIRPERSON: Ja.

10 **MR SINGH:** An obvious point is, Mr Chair, that the letters obviously referred to the MSA. And we will, I will deal later with the fact that there is a distinction between the MSA and the Corporate Plan.

CHAIRPERSON: H'm.

MR SINGH: So that is in terms of 5.8 and then Mr Chair, then we needed to go through paragraph 20.1 and I just want to check if I have any additional notes between 5.8 and 2.1 that I would like to bring to the attention of the Chairperson. Mr Amankwah does deal with the MSA Mr
20 Chair, and in the interest of time, and given the fact that we wanted to close the corporate plan, and I think we will deal with the corporate name issues now and if there is a need to come back to the affidavit relating to the MSA we will come back.

CHAIRPERSON: Okay. Mr Seleka is the one who knows

exactly what points he wanted you to deal with, so he – Mr Singh is saying ...[intervenes]

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: He would like to deal with the Corporate Plan and close that off and again but to the extent that he needs to deal with the MSA that can be dealt with later. It think he – that is what – that is what you are saying Mr Singh?

MR SINGH: That is correct Mr Chair.

10 **CHAIRPERSON:** Ja. Okay. I think he must be saying that because of the issue we discussed in chambers about the need to do only an hour.

MR SELEKA SC: Yes. I am not sure whether that is the reason Chair.

CHAIRPERSON: Well maybe it is not the reason.

MR SINGH: Well Mr Chair if I do deal with the issues of a MSA

CHAIRPERSON: MSA

MR SINGH: As it is alleged to this.

20 **CHAIRPERSON:** Yes.

MR SINGH: Then it would be contrary to the fact that you wanted it to be in context.

CHAIRPERSON: Oh okay.

MR SINGH: Of how we – how we dealing with it.

CHAIRPERSON: Okay. So it is a different reason.

MR SELEKA SC: Okay.

MR SINGH: Yes.

CHAIRPERSON: So Mr Seleka is right? It is a different reason. Okay. Okay.

MR SINGH: Mr Chair.

CHAIRPERSON: So you are now going to deal with the corporate plan.

MR SINGH: Yes Mr Chair.

CHAIRPERSON: Okay.

10 **MR SINGH:** In terms of paragraph 20.1 Mr Chair. I think that was the next ...

CHAIRPERSON: 20.1 at page 702.213.

MR SINGH: Yes.

CHAIRPERSON: Ja.

MR SINGH: And that is the – and that was the next one that Mr – Advocate Seleka wanted me to deal with.

CHAIRPERSON: Well Mr Seleka the point about the corporate plan are simply about who rendered the services Trillian or Regiments?

20 **MR SINGH:** Yes.

CHAIRPERSON: That is the real point.

MR SELEKA SC: Yes and who was paid.

CHAIRPERSON: Ja what is common cause was paid this. Ja. So you – okay I just wanted to make sure we are – that we are all on the same page as to what point you are – you

seek to deal with under the corporate plan issue.

MR SELEKA SC: Yes Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: As it relates to the paragraphs that I was referred to by Advocate Seleka 20.1.1.

CHAIRPERSON: I do not have 20.1.1.

MR SINGH: 20.1 and then I think in bracket (1) Mr Chair.

CHAIRPERSON: Ja okay.

MR SINGH: Right. First Trillian held itself out in
10 correspondence with McKinsey as a successor to the consulting business of Regiments.

CHAIRPERSON: I am sorry. I do not think you reading from the same paragraph that I have as 20.1 at page 702.213.

MR SINGH: Sorry Chair I think it is 702.212.

CHAIRPERSON: 212.

MR SINGH: Yes.

CHAIRPERSON: Oh.

MR SINGH: I think there is two 20's – two paragraphs 20.1.

CHAIRPERSON: Oh.

20 **MR SINGH:** And then the...

CHAIRPERSON: Oh okay so that is just – let us continue. So the first 20.

MR SINGH: The first 20.1

CHAIRPERSON: 20.1.

MR SINGH: Yes Mr Chair.

CHAIRPERSON: Okay. Alright.

MR SINGH: I think in terms of the 20.1(1) I think again here Mr Chair.

CHAIRPERSON: Well do not say bracket 1 because whoever reads the transcript will not find bracket 1.

MR SINGH: 1 in brackets.

CHAIRPERSON: Except for your convenience. The paragraph 20.1 that is at page 702.212.

MR SINGH: Thank you Mr Chair.

10 **CHAIRPERSON:** Ja okay.

MR SINGH:

“First Trillian held itself out in correspondence with McKinsey as a successor to the consulting business of Regiments which had already undertaken work at Eskom.”

Mr Chair this paragraph – this paragraph basically is consistent with the letter that we had admitted into evidence earlier.

20 **CHAIRPERSON:** Let us break this up. What – what is said here – one of the things that is said here is that Regiments had undertaken consulting – or had undertaken work already at Eskom and not Trillian. That – they do not say Trillian they say Regiments but they say Trillian – they understood that Trillian – or Trillian held itself out in correspondence

with McKinsey as the successor to the consulting business of Regiments which had already taken work at Eskom.

As I understand it they are saying it is Regiments who had done the work at Eskom.

MR SINGH: Ai – Mr Chair that part I agree with.

CHAIRPERSON: You agree with that part.

MR SINGH: I am just saying that the suc... – the issue of Trillian being a successor to Regiments.

CHAIRPERSON: Ja.

10 **MR SINGH:** Is consistent with my letter.

CHAIRPERSON: Ja okay so...

MR SINGH: In terms of why it was constructed the way it was constructed.

CHAIRPERSON: Okay. Alright. Okay. Ja.

MR SELEKA SC: Sorry in terms of? Sorry I missed that. In terms of?

CHAIRPERSON: I think he is talking about the what he has referred to as the secondment.

MR SINGH: No, no Sir.

20 **CHAIRPERSON:** Oh no that is – okay.

MR SINGH: No the letter that we just admitted.

CHAIRPERSON: Oh the one that ...

MR SINGH: Into evidence.

CHAIRPERSON: Yes.

MR SELEKA SC: Oh okay.

MR SINGH: Advocate Seleka referred to Regiments Group.

CHAIRPERSON: Let me have a look at those letters – that letter?

MR SELEKA SC: Ja. Ja and Mr Singh's...

CHAIRPERSON: But you accept – you would accept Mr Singh will you not that the second part is not consistent with at least your evidence at some stage namely that is Regiments which had done the work?

10 **MR SINGH:** Well Mr Chair this is – it basically this is at a point in time.

CHAIRPERSON: Hm.

MR SINGH: I am saying the way that I understand Mr Amankwah's affidavit is that this at a point in time.

CHAIRPERSON: Ja.

MR SINGH: So he is giving.

CHAIRPERSON: Of course.

MR SINGH: So he is giving – he is obviously giving you a sequence of events as it how – as how it unfolded.

CHAIRPERSON: Okay.

20 **MR SINGH:** The second point is...

CHAIRPERSON: Well I want to look at the – at your letter. You said the first part.

MR SINGH: Oh sorry.

CHAIRPERSON: Is consistent with your letter. I want to see where in your letter you – you say something that you say is

consistent with this.

MR SINGH: Mr Chair there it is a – if you look at the first bullet point.

CHAIRPERSON: Hm the first one?

MR SINGH: Yes. The first one.

CHAIRPERSON:

“In relation to the above Eskom requests a formal response on the following items.”

MR SINGH: Narrow.

10 **CHAIRPERSON:** First bullet point:

“Eskom understands that the intended BBEEE partnered to McKinsey and Company is Regiments – Regiments Group. They also further note that Regiments Group is in a process of transition and that the ultimate BBEEE partner would be Trillian – Trillian Group.”

MR SINGH: So that is the ...

CHAIRPERSON: That is the part you say.

20 **MR SINGH:** That is what I am saying to be consistent.

CHAIRPERSON: Is consistent. Okay I understand. Ja.

MR SINGH: Thank you Mr Chair.

“Second McKinsey never made any payments to Trillian and never had a contract with Trillian.”

I do not think anyone disputes that Chair.

CHAIRPERSON: Yes.

MR SINGH:

“The reason why McKinsey never contracted with Trillian as a suppliers development partner as discussed further below is that Trillian failed McKinsey’s due diligence process in February/March 2016.”

CHAIRPERSON: Okay. Okay I am sorry. I am saying I am
10 sorry. The first sentence of paragraph 20.1.2 okay maybe I was wrong when I said do not say bracket (1) I think I misunderstood. I think you – I thought you were – you had put your own (1) for your convenience but now I understand what you are referring to. Okay 20.1(2) you say the first sentence nobody disputes that? Is that right?

MR SINGH: Yes.

CHAIRPERSON: Okay and that sentence has two points.

“One is McKinsey never make any payments to Trillian.

20 2. McKinsey never had a contract with Trillian.”

Okay that is not in dispute. Ja continue.

MR SINGH:

“The reason why McKinsey never contracted with Trillian as a supplier development

partner as discussed further below is that Trillian failed McKinsey's due diligence process in February/March 2016."

Mr Chair I think the wording of February/March 2016 is a convenient way for – to be put because the letter that we just read and admitted into evidence suggests that at 25 March they were still – 25 February they were still going through a due diligence process which ultimately led to them informing Trillian at the 16 March that they would not be able
10 to continue as their BEE partner any longer and informed Eskom on the 31st of that – so February/March Mr Chair in my view is very convenient in the way it is formatted.

CHAIRPERSON: So

MR SINGH: And that is formatted in that manner Mr Chair to include the corporate plan.

CHAIRPERSON: To include?

MR SINGH: The corporate plan.

CHAIRPERSON: Corporate plan.

MR SINGH: Because the corporate plan was finalised in
20 February.

CHAIRPERSON: Hm. Yes.

MR SINGH: So there was no due diligence outcome in the month of February.

CHAIRPERSON: Hm. So are you saying factually you dispute that Trillian failed the McKinsey due diligence

process in February/March 2016? Do you go that far or you simply say look I do not know factually whether that is true but it does seem quite convenient.

MR SINGH: Mr Chair I think I am – I think I am putting it more stronger than that Mr Chair.

CHAIRPERSON: You are (speaking over one another)

MR SINGH: I am saying factually it is that based on the letter that we have just admitted on the 25th McKinsey admits that they still conducting a due diligence process.

10 **CHAIRPERSON**: Let us go to that – letter is dated 25 February 2016.

MR SELEKA SC: Chair may I help?

CHAIRPERSON: It is assigned where they say that are still – okay – on.

MR SINGH: It is the one that says...

CHAIRPERSON: They say on the second page

20 “We can confirm that we will not be able to commence our relationship with Trillian or any other partner or sub-contractor until these criteria have been met and approved by our global risk and legal team. We have requested the above information from Trillian and have been ensured that this will be made available to us before 1 March 2016. We have also expressed our concern to Mr Wood

about 00:12:01 and he has assured us that he will issue a supplementary form. Based on this our relationship with Trillian remains under review by our committees.”

So the point you are making is that as at 25 February McKinsey is saying we are still reviewing or considering the issue of whether we should have a relationship with Trillian and we have asked for some information that is 25 February. That is - that point might be fine but only up to 25 February
10 is it not? If we talking about March it does not cover much because you – we would not know whether they got all of this information in the next few weeks.

MR SINGH: Well Mr Chair.

CHAIRPERSON: But of course there might be another part somewhere which tells us.

MR SINGH: Ja but it – I think Mr Chair by now it is common cause.

CHAIRPERSON: Ja.

MR SINGH: That McKinsey informed Trillian.

20 **CHAIRPERSON:** Ja.

MR SINGH: That they had – that they had failed.

CHAIRPERSON: Ja.

MR SINGH: And they will no longer partner.

CHAIRPERSON: Yes.

MR SINGH: Officially on the 16th March.

CHAIRPERSON: On the 16th – oh so about three weeks later.

MR SINGH: Yes.

CHAIRPERSON: Okay.

MR SINGH: And officially then informed Eskom alternatively.

CHAIRPERSON: Ja.

MR SINGH: On the 31st of March.

CHAIRPERSON: Yes okay so therefore ...

MR SINGH: From February you will not know.

10 **CHAIRPERSON:** There was on their version by 31st of March they had no relationship with...

MR SINGH: Well 15th of March.

CHAIRPERSON: With Trillian.

CHAIRPERSON: By 16th of March ja.

MR SINGH: Yes.

CHAIRPERSON: They had no relationship with – and they had decided that they were not going to continue.

MR SELEKA SC: Yes.

20 **MR SINGH:** Because at – per this letter Mr Chair they were still expecting information from Trillian on the 1st of March.

CHAIRPERSON: Ja, ja.

MR SINGH: So they could not have made a decision in February.

CHAIRPERSON: Ja, ja they made it after.

MR SINGH: They made it after.

CHAIRPERSON: Ja. Ja.

MR SINGH: And the point that I am making is that I am factually disputing February because February is conveniently inserted to give the impression that they had failed in February to cast doubt on the corporate plan work.

CHAIRPERSON: Well the corporate plan – the corporate plan – this letter is about the MSA is it not? Or is it about both the corporate plan and the – and the MSA letter (talking over one another).

10 **MR SINGH:** Mr Chair the letter both mine and McKinsey's letter refers to the MSA.

CHAIRPERSON: Ja. Yes okay. Now insofar as the MSA is concerned there is – what you are saying is on their letter and whatever other correspondence by 16 March they said they had no relationship with Trillian and end of March they informed Eskom. But your – you used that not in relation to MSA for present purposes you use it in relation to the corporate plan.

MR SINGH: Yes Sir.

20 **CHAIRPERSON:** Okay. Mr Seleka.

MR SELEKA SC: Ja thank you Chair. Mr Amankwah does specify the dates later in his affidavit and Mr Singh I just want to mention those dates. They addressed a letter for McKinsey he says: 15 March 2016 and then the letter to you was 30 March – remember the one we looked at.

I know the 31st is the meeting – a steering committee meeting you have.

MR SINGH: Steering committee will have it.

MR SELEKA SC: Ja so the letter had already been given. So it is 15 March and 30 March and then there is a meeting on the 31st of March.

CHAIRPERSON: But the – what is the point you make about the absence of the relationship between McKinsey and Trillian under the MSA that relates the corporate plan?
10 Remember we are talking about the corporate plan now but you are relying on a letter that talks about the MSA, what is that point that you want to make because under the corporate plan remember sometime maybe 30 minutes ago I asked Mr Seleka what was the point about the corporate plan and he confirmed that the point was who had provided services.

MR SINGH: Mr Chair McKinsey relies on the fact they had that Trillian had failed their due diligence process and therefore they were never – the – supplier development
20 partner.

CHAIRPERSON: Yes.

MR SINGH: But I am saying for the corporate plan they were never subjected to a due diligence process.

CHAIRPERSON: You mean?

MR SINGH: Trillian.

CHAIRPERSON: Trillian.

MR SINGH: Yes.

CHAIRPERSON: Right.

MR SINGH: Albeit that they were working together.

CHAIRPERSON: Yes but they say in – they say or maybe some of the affidavits that they never had any contracts with – with Trillian.

MR SINGH: Mr Chair we will deal with that.

CHAIRPERSON: Okay. Because you see I think I want to
10 keep my focus on the issue and that is the issue of whether there was a contract and who the contract was with, whether services were provided and who provided the services. I want to keep my focus on that as we deal with the corporate plan.

MR SINGH: I will certainly deal with that in that.

CHAIRPERSON: Ja okay. Okay. Continue.

MR SINGH: Mr Chair in terms of (3) which is on the next page.

CHAIRPERSON: Which is 20.1 sub 2.

20 **MR SELEKA SC:** Chair before – I know Mr Singh will not lose the point because he knows where it is but I think the statement he made this requires some clarification Mr Singh.

CHAIRPERSON: Okay. Okay.

MR SELEKA SC: Ja. Insofar – because insofar as you say Trillian was never subjected to review under the corporate

plan. Then you go on to say all the ...

CHAIRPERSON: That the due diligence process.

MR SELEKA SC: Yes.

CHAIRPERSON: I think that is what he said. When you say under review you are talking about the same thing.

MR SELEKA SC: The same thing Chair.

CHAIRPERSON: Ja.

MR SELEKA SC: So they were not subjected to that risk – global risk assessment review in respect of the corporate
10 plan.

CHAIRPERSON: Ja.

MR SELEKA SC: But then he adds something to do the effect that even though McKinsey worked with Trillian.

MR SINGH: Yes Sir.

MR SELEKA SC: Is that what you are saying Mr Singh?

MR SINGH: Yes.

MR SELEKA SC: But that is not correct. Then we can leave it on record like that.

MR SINGH: Why would...

20 **MR SELEKA SC:** Because – because we have established from your own affidavit that you approached Eric Wood of Regiments who was working on the corporate plan.

CHAIRPERSON: But remember Mr Seleka this affidavit by Mr Amankwah.

MR SELEKA SC: Amankwah.

MR SINGH: Amankwah

CHAIRPERSON: Ja you remember there was a part where I said well he now talks on the basis on the basis that in effect although there was no – they did not have contracts that is McKinsey.

MR SELEKA SC: Yes.

CHAIRPERSON: With

MR SINGH: Trillian.

CHAIRPERSON: I cannot remember whether Trillian or
10 Regiments but some work – they worked together at Eskom.
Do you remember there was that paragraph.

MR SELEKA SC: Yes Chair.

CHAIRPERSON: Yes Sir.

MR SELEKA SC: But that – that is Chair – that is under Mr Singh should explain to you that is under the MSA.

CHAIRPERSON: Oh that is under the S – MSA.

MR SELEKA SC: Yes.

CHAIRPERSON: Oh not under the corporate plan.

MR SELEKA SC: Not the corporate plan Chair.

20 **CHAIRPERSON:** Oh okay. That is..

MR SINGH: That is – Mr Chair that is not something for me to explain that is Ms Seleka's view – Advocate Seleka's view.

MR SELEKA SC: No, no.

CHAIRPERSON: Well if it – if you do not tell him you do not agree I will think you – you are agree with him.

MR SINGH: Hence I am saying Mr Chair I disagree with Mr Seleka's point.

CHAIRPERSON: Ja. Ja. Okay continue.

MR SINGH: Mr Chair in terms of (3) Mr Amankwah raises a concern regarding Trillian employees who had withheld information about the true shareholding and structure of Trillian in their interaction with McKinsey. And later in their affidavit Mr Chair we can - we can- go to that but you will see that that is actually give the first to Ms Goodson. So
10 that is the comment in terms of paragraph 3.

In terms of paragraph...

CHAIRPERSON: But – but how – I would expect you to have nothing to do with sub 3 because is that not an internal matter or not a matter just between Trillian and McKinsey.

MR SINGH: Not as Chair raise it because it is an issue for the commission in terms of the fact that you placing reliance on Ms Goodson's testimony and Ms Goodson's affidavit. And Mr Amankwah is raising a concern regarding her knowledge of the shareholding and the manner in which she either did
20 or did not disclose that to McKinsey at the time.

CHAIRPERSON: Well what – what comment did you give?

MR SINGH: Mr Chair I am saying that Mr Amankwah is raising a concern regarding Trillian employees who repeatedly withheld information from McKinsey about Trillian's true ownership structure. So he is saying that they

have now discovered years later that Trillian employees at the time had knowledge of the true ownership structure of Trillian.

CHAIRPERSON: Ja.

MR SINGH: Which they did not disclose to them and my comment Mr Chair is to add to this paragraph is that the person that Mr Amankwah has – is referring to is Ms Goodson.

CHAIRPERSON: Oh okay.

10 **MR SINGH:** Okay and he further names her in the affidavit.

CHAIRPERSON: Okay.

MR SINGH: Okay I can take you to that paragraph.

CHAIRPERSON: Ja.:

MR SELEKA SC: Ja that – the timing is – the time is not going to..

CHAIRPERSON: Well I.

MR SELEKA SC: I think Mr Singh should deal with what pertains to him.

MR SINGH: Mr Chair.

20 **CHAIRPERSON:** No just hang on one second. Your situation ...

ADV VAN DEN HEEVER: Chairperson I would prefer it if we adjourn at this point.

MR SELEKA SC: Yes.

CHAIRPERSON: Ja, no, no. no that is fine. That – let us

adjourn ja okay. Let us adjourn. But can we talk about next – next week Monday and Tuesday can we use those evenings? Your – Monday and Tuesday are your days is it not?

MR SELEKA SC: They are Chair.

CHAIRPERSON: Ja.

MR SELEKA SC: Except that Monday we have a witness equally heavyweight as Mr Anoj Singh.

CHAIRPERSON: Oh so you think you will take – you will
10 take – but we need to have – we need if we can to try and finish with somebody. I – we would like you to finish with that one.

MR SELEKA SC: Yes. That is...

CHAIRPERSON: With Monday's one.

MR SELEKA SC: That is what we aim to do so that if we need to go into time – more time in the evening we could do so.

CHAIRPERSON: Ja okay alright.

MR SELEKA SC: Yes.

20 **CHAIRPERSON:** And then on Tuesday you are supposed to have who?

MR SELEKA SC: Minister – Mr Zwane.

CHAIRPERSON: Ja Mr Zwane. Okay alright. Can we talk in chambers for one minute before we let you go about next week? I think let us do that. Thank you very much we will

adjourn now and next week we on Monday we will deal with Eskom and Mr Koko will give evidence. Tuesday is supposed to be Mr Mosebenzi Zwane and ja – we adjourn. Thank you to everybody for staying until this time. We appreciate everybody's cooperation. Thank you.

We adjourn.

INQUIRY ADJOURNS TO 29 MARCH 2021