

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**18 MARCH 2019**

**DAY 68**

20

**PROCEEDINGS HELD ON 18 MARCH 2019**

**CHAIRPERSON**: Good morning Mr Pretorius, good morning everybody.

**ADV PAUL PRETORIUS**: Good morning Chair.

**CHAIRPERSON**: Yes.

**ADV PAUL PRETORIUS**: Chair for today and for Tuesday and Wednesday evidence would be led in the Denel work stream. The head of that stream is Ms Gcabashe and she is assisted by Mr Buthelezi. The first witness Mr Tihakudi is present before you.

**CHAIRPERSON**: Thank you. Thank you. For what it is worth so we can just confirm that for this week we are really deal with Denel and on Friday there might be a witness

10 that has nothing to do with Denel.

**ADV PAUL PRETORIUS**: Yes.

**CHAIRPERSON**: Mr Mbalula so other than that we will be dealing with Denel.

**ADV PAUL PRETORIUS**: Yes and then maybe some applications before you on Friday but we processing those at the moment.

**CHAIRPERSON**: Okay no that is fine. Thank you. Ms Gcabashe.

**ADV LEAH GCABASHE SC**: Good morning DCJ and thank you.

**CHAIRPERSON**: Good morning.

**ADV LEAH GCABASHE SC**: DCJ before I start it might be prudent for Mr Libala to place himself on record?

20 **CHAIRPERSON**: Oh yes. Thank you.

**MR SIMMY LEBALA**: As it pleases Chairperson we are appear for Ms Lynne Brown the former executive political head of the Department of Public Enterprise. We have already placed ourselves on record.

**CHAIRPERSON**: Yes.

**MR SIMMY LEBALA**: I appear with my colleague Mr Welcome Lusenga.

**CHAIRPERSON:** Yes.

**MR SIMMY LEBALA:** We briefly mention some overlapping concerns that will be taken care of by the process as it unfolds.

**CHAIRPERSON:** Yes.

**MR SIMMY LEBALA:** We assure you and undertake to make it a point that on or before Wednesday.

**CHAIRPERSON:** Yes.

**MR SIMMY LEBALA:** Two responding statements dealing with the witnesses that the commission would be focussing on.

10 **CHAIRPERSON:** Yes.

**MR SIMMY LEBALA:** To be specific Ms Janse Van Rensburg and Mr Soluge would be presented to the commission together with an application for condonation.

**CHAIRPERSON:** Okay no thank you.

**MR SIMMY LEBALA:** The other statement will be here listening to the testimony of Mr Tihakudi and will respond accordingly in accordance with the rules of the commission.

**CHAIRPERSON:** Okay no that if fine thank you very much Mr Lebala.

**MR SIMMY LEBALA:** As you please Chairperson.

**CHAIRPERSON:** Thank you. Yes Ms Gcabashe.

20 **ADV LEAH GCABASHE SC:** Thank you DCJ. DCJ the evidence today that will be taken is that or Mr Kgathatso Tihakudi who is currently the DDG Business Enhancement Services at the Department of Public Enterprises. Just briefly some introductory comments .DCJ. What triggered the interest in Denel, the commission's interest is of course the Public Protector's report which is dated October 2016 and entitled the State of Capture which is part of this commission's record of reports. The

then Public Protector had regard to allegations in the media and from other sources regarding governance related matters. The involvement of the Gupta and or other associates of the Gupta's in the establishment of VR Laser Asia and Denel Asia and the basis on which three key members of Denel's Exco were suspended and ultimately relieved of their duties in or around September – end of September 2015. For your ease of reference DCJ Mr Tihakudi will be dealing with all of these governance end related matters because he was part of that decision making process as an employee of the Department of Public Enterprises. So in essence DCJ the testimony today deals with term of reference 1.1 and 1.4 and it actually also touches on term of reference 1.3.

10 The terms of reference DCJ for completeness sake term of reference 1.1 requires the commission to inter alia enquire whether and if so to what extent relevant legislation, policies and guidelines were subverted by those who are alleged to have made attempts through any form of inducement or for any gain whatsoever to influence members of the national executive and this includes Deputy Ministers, office bearers functionaries or any of the state institutions organs of state and of course Denel falls into this bracket. Term of reference 1.4 requires this commission to investigate and I quote "whether the President or any member of the present or previous members of his national executive and again including Deputy Ministers or public officials, employees of the state owned entities breached or violated the constitution or any relevant ethical

20 code or legislation by facilitating and I underline facilitating Chairman the unlawful awarding of tenders by SOE's or any organ of state to benefit the Gupta family or any other family, individual or corporate entity doing business with government or any organ of state." From the totality of the evidence that will be led this week Chairman and as we have indicated in your chambers we have one witness today, there are two witnesses who will give evidence tomorrow and there will be one more who will give

evidence on Wednesday. From the totality of their evidence Chairman it may be that their evidence will fall within the parameters of 1.3 whether directly or inferentially I underline the inferential evidence that you may deduct at the end of the day from what they have to say DCJ because term of reference 1.3 requires this commission to investigate and I will quote “whether the appointment of any member of the national executive functionary and or office bearer was disclosed to the Gupta family or any other unauthorised person before such appointments were formally made and or announced and if so whether the President or any other member of the national executive is responsible for such conduct.” DCJ before I take you through the different  
10 files I think it is going to be important we have tried to label the exhibits differently this time and we hope that it is going to be a more work – user friendly lately.

**CHAIRPERSON**: It seems to accord with what I have been asking for for some time.

**ADV LEAH GCABASHE SC**: Oh we have Derrick De Beer to thank for that DCJ.

**CHAIRPERSON**: Yes, yes.

**ADV LEAH GCABASHE SC**: He really has put a lot of effort.

**CHAIRPERSON**: YEs.

**ADV LEAH GCABASHE SC**: And of course we will improve what we have presented.

**CHAIRPERSON**: Yes.

**ADV LEAH GCABASHE SC**: As you direct us to.

20 **CHAIRPERSON**: Yes.

**ADV LEAH GCABASHE SC**: But before I just go through those DCJ for your ease of reference maybe I should ask your Registrar to swear in Mr Tihakudi.

**CHAIRPERSON**: Yes. Thank you.

**REGISTRAR**: Please state your full names for the record?

**MR KGATHATSO TIHAKUDI**: My name is Kgathatso Tihakudi.

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

**MR KGATHATSO TIHAKUDI:** No objection.

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

**MR KGATHATSO TIHAKUDI:** Yes I do.

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

**MR KGATHATSO TIHAKUDI:** So help me God.

**REGISTRAR:** Thank you.

10 **ADV LEAH GCABASHE SC:** Thank you Chairman thank you.

**CHAIRPERSON:** Thank you.

**ADV LEAH GCABASHE SC:** Mr Tihakudi for your benefit but also for that of the Chairman can I take you through the exhibits, the files that are on the desk at which you are sitting? Chairman for the record we are on Exhibit W.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** The Exhibits are numbered Exhibit W1 through to Exhibit W5.

**CHAIRPERSON:** Yes.

20 **ADV LEAH GCABASHE SC:** Exhibit W1 comprises two files which are labelled with the name of the particular witness this is Mr Tihakudi.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And you have File 1 of 2 and File 2 of 2.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** On the spine of the Exhibit. Similarly tomorrow...

**CHAIRPERSON:** I wonder whether – whether since W1 has got 2 files whether it might

not be more convenient to say A and B.

**ADV LEAH GCABASHE SC:** We can make...

**CHAIRPERSON:** Or is that you something you considered.

**ADV LEAH GCABASHE SC:** We had DCJ I think it is only the witness on Wednesday who will also have two files.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** Tomorrow's witnesses have one file each if I am not wrong. But whatever is more convenient for you DCJ because you are collecting so many files we are happy to make it easier for you.

10 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** To get back to.

**CHAIRPERSON:** I am just thinking that you see where you have got W2, W3 and it is one file it is quite clean and easy to follow. Where you have got W1 but there are two lever arch files so you have to distinguish which one of the two and I see you have got File 1 so you might have to say Exhibit 1 – Exhibit W1 File 1 that is another way. It might be fine maybe we should not be concerned otherwise we could say that it is W1A and W1B. So if we referred to it we just say W1A or W1B, what do you think of that?

**ADV LEAH GCABASHE SC:** I think the A and the B sounds simpler DCJ.

20 **CHAIRPERSON:** Sounds better ja. Okay so let us say Exhibit 1 that is marked File 1 of 2 let us say that will be Exhibit 1 A.

**ADV LEAH GCABASHE SC:** So it is Exhibit W1 DCJ.

**CHAIRPERSON:** W1 yes W1A.

**ADV LEAH GCABASHE SC:** Capital A.

**CHAIRPERSON:** Okay. And then the other one which is File 2 of 2 it is Exhibit W1B. So that is how we will distinguish. Okay thank you. Otherwise then all the other

Exhibits under W that you have already told me about they are marked as you indicated.

**ADV LEAH GCABASHE SC:** Except for W5 DCJ. W5 is a reference documents.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** In W5 we have you know governance documetns.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Transcripts things like that.

**CHAIRPERSON:** Yes, yes.

**ADV LEAH GCABASHE SC:** It really will be a reference document that all the  
10 witnesses will be using between today and Wednesday.

**CHAIRPERSON:** Yes, yes.

**ADV LEAH GCABASHE SC:** But I suggest we also ...

**CHAIRPERSON:** Ja and do the same.

**ADV LEAH GCABASHE SC:** Do the same/

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** W5A and W5B.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Is the way we will label that file.

**CHAIRPERSON:** Yes, yes. Okay let us do that. So File 1 of W5 will then be Exhibit  
20 W5A.

**ADV LEAH GCABASHE SC:** Mr Tihaduki if you would be so kind as to do the same even if is in pencil with the files that you have.

**MR KGATHATSO TIHAKUDI:** Okay.

**ADV LEAH GCABASHE SC:** Just for your ease of reference we will correct them properly at tea time. Just so you can work your way around the files as well. So it is

Exhibit W5 File 1 is A, File 2 will be B and the same with of course...

**CHAIRPERSON**: And the A and the B you can just write immediately after W5 or 5.

Okay so and File 2 will be W5B, capital letter B.

**ADV LEAH GCABASHE SC**: Mr Tihakudi you need to bring W5 quite close to you because we will be moving from one to the other ever so often.

**MR KGATHATSO TIHAKUDI**: Alright. Okay.

**ADV LEAH GCABASHE SC**: So you need, they need to be in – within reach quite frankly. Your primary document though is W1.A and 1B.

**MR KGATHATSO TIHAKUDI**: That is correct yes.

10 **ADV LEAH GCABASHE SC**: That is your primary source of information for this morning. Thank you. Thank you Chair.

**CHAIRPERSON**: Thank you.

**ADV LEAH GCABASHE SC**: So if we look at Exhibit W1A Mr Tihakudi. You will find that there is a glossary but the glossary really is more for ease of reference of the Chairman when he reads these bundles much later. For current purposes I would like you to have a look at page 001

**MR KGATHATSO TIHAKUDI**: Okay.

**ADV LEAH GCABASHE SC**: It is labelled KT001. If you keep your finger on 001 and go across to 00 – I beg your pardon, to 035 so you moving from page 1 to page 35 of  
20 the bundle. Can you please explain whose signature that is on page 35?

**CHAIRPERSON**: Maybe before he does that Mr Gcabashe let me just announce formally that so this week from tomorrow the starting time will be half past nine and the finishing time will be half past four but I may extend that time from day to day depending on the situation if we need to finish a witnesses evidence. 3 on Friday however we will not start at half past nine we will start at nine o'clock. Okay. Thank

you.

**ADV LEAH GCABASHE SC:** Thank you Chairman. So we are page 35 Mr Tihakudi.

**MR KGATHATSO TIHAKUDI:** Yes.

**ADV LEAH GCABASHE SC:** And you were about to explain whose signature that is on page 35.

**MR KGATHATSO TIHAKUDI:** It is my signature.

**ADV LEAH GCABASHE SC:** Yes thank you and what is the date on which you signed this document?

**MR KGATHATSO TIHAKUDI:** I signed it on the 25 February 2019.

10 **ADV LEAH GCABASHE SC:** If we go back to page 1 what is the document that you have signed?

**MR KGATHATSO TIHAKUDI:** The document is a statement that I had put together for this commission.

**ADV LEAH GCABASHE SC:** Yes thank you. At this point are there any corrections you wish to make to this statement before we start dealing with the contents?

**MR KGATHATSO TIHAKUDI:** Yes there is counsel. If I may refer you to paragraph 68.

**ADV LEAH GCABASHE SC:** May I interrupt you? I know this is my error. You addressed the Chairman all the time. I am just here to assist. On all your responses are addressed to the Chairman.

20 **MR KGATHATSO TIHAKUDI:** Okay thank you Counsel and thank you Chair. Chair if I may refer you to paragraph 68.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** On paragraph 68 we the last – the third line from the bottom there is an insertion of a NOT they had not – in the original statement as we have put together that correction was not there. And Chairperson...

**CHAIRPERSON:** So we should delete NOT?

**MR KGATHATSO TIHAKUDI:** Not is correct yes.

**CHAIRPERSON:** Not is correct?

**MR KGATHATSO TIHAKUDI:** Not is correct yes.

**CHAIRPERSON:** Okay. Okay.

**MR KGATHATSO TIHAKUDI:** Ja. If I may Chair just indicate that we had noted some grammatical errors as we going through the statement.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And this is one material change that I intended to make  
10 here.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** But unfortunately it was – it was corrected beforehand so we apologise for that.

**CHAIRPERSON:** Oh okay, okay, okay.

**MR KGATHATSO TIHAKUDI:** And then the next paragraph is paragraph it is in relation to KT2 – I am trying to locate it. If counsel can help me out there? I had written paragraph 17 but I see it is not – that is not the paragraph.

**ADV LEAH GCABASHE SC:** Paragraph – paragraph 75.

**MR KGATHATSO TIHAKUDI:** It is 75. 75 has to do with the date that you are referring  
20 to there. That would be – that should be 2016. We seeing 1608 in February 2018 that should be 2016 Chair.

**CHAIRPERSON:** Thank you.

**MR KGATHATSO TIHAKUDI:** And we make reference to Annexure KT2 I am just trying to locate it. We had.

**ADV LEAH GCABASHE SC:** You can go to paragraph 33 for that one.

**MR KGATHATSO TIHAKUDI:** Alright. Thank you Counsel. Paragraph 33 make reference to memorandum – decision memorandum that decision memorandum existed at some point and that is why when I was writing that statement I had referred to it.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And the intention was then to pull out of our register.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Registry.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And append it here.

10 **CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** When we went to look for it we could not find it.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** But I know for a fact it existed.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And later on I am referring to it.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** That I had signed that particular decision memorandum.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** What we can do if we are able to locate it

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** After today's evidence here.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** We can do a supplementary statement.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** To include it into record.

**CHAIRPERSON:** Yes, no, no I think that is fine and If you do not find it and you reach a point that you simply cannot find it maybe a supplementary affidavit can also be done which refers to this paragraph.

**MR KGATHATSO TIHAKUDI:** Okay.

**CHAIRPERSON:** And says how come you refer to an annexure which is not there and this is why what happened. Ja. Ja.

**ADV LEAH GCABASHE SC:** Thank you Chairman.

**CHAIRPERSON:** So ultimately for now we do not make any correction on paragraph 32 subject to the possibility of a supplementary affidavit.

10 **ADV LEAH GCABASHE SC:** It is paragraph 33 Chairman.

**CHAIRPERSON:** Oh 33 I am sorry 33 yes. And we did not make any correction on the other paragraph to which you referred earlier because the NOT which you thought was not there was there?

**MR KGATHATSO TIHAKUDI:** Correct.

**CHAIRPERSON:** Okay. Alright.

**ADV LEAH GCABASHE SC:** Thank you Chairman. Mr Tihakudi can we then go back to the beginning of your statement and can you just give the Chairman a brief synopsis of your professional profile. You deal with that in paragraphs 1 to about 5 or 6 highlighting your qualifications and how you came to be appointed to the position of  
20 DDG at the Department of Public Enterprises?

**MR KGATHATSO TIHAKUDI:** Thank you Chair. Chair I hale from the Free State from Welkom and I start – I came up here to Johannesburg in 1990. It happened to be the same day that Mandela was released from prison and so I was released from the Free State so to put it. I studied at the University of the Witwatersrand and I graduated in 1995. I was fortunate to have – to get a bursary to be able to study and I went on to

study for a Master's Degree in 2003 at the University of Cape Town and I got a Gatsby scholarship which is a British Institution which allowed me to also spend time at the University of Cambridge at Wilson College where I spent time in the Institute of Manufacturing. And I also had an opportunity to study for an Air Transportation Management Diploma with the Real Aerospace Society in United Kingdom located in Oxford and I have also – I also possess the Post Graduate Diplomas in Programme Management and Systems Engineering from the University of Cape – of North West. Chair I have 24 years working experience and I happened to have started – to have started working at Denel after I graduated I was engineering training. I spent 9 years at  
10 Denel where I rose up the ranks. I was a design engineer at some point. I became a Project Manager – a Programme Manager. Also at some point I was entrusted to do Business Development Responsibilities and when I left Denel it was in 2004 when I joined Volkswagen of South Africa in their after sales business as a Field Operations Manager responsible for Free State, Northern Cape, Gauteng, Northern Cape, Mpumalanga, Limpopo in South African as well as Botswana and Namibia. The – I will say the defence bug had bit me so to speak and in 2008 I was head hunted by Armscor to join them as a Senior Manager responsible for aircraft systems acquisition. This would be the acquisitions of the like of the Cryptons, the Hawks, The Augusta and another aircraft systems would have been acquired during my time there. And also I  
20 did some work for the South Africa Police because at some point the Armscor was responsible for acquiring their aircraft systems.

**CHAIRPERSON:** Just one second.

**ADV LEAH GCABASHE SC:** So can I...

**CHAIRPERSON:** I take it that everybody can hear at the back? Yes Okay thank you.

**MR KGATHATSO TIHAKUDI:** Alright.

**ADV LEAH GCABASHE SC:** Mr Tihakudi can I then say that by what you have written here and just in terms of my understanding you are an engineer by training. You have done management courses and as you say at paragraph 5 of your statement you have a very good understanding of the defence and aerospace sector?

**MR KGATHATSO TIHAKUDI:** That is correct Ma'am.

**ADV LEAH GCABASHE SC:** What is the core business of Denel just briefly?

**MR KGATHATSO TIHAKUDI:** Ja Denel develops manufactures and sells armourments and these varies from air based systems and at some point Denel manufactured aircraft the likes of the Cheetahs, the Rooi Valk Helicopter which most people are familiar with.

10 Denel is the OEM of those particular systems. Denel also manufactures missile systems it has a division that is called Denel Dynamics that does that. They produce various calibres of ammunitions, small calibre ammunitions is still with them, medium and large calibre ammunitions these are not deposited in an anti [indistinct] Denel sold a majority stake to – Rheinmetall of Germany and I will touch of those later on. And they also produce land watt systems vehicles which obviously they have guns mounted on them so they are combat vehicles. They also – there is a protected vehicles for obviously for safe transportation of personnel in the theatre of war. So that is what Denel does and it is a – it sell these various systems locally as well internationally. At some point international sales were – went up to about 60% of the total revenue of

20 Denel so it is quite a well-known international brand.

**CHAIRPERSON:** Well maybe this might be the right time Mr [indistinct] for him if he is able to tell us also the different subsidiaries if there are any of Denel insofar as they may be relevant to evidence later on.

**ADV LEAH GCABASHE SC:** Chairman what I believe is relevant are the particular entities he had oversight of.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** Because he then draws parallels between that and Denel.

**CHAIRPERSON:** Yes. Okay no then he can deal with that. Ja.

**ADV LEAH GCABASHE SC:** Thank you Chairman.

**MR KGATHATSO TIHAKUDI:** Ja. Ja Chair if I may I had oversight over the whole of Denel including his divisions its subsidiaries as well as its indirectly its associate companies.

**CHAIRPERSON:** Then you may as well just inform us as much as is reasonably possible obviously there might be things that will not come up but you exercise your judgment in terms of giving us a picture of different important components of Denel by way of subsidiaries or divisions and so on.

**MR KGATHATSO TIHAKUDI:** Ja. In relation to my testimony here it mainly is speaking to the events as they unfolded at corporate level of Denel.

**CHAIRPERSON:** Yes, okay.

**MR KGATHATSO TLHAKUDI:** But for what I can do is just indicate and later on I will touch on the specific divisions as I speak to them and also explain what they do.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** But Denel has about six divisions. There is Denel Aerospace which is located in Kempton Park which is mainly does the maintenance repair and overhaul of airbase systems. Your, both your fixed wing and rotary wing aircraft, helicopters and fixed wing aircraft and then you have Denel Land Systems which is located in Centurion which manufacturers land vehicles as well as the turrets which are integrated onto these vehicles. Turrets will then carry various systems like your gun for instance your motor system, your siding system and then you have Denel

Dynamics which I referred to earlier which is in the missiles business. They produce both air defence missiles which means missiles that are fired from the ground to air as well as air to air missiles which will be carried by aircraft for defence attack against other aircraft systems. Denel has a PMP, Pretoria Metal Pressing which is located in Atteridgeville which is in the smaller calibre ammunition basically for your RV5, RV1 and it produces AK47 ammunition and then there is a division that is located down in the Cape, OTB and they are, it is a testing site for various airbase systems in the Cape and then there is Denel Vehicle Systems which is in Boksburg which manufactures vehicles which was acquired in, I am just trying to remember my days now. I think it is 10 2015. I think it is early 2015 that was when that business was acquired. Then there is LMT, which is Light Mobility Technologies which is mainly paramilitary vehicles. They produce those. *Ja*, and it is associated companies. There is Rheinmetall Denel Munition which was in the news recently. There was an accident near Simons Town side. It is located in Simons Town as well as in North West at Potchefstroom. There is Hensoldt which is at the Centurion Campus which produces siding systems for both airbase systems for naval vessels as well and it is, *ja* I think I have touched on all of them.

**CHAIRPERSON:** Okay. Thank you.

**ADV LEAH GCABASHE:** Thank you Mr Tlhakudi. It might then be useful for you to 20 speak specifically from a DPE perspective of the specific SOEs that you had oversight of.

**MR KGATHATSO TLHAKUDI:** Chair besides Denel I am also responsible for Alexkor which is a diamond mining company located, its operations are located in North-West, my apologies, Northern Cape in the Russells Veld at Alexander Bay. It is right on the Orange River mouth, right on the border with Namibia and there is also SAFCOL which

has its operations in Mpumalanga, in Limpopo and it also has a small plantation in Kwa-Zulu Natal in [indistinct] in Kwa-Zulu Natal.

**ADV LEAH GCABASHE:** Yes and then if you could just elaborate on the teams you had around you as the person responsible for these SOEs.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE:** And add to that how you then supported the Minister with the work that you as technocrats did. If you could go through that very briefly for the Chairman.

**MR KGATHATSO TLHAKUDI:** *Ja.* Chair it can be appreciated, I mean, having  
10 oversight over these entities especially as varied as the ones that I had in my portfolio in it various skills. I am an engineer. So I have financial analysts who support me headed by a Chief Financial Analyst and we had segmented them by sector as well. So that we have some who are looking after defence, some looking after mining and some of the forestry goods. The businesses are different. They operate in different sectors. You have to understand the dynamics of that particular sector to better interpret the financials as we receive them. You also need technical skills. We have forest stats for instance. When you go visit an operation we need someone who will look at the business from that perspective, will be able to tell us there is something wrong here. The plantations do not look to be in good health. The proper maintenance tasks  
20 [indistinct] culture task being performed at this business. We also have engineers, the mining engineer that looks directly after Alexkor. Her responsibilities are obviously to provide the technical input especially as we not only get the reports, but also we get applications to the Minister for various ventures. You can get it from that particular; we have economists in the team who support us. We have a defence specialist who supports us. We have access as well to support functions in the department. We have

quite significant Legal Governance and Risk Team that supports us. Usually in view of the SOCs also having a developmental mandate we have a team that assists us with looking at the socio-economic impact of our SOCs. So they look at for instance the CSI Program, the Corporate Social Investment Program, of the SOC to say you know is it addressing the right things. One of the things that we are trying to do as well is to try to get the SOCs for greater impact to work together when they are unrolling the CSI Program and our particular focus as a department and the SOCs have mainly been in the education space. For instance [indistinct] donate a timber framed building to a school and then you will have the likes of Eskom donate the education aids for instance

10 for any child. The toys that the kids would use to be able to learn better and so on. So that is, so we have that team. We also have an environmental unit that looks at whether our SOCs are compliant with environmental requirements. They have the right plans in place, those being implemented. We have a Skills Development Team, because one of the things that we try to do as a DPE is to leverage the facilities that our SOCs have for training of artisans for instance to say do not only train for your own requirements. To an extent it also, train for the wider economy. So those are, you know, those are the kind of skills that we have at our disposal.

**ADV LEAH GCABASHE:** Yes. In paragraph 9.4, 9.1 to 9.4 you set out the elements of the relationship between the shareholder that is the Minister and the SOE Board. I

20 would like you to take the Chairman through that, but as you do that I would also like you to have regard to EXHIBIT W5A which has the governance documents that are relevant to the evidence you set out in paragraph 9 and if you could just illustrate the points you make possibly by pointing to the relevant governance document that underscores the point you may be making in paragraph 9 of your statement. So the reference bundle is W5.

**MR KGATHATSO TLHAKUDI:** Huh-uh.

**ADV LEAH GCABASHE:** A should be the one that has the governance document. So if you just.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE:** Look at that, thank you. To the extent that you are able to if you can just, so when the Chairman looks at this evidence at his leisure he is able to connect what you are saying in paragraph 9 to the governance documents that we have included in that pack. Thank you.

**MR KGATHATSO TLHAKUDI:** Thank you Counsellor. Chairperson the, where we  
10 start with the SOEs obviously we need to give them objectives, governance objectives, strategic objectives obviously in line with their own mandate whether it is an act that recreated them were in terms of their MOI and so on. So what, how we do that there is a statement that we refer to, the Strategic Intent Statement which would be issued by the Minister a year ahead. So for instance for the next financial year she will issue it in this year and early in this financial year to enable the SOC as it plans that they are cognisant of those priorities that the Minister will be saying I need you to pay particular focus on these and obviously some of those strategic objectives would be derived under what are called the [indistinct] document which is going to be national development plan. There will be the medium term strategic framework which covers an  
20 administration period which will have specific deliverables that each SOC especially, let me say the major ones, especially Eskom, Transnet and Denel to a certain extent are expected to undertake on behalf of Government. So that is and that strategic statement is reflected on pages 111 of W5A. That will be, it is reflected as Annexure 3. So that is, so let me get to a specific area in the shareholder compact.

**CHAIRPERSON:** Okay. I think I have found it.

**MR KGATHATSO TLHAKUDI:** *Ja*, paragraph 11. We have captured it here in the [indistinct], but it is also a separate document that we issued to the SOC.

**ADV LEAH GCABASHE:** Mr Tlhakudi.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE:** Might I interrupt you?

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE:** Which page are you on?

**MR KGATHATSO TLHAKUDI:** I am on page 13. Sorry on 116.

**CHAIRPERSON:** 116.

10 **ADV LEAH GCABASHE:** 116.

**MR KGATHATSO TLHAKUDI:** 116.

**CHAIRPERSON:** *Ja*, okay.

**MR KGATHATSO TLHAKUDI:** Paragraph 11.

**ADV LEAH GCABASHE:** Thank you.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE:** And you are saying this is an example of a [intervenes]?

**MR KGATHATSO TLHAKUDI:** *Ja*, this is an extra.

**ADV LEAH GCABASHE:** SIS, Strategy Intent.

**MR KGATHATSO TLHAKUDI:** *Ja*.

20 **ADV LEAH GCABASHE:** Statement?

**MR KGATHATSO TLHAKUDI:** Correct, yes and as it relates to Denel you will see there it talks about Denel Support and Maintaining the Department of Defence Sovereign and Strategy Industrial Defence Capabilities and also goes on to touch on other expectations of the Minister in relation to Denel.

**ADV LEAH GCABASHE:** Yes. So the Strategic Intent Statement would actually be

contained in the shareholder compact?

**MR KGATHATSO TLHAKUDI:** It gets reproduced there, but is also a standalone document that gets issued early on in the financial year. The next, 9.2 we refer to the shareholder compact. Now the shareholder compact would typically be signed also a year ahead of the financial year, but this would be done in the third quarter normally at the AGM. So for the purpose of completeness with the shareholder compact we would recall to produce the Strategic Intern Statement.

**CHAIRPERSON:** The Strategic Intern Statement does it reflect the strategic objectives that are set for that particular SOE for a particular period of time? If I put it like that  
10 [intervenes].

**MR KGATHATSO TLHAKUDI:** You have it right, Chair.

**CHAIRPERSON:** Would I still be accurate if I put it like that?

**MR KGATHATSO TLHAKUDI:** It is accurate, yes.

**CHAIRPERSON:** Okay, alright. Thank you.

**ADV LEAH GCABASHE:** So if you in fact look at moving from your page 116.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE:** Mr Tlhakudi, if we went to page 115 you will find that the Strategic Intent Statement that is on page 116 relates to the financial year 2015/2016.

**MR KGATHATSO TLHAKUDI:** *Ja.*

20 **ADV LEAH GCABASHE:** And that is recorded on page 115. So in this file you have got three different Strategic Intent Statements which run from the year 2014 to 2015.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE:** 2015 to 2016.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE:** 2016 to 2017.

**MR KGATHATSO TLHAKUDI:** *Ja*, but.

**ADV LEAH GCABASHE:** And each year the Minister would then set out what her expectations are?

**MR KGATHATSO TLHAKUDI:** That is correct.

**ADV LEAH GCABASHE:** Thank you.

**MR KGATHATSO TLHAKUDI:** Thank you Chair and a shareholder compact Chair is a performance contract. It would include the, let me check whether it is three pages, unfortunately not. It will include the specific KPAs and KPIs that the SOC must deliver against. So at the AGM the Minister would be saying for the next financial year this is my expectations of you and of course at the AGM there is also an opportunity to reflect on the performance for the financial year that has just passed. So would have and in the annual report they show a compact performance of the SOC would reflect it in there to say the SOC had 20 KPAs. You were able to deliver on 15 of them. So on the basis of that it is 75 percent. We are not so happy. We prefer you to be above 80 percent. So it is the kind of discussion that would go at the AGM and of course it will also provide the SOC an opportunity to explain to the Minister some of the challenges that they may have experienced in the last financial year that disabled them from delivering on the components of the shareholder compact.

**ADV LEAH GCABASHE:** At some point I trust you will then take the Chairman to Annexure KT1. You may not wish to do so at this point which is.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE:** A document that speaks to exactly what you are talking about now.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE:** But you may want to just complete the information you have

set out in paragraph 9.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE:** Before you go across to Annexure KT1 to illustrate the points you are making.

**MR KGATHATSO TLHAKUDI:** Alright. *Ja*, let me do that.

**ADV LEAH GCABASHE:** Is it convenient?

**MR KGATHATSO TLHAKUDI:** [Intervenes].

**ADV LEAH GCABASHE:** For you to go to it now?

**MR KGATHATSO TLHAKUDI:** Let me complete paragraph 9.

10 **ADV LEAH GCABASHE:** Thank you.

**MR KGATHATSO TLHAKUDI:** Then we can go to it, *ja* and then in line with the requirements of the PFMA an [indistinct] is expected to deliver a corporate plan by the end of February just before the financial year. So for instance for the next financial year which will be 2020/2021 the corporate plan we are expecting it by the end of February 2020 to be delivered to her and the corporate plan is, would include for instance the budget for that particular year. So the SOC is explaining these particular resources at my disposal and this is how I intend to utilise them, to reach the objectives that you have set for me. So I may need to go out and for instance do some borrowing because I do not have enough resources at my disposal. There are these ventures that

20 I want to undertake in the next financial year. Please be aware of them. Although I am giving you a heads-up now there is a particular PFMA process that I will follow at the right time. So that is what the corporate plan is intended to do.

**CHAIRPERSON:** So the corporate plan I assume is a kind of a follow up on the Strategic Intent Statement. You first have the Strategic Intent Statement.

**MR KGATHATSO TLHAKUDI:** Yes.

**CHAIRPERSON:** And once you have got that you need to have a plan as to how you would, you will, what you will do or what you do to achieve those objectives and that is when you then in the correct corporate plan set out your plan and how you will go about the business of the, also the SOE to achieve those objectives during that financial year. Is that right?

**MR KGATHATSO TLHAKUDI:** That is correct Chairperson.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** You must also remember there is a performance contract as well. They show [intervenes].

10 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Which will now, because it is a written statement. It is written at quite a high level. It is.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Now they show the compact. Now it started to speak to specific deliverables.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** This is the revenues, the cash flows.

**CHAIRPERSON:** Yes.

20 **MR KGATHATSO TLHAKUDI:** These are the products the number of which I will produce.

**CHAIRPERSON:** *Ja.*

**MR KGATHATSO TLHAKUDI:** Now corporate plan is how am I going to do this.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE:** Mr Tlhakudi it is correct though that the corporate plan would be prepared by the Exco, by the Executive Committee, presented to the Board and signed off by the Board of the SOE?

**MR KGATHATSO TLHAKUDI:** That is correct.

**ADV LEAH GCABASHE:** And it would be done in, as you have explained, in that financial year?

**MR KGATHATSO TLHAKUDI:** The preceding financial year.

**ADV LEAH GCABASHE:** So if we take the financial year 2015/2016 which is the year that this Commission has a particular interest in because that is when you had a  
10 change of Board.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE:** When the new Board arrived there was a corporate plan in place already. I am just really trying to explain what documentation governs and then what the new Board might have found in place. Just illustrate the point.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE:** So that is correct. When the new Board would have come in the corporate plan would have been place already. The new corporate plan would be prepared in 2016 for the 2016/2017 year?

**MR KGATHATSO TLHAKUDI:** That is correct Chair.

20 **CHAIRPERSON:** Yes. So just going back to the corporate plan not only from what you have said, not only does it deal with what will be done. It also deals with how it will be done?

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** With the aim of achieving the objectives and bearing in mind the performance contract, *ja.*

**MR KGATHATSO TLHAKUDI:** Correct Chair.

**CHAIRPERSON:** Okay, thank you.

**ADV LEAH GCABASHE:** And is this the purpose of the monthly meetings or the quarterly performance reports? You refer to those in paragraph 9.4. Please just speak to that issue.

**MR KGATHATSO TLHAKUDI:** Now once we have done all that now we must stick close to the SOC in order to ensure that they deliver on what they have promised the Minister.

**ADV LEAH GCABASHE:** Mr Tlhakudi I beg your pardon can I interrupt you? We, who  
10 is we?

**MR KGATHATSO TLHAKUDI:** Oh.

**ADV LEAH GCABASHE:** Thank you.

**MR KGATHATSO TLHAKUDI:** We would be the department in relation to the SOC's that I have oversight over. That would be a team led by myself and those SOC's as indicated earlier is Denel, Alexkor and SAFCOL and what we do is we would have quarterly reports that would come from the SOC where now they are saying in terms of the targets that you set for ourselves for this quarter this is how we have performed. Have we exceeded those targets or we have not exceeded those targets. Now what we also do if the SOC is in trouble then we demand the monthly reports be submitted to us  
20 so that we have, then we are even closer to the SOC in terms of monitoring its performance and these quarterly reports there is what we call an investa brief. It is a document that, which is an analysis of the quarterly report that we then put together and put it before the Minister to say Minister this is what is happening with your SOC and that document the Minister would then send to the Chairperson of the Board to say to the Board we have received your quarterly report. This is our view of your business.

We need you to pull up your socks in the following areas and we commend you in the following areas and typically those reports can also trigger the Minister saying let us have a meeting with the Board. I am not happy with the extent of deviation from agreed targets by this particular SOC.

**ADV LEAH GCABASHE:** Yes. You then speak about the AGM.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE:** Take the Chairman through that particular process.

**MR KGATHATSO TLHAKUDI:** *Ja.* Chairperson we have referred to it as 9.5 as the pinnacle of the financial year because that, at an Annual General Meeting that is where  
10 the Minister would receive the annual report incorporated. Within that will be the annual financial statements. The Minister will also have the external auditors of the SOC attend to give a report on how the business has been looking after the resources entrusted to it and we also would have a Board Evaluation Report which would give insight in terms of how the Board has been functioning and some of the things that we would be interested in is for instance the dynamics in the Board, you know. Is there a member who is in terms of the Peer Review Component of the Board Evaluation Report who is not, who is maybe a destructive force in the Board. We interested in that and of course we will look at things like attendance as well at the AGM and what has happened in the past is if a particular member is seen not to be prioritising their role as  
20 a Director of that SOC as reflected in the attendance record. The Minister would address that and ask them, the Director what is going on. Why can you not make time for this particular role? So it performs that particular role and of course depending on whether the Board's term has come to an end. It will be an opportune time to also to rotate the Board and, you know, Codes of Good Practice speak of you rotate a third of a Board at each AGM, but we have not had that opportunity because we tend to change

the Board wholesale. So you will find that the three, the whole of their term is coming to an end at the same time, but also Good Practice obviously would say retain some of the members so that there continuity for the Board and sometimes what happens is that you get because the [indistinct] with regard to the MOI of Denel a Director can stay for a maximum of three terms which is nine years. You get there and all of the members served their three terms and that is the point with which they will be rotating. So that is typically the business that will happen including, obviously there will be resolutions as well that we put before the Minister in line with the MOI of that SOC. So, *ja*.

**ADV LEAH GCABASHE:** So in relation to Denel the MOI you a referred to is of course  
10 in W5A?

**MR KGATHATSO TLHAKUDI:** That is correct.

**ADV LEAH GCABASHE:** And you would then be referring to Clause 13 of that MOI which deals with the aspect you touched on?

**MR KGATHATSO TLHAKUDI:** *Ja*. That is correct. Is it number five? No, I am just trying to locate it in the [intervenes].

**ADV LEAH GCABASHE:** If you go to the reference file W5A and go through to page 21, 021.

**CHAIRPERSON:** W5A.

**MR KGATHATSO TLHAKUDI:** Page 21.

20 **ADV LEAH GCABASHE:** W.

**CHAIRPERSON:** W5A.

**ADV LEAH GCABASHE:** W.

**MR KGATHATSO TLHAKUDI:** 5A.

**CHAIRPERSON:** Is it W5A?

**ADV LEAH GCABASHE:** 5.

**CHAIRPERSON:** Or is it?

**ADV LEAH GCABASHE:** A.

**CHAIRPERSON:** Okay, alright.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** I may have heard wrongly, but I thought you said WA, so.

**ADV LEAH GCABASHE:** W5A Chair.

**CHAIRPERSON:** *Ja*, okay.

**ADV LEAH GCABASHE:** Thank you.

**CHAIRPERSON:** What page must we look at?

10 **ADV LEAH GCABASHE:** It is page 21, 021.

**CHAIRPERSON:** Thank you.

**ADV LEAH GCABASHE:** If you can very briefly take the Chairman through that section that deals with Directors.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE:** Which underscores the point you have just made really in relation to a Director being eligible for three consecutive three year terms. Meaning they can serve for nine years is what you are saying on a Board, but that provision is made, is set out in the MOI.

20 **MR KGATHATSO TLHAKUDI:** Chair at paragraph 13.1.2 on page 21, it speaks to the Director being appointed for a three year term. It also says that:

“No person is appointed as a Director for longer than three consecutive terms.”

That is where the nine years is coming from.

**ADV LEAH GCABASHE:** We will come back to this when we deal.

**CHAIRPERSON:** Thank you.

**ADV LEAH GCABASHE:** With the Board of Directors.

**MR KGATHATSO TLHAKUDI:** Alright, thank you.

**ADV LEAH GCABASHE:** Mr Tlhakudi.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE:** You were on paragraph 9.5.

**MR KGATHATSO TLHAKUDI:** 9.5.

**ADV LEAH GCABASHE:** And just tidying up the matters that arise there.

**MR KGATHATSO TLHAKUDI:** *Ja*, alright. I think I have covered 9.5. We will have an opportunity when we get to KT1 to go through an AGM pack and show the Chair the structure of the AGM pack and on 9.6 we are saying besides the functions of shareholder oversight that I have touched on the Minister and the department receives correspondence throughout the year and would be expected for instance to analyse those and advise on what intervention should be taken and that's – and what would happen is that depending on which entity it relates to would be referred to the right sector team so that we can respond and *ja*, and we also have in 9.7 forums that we serve on behalf of the department for instance in the defence sector I sit on the National Defence Industry Council on behalf of the Department with – and that Council is convened by the Department of Defence and my interest being there on behalf of the Department is to ensure that Denel is you know is assisted in terms of achieving its own mandate, and – because in the defence industry in this country Denel is also quite a gorilla as well so also we get first hand if there are areas of weakness that are affecting the rest of the industry we get to know about them there, so we are able to come back and deal with them when we get back. The same would apply with each particular entity, so that's in a nutshell Chair what the shareholder oversight role as is undertaken by the Department on behalf of the Minister entails.

**ADV LEAH GCABASHE SC:** Can you just very briefly tell the Chairman who the primary stakeholders of Denel are?

**MR KGATHATSO TLHAKUDI:** Ja. Chair the primary stakeholder in this country in the Department of Defence as I indicated earlier the – Denel at some point was supplying 40% of its revenues were derived from business for the Department of Defence, and of course when countries decide to purchase arms, because it's governments that purchase, and typically those governments and those governments will be the Departments of Defence in those countries that do the purchasing, and typically the point of entry would be our defence, Department of Defence and the Minister of

10 Defence so it's a very important stakeholder and a stakeholder that we also utilise quite extensively in terms of marketing the products of Denel because – and especially – and that's why it becomes important as well, and that's one of the challenges that we have had that your local defence force utilises your products because that gives confidence to your foreign buyer that you know this must be a good product if this - if their own defence force is utilising it, and Denel has had – or let me rather say the Department of Defence budgets have been cast over the years you know the amount of business that the Department of Defence does with Denel has been going down so that's where the experts have come in to assist us in terms of maintaining the defence and that sort of capability that is housed within Denel.

20 The rest of the industry is obviously quite critical, Denel is quite reliant on bought-in services, products because in producing a system, the sub-system there is components of it that would be produced by various players in the sector, that's why when Denel has the kind of challenges that it has been having of late it affects those companies and some of them have had to close as a result, because the development of Defence products is technologically intensive, there's research and development that

gets undertaken. An entity like CSIR which reports to the Department of Science and Technology is an important player there. The Academic fraternity, the engineering departments are very important sources of skills but also of research because Denel would sponsor certain projects in those universities that will become the basis on which they develop products within Denel and I don't know whether I should go wider, the Department of Trade of Industry for instance would also be quite important, there's an expert council that they are sponsoring, that effort is important for Denel in terms of getting their products out to someone like NCACC which is the National Council on Arms Compliance, I may have just mixed up the words there, would be important, it's

10 chaired by Minister Radebe, it licenses who can buy and sell arms and they offer end-user certificates to the industry. Those are important terms of ensuring compliance by Denel and of course they do their own audits to ensure that particular compliance, so I will touch on those stakeholders ma'am.

**ADV LEAH GCABASHE SC:** Thank you. Chairman I notice it is just after quarter past eleven, it might be convenient for us to take the tea break now.

**CHAIRPERSON:** Yes, let's take the tea adjournment, we will resume at half past eleven. We adjourn.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

20 **CHAIRPERSON:** Yes, you may proceed Ms Gcabashe.

**ADV LEAH GCABASHE SC:** Thank you Chairman. Mr Tlhakudi before we deal with the next section just to tidy up the evidence you have just given before tea. Can you spell out for the Chairman the nexus between the sovereign integrity of our country, I know that the Defence review documents speaks to maintaining a sovereign integrity, it's a constitutional imperative and the obligation on Denel to maintain a sovereign

capability as manufacturer and provider of specific goods and services. I want you to deal with this simply because it's a debate that's going to inform some of the matters that we will be dealing with going forward.

**MR KGATHATSO TLHAKUDI:** Chair our country as everyone is aware, I'm starting from after 1994 we adopted a particular posture when it comes to defence, we said we are no longer going to be the country we were before then that causes instability amongst its own neighbours, we said that we shall defend ourselves against any aggression that will come our way, we will not go out as an aggressor, and as everyone is aware as well as a country we have been quite, played a lead role in keeping peace  
10 on our Continent. We have deployed our people, our soldiers as well as equipment to ensure that.

Now in order to be able to perform – to basically defect that posture it is important for a country like ours to have a capable defence and as well capability and that's where Denel comes in, and that's where the other players in the defence industry who are South African owned come in and we are also fortunate in this country that we have quite a significant presence of defence multi-nationals in this country and they have been attracted obviously by both business opportunities, selling to our country, but also they have been attracted by the skills base that we have in our country.

If I may use a term, it's maybe politically incorrect, we have an apartheid  
20 dividend in the defence industry that we have in place, because of the past that we had our country had to be self-sufficient, so we're quite fortunate that we have the defence industry capabilities that we have here.

Now what the Defence Review 2015 sought to do, was to try and classify those defence industry capabilities. It came up with a number of categories, it says we have what is called sovereign capabilities. Now a sovereign capability is the kind of

capability that would say it's at the highest level of criticality in terms of us being able to maintain the posture that I have referred to earlier, and a division of Denel which produces missiles has been classified as a sovereign, as having sovereign capability because one of the product that it produces an air defence missile so that if somehow you had to have an aggressor you are able to fend them off using that kind of capability.

Then the next category of capability is what they call strategic capabilities, now the strategic capabilities within Denel would be the other five divisions of Denel, the production of large calibre ammunitions, small calibre ammunitions, your ability to be able to maintain, repair and overhaul the equipment that would be a strategic  
10 capability, your ability to produce vehicles, armoured vehicles, combat vehicles, those would be strategic capabilities and linked to those definitions is that there is also the question that comes up is what level of ownership should the State have in order to ensure that that capability is sustainable and is accessible to the State and one of the discussions that were happening in the National Defence Industry Council was if you say these capabilities are sovereign capabilities should the State not have ownership of it and typically Denel would be a depository of that kind of capability.

This – if you say it's a sovereign capability can a multi-national that is operating in this country have a part-ownership in an entity which has been – which is a depository of that capability. Now what do we do with what we call strategic  
20 capabilities, like do we say that an entity that is domiciled in South Africa is the only one that can have and in which those capabilities can be deposited, and of course your non-strategic capabilities obviously then that then will be anyone can be able to have ownership of an entity in which those non-strategic capabilities are domiciled, so that's how those definitions of sovereign and strategic capabilities were defined in relation to specific defence players in the country.

**ADV LEAH GCABASHE SC:** Yes, now let's throw into that explanation the whole concept of intellectual property because you speak of Denel being the depository of this sovereign capability. What I take from that is you're saying that the intellectual property that resides in Denel in certain circumstances must remain in Denel, but where there are partnerships, you spoke of international companies coming into the country it's the type of intellectual property that would benefit the equity partners in that relationship.

**MR KGATHATSO TLHAKUDI:** Mmm.

**ADV LEAH GCABASHE SC:** Maybe you just want to elaborate a little more on that, why it is so important when you deal with Denel's intellectual property and when you  
10 deal with skills flight from Denel, certain protective measures have to be taken to secure, not just the sovereign capability but the sovereign capacity to protect this country.

**MR KGATHATSO TLHAKUDI:** Yes, Chairperson as I said earlier the defence products are technologically intensive and defence generally is at the cutting edge of new technologies in fact a lot of the products that we use in our everyday lives including the GPS system is developed in a different space. Now that capability for it to be effective for you it's important that appropriate measures are put in place to ensure its security, in terms of obviously the documentation that is a direct result of the development activities that you undertake like the design information that you would have, some of  
20 the results that would come from testimony and evaluation of that particular equipment but most importantly this capability also lies in people's heads, so it's important to also have a sense of who are those critical engineers be they system engineers, be they (indistinct) specialists, that complete the picture in terms of the capability also includes the facilities that you would have that you are running and the procedures and working instructions that inform how those facilities should be utilised, so that in a nutshell is

what the capability is and of course in this day and age a lot of this is also in software, it lies in software so important to have appropriate measures to protect that and if you don't take appropriate measures and we know this particular industry there's also quite a lot of activity of foreign agents you also the risk of some of you losing that intellectual capability and landing in the hands of people that ordinarily should not have, for instance people that are likely or companies that are likely to be aggressive towards you, you would not want them to know what capabilities you have and how you intend to deploy them in the event that they were to follow through on their aggression.

So that's in a nutshell that's with regard to intellectual – maybe I should add  
 10 as well that as you do sales of arms one of the conditions that come up because countries as well they've realised that if you just buy these products from supplier countries there comes a time when your interest differ and – or diversion - during those times the supplier country is able to stop supplying you and therefore rendering the equipment that you got from them useless and now what they are attempting to do they say well we want to have the capability to produce, support and maintain the equipment in our countries. Now for them to be able to do that there's expectations then that there will be technology transfers and we have also as a country done that when we are purchasing equipment, for instance the strategic defence packages, there were some technology that was transferred to this country in exchange for us (indistinct) those  
 20 particulars arms and Denel typically as it does because most of its business is foreign sales there are expectations that do that, that you transfer certain levels of technology to other countries in exchange for landing their sales and the orders.

**ADV LEAH GCABASHE SC:** Yes thank you. Let's get back to more pedantic matters which you deal with at paragraph 12 of your statement but maybe to give a context to what we're going to deal with now please tell the Chairman who the Minister of Public

Enterprises was when you assumed office?

**MR KGATHATSO TLHAKUDI:** Chair if I may, Counsel at this particular point I also wanted to say that I'm quite cognisant of my role here, the statement, the purpose of the statement obviously speaks to why I'm here and the primarily it's around the Denel Board appointments but also that speaks to the other appointments that were done in our department.

**CHAIRPERSON:** Yes, yes.

**MR KGATHATSO TLHAKUDI:** It also speaks to the Denel Asia process but when I say secondary is that and Chairperson I want to speak for those people as well that were  
10 subject to victimisation for daring to speak up.

**CHAIRPERSON:** Well that's very important Mr Tlhakudi because sometimes you may be called primarily for a certain issue but your knowledge of things that are relevant to the investigation of the Commission the whole purpose of the Commission goes wider and so we encourage that people tell us, the preferred way of doing it is of course if it's put in a statement first so that if there are any people that are implicated they can be notified, but certainly that information is important and you must be able to talk about it.

**MR KGATHATSO TLHAKUDI:** Yes and later on in my statement I go quite into detail relevant to my own experience.

**CHAIRPERSON:** Yes, yes.

20 **MR KGATHATSO TLHAKUDI:** And I want to say that you know the ...(intervention)

**CHAIRPERSON:** So just to make sure you understand, so I welcome your preparedness to talk about other incidents where people as you say may have been victimised for standing for what is right.

**MR KGATHATSO TLHAKUDI:** Ja, alright, thank you Chair. And some of these people Chair were much braver than myself and I will explain later on.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Some of them as a direct result of during (indistinct) the SOC's or in the government departments by saying it should not happen that way to the principal, it should happen this way they were removed, and some of these people Chair have had their livelihoods thrown into disarray, they have seen their children being put out of school, they have lost their houses and that's really what happens out there Chair. In our Department today didn't you hear some of those stories?

**CHAIRPERSON:** Mmm.

**MR KGATHATSO TLHAKUDI:** Because people now feel a lot more confident because  
10 we have the Minister that we have in our Department to now speak up and say this is what happened to me, I've tried to go to the courts, it does not work, it's too expensive .

**CHAIRPERSON:** Yes, yes.

**MR KGATHATSO TLHAKUDI:** And I will touch on my own experience and like I say they were much braver than I, I think there was an element of self-preservation that informed my own conduct and I will speak to it later on, so I thought that's – it's important that I just put that up-front.

**CHAIRPERSON:** No, no that's very important and I do want to hear those stories because they are important you know in the midst of everything that was happening there were people, there were human beings and if people suffered for standing for  
20 what is right we as a nation need to know who are the people who tried to do what is right, who tried to say wrong things mustn't be done but they were victimised, they were removed, we need to hear all of that because apart from anything else that also speaks to the extent of the damage that happened so I encourage you, I encourage everybody out there who knows such stories, and people did suffer to come forward and tell us what happened because one of the things that the Commission has got to do is that at

the end if it finds that that there were these things that happened it must make recommendations about what measures must be put in place so that people are never put through that kind of thing again, and it can't do that effectively if it doesn't know what happened to people, so that is very important.

**MR KGATHATSO TLHAKUDI:** Thank you Chair.

**ADV LEAH GCABASHE SC:** And Mr Tlhakudi if I might add this is a fact finding Commission, so the facts that you can share with this Commission, as the Chairman says, are most welcome. Please proceed to deal with just the historical background behind Board appointments, but can you start of by just telling us who was the Minister  
10 of Public Enterprises when you joined DP?

**MR KGATHATSO TLHAKUDI:** Yes, Chair I joined DP in 2012, I was interviewed by Minister Gigaba and Deputy Minister Benedict Martins at the time, so when I arrived at the Department Mr Gigaba was still the Minister, Mr Martins had moved to another portfolio and Mr Gratitude Magwanishe was the Deputy Minister in the department.

**ADV LEAH GCABASHE SC:** Then of course we had elections in 2014.

**MR KGATHATSO TLHAKUDI:** Mmm.

**ADV LEAH GCABASHE SC:** And you had a change of ministers, who took over at that point?

**MR KGATHATSO TLHAKUDI:** After the elections there was new appointments and the  
20 new Minister that came in was Minister Lynne Brown to replace Minister Gigaba and the Deputy Minister continued to be Mr Gratitude Magwanishe.

**ADV LEAH GCABASHE SC:** So the evidence that you're about to give dealing with the period 2014/15, 15/16 is a period where Minister Lynne Brown was the Minister of Public Enterprises?

**MR KGATHATSO TLHAKUDI:** That's correct Chair.

**ADV LEAH GCABASHE SC:** Thank you. Please proceed.

**MR KGATHATSO TLHAKUDI:** Chair if I may go on to paragraph 13 as I said earlier on the AGM is a very important event in the financial year and one of the tasks that are undertaken at this – at an AGM is, would be the review of directors and rotation and of course what would then happen is if there's a rotation you would have the new directors in what we call a special general meeting which will follow the AGM, and events that I am going to speak to here as they relate to the Denel, as I say in paragraph 12, they were reflected also in Alexcor and SAFCOL but of course I am going to deal with Denel only, and Chair we have included the pack for – emanating from the AGM of 2015 and  
10 it's reflected as KT1, and in KT1 which is page 37 what you have there is what would normally happen after an AGM would prepare a memorandum, a decision memorandum for the Minister which would cover the various issues that were dealt with at the AGM, and that would be to enable her obviously to for her own records to sign off on them and say yes I agree, these are the decisions that we made, and if you go further Chair you will see on page 57 we have a table of resolutions that would have been dealt with at the AGM of 2015, and as well as the decisions that the Minister would have made and then on page 66 ...(intervention)

**ADV LEAH GCABASHE SC:** Can I ask you before you get to page 66 just to reflect briefly on page 60.

20 **MR KGATHATSO TLHAKUDI:** 60?

**ADV LEAH GCABASHE SC:** Six zero, and that would be under Agenda item 9 because that speaks to what you deal with in paragraph 12, 13 and onwards.

**MR KGATHATSO TLHAKUDI:** Page 60 paragraph?

**ADV LEAH GCABASHE SC:** It's item 9.

**MR KGATHATSO TLHAKUDI:** Oh item 9 yes.

**ADV LEAH GCABASHE SC:** Which is the item that deals with the retirement appointment, and then reappointment of non-executive directors.

**MR KGATHATSO TLHAKUDI:** Correct, so in this case at this particular AGM the decision to rotate the then members of the Board was taken by the Minister and the names of the members that were rotated are reflected in that paragraph 9, counsel is that ...(intervention)

**ADV LEAH GCABASHE SC:** Yes, that's fine because you want to go to page 66 and then I will take you through to the next session I would like you to focus on.

**MR KGATHATSO TLHAKUDI:** Alright. I wanted to take the Chair through the various  
10 documentation that will be dealt with, obviously at the AGM we have an agenda that is reflected here, there, and ja ...(intervention)

**CHAIRPERSON:** It's at page 66.

**MR KGATHATSO TLHAKUDI:** Ja, on page 66.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And of course there's various agenda items like we start with the notice to members which would be the first item or the fourth item rather on the agenda, that's obviously this will be done in line with the Companies Act and the MOI of the business and what would normally happen is that on – if you go to page 70 then you would have the Minister give an address to the directors and this would be  
20 speaking to the Annual Report as it was received, the analysis that would have performed and Minister's own views as to the performance of the SOC during the past financial year and if Chair goes to page 71 as can be seen there the (indistinct) that we spoke about earlier Denel had achieved 80% of a shareholder compact and as we further – as we go to the next ...

**ADV LEAH GCABASHE:** Mr Tihakudi if I might interrupt you. Could you just go back

to page 70 because that is really the beginning of the Minister's feedback to the board and I note that she is quite complimentary of the board that was chaired by Marti Van Rensburg – Janse Van Rensburg. I note right from the outset in her very first paragraph she speaks to their professionalism maybe you just want to read it is line 1 to 3. Read her comment on the outgoing board as recorded in this paragraph.

**MR KGATHATSO TIHAKUDI:** Chair I agree with Counsel it is – it was quite complimentary and the Minister started with:

10 “I first wish to note the role and contributions of all employees of Denel management and board of directors towards another successful financial year. I am cognisant of my address to the 2015 AGM also marks the end of the term of the current board. It has indeed been a pleasure working with you, your professionalism, the spirit with which you have served the company has not only ensured a smooth transition but more especially sad the company on a long term path of sustainable performance.”

**ADV LEAH GCABASHE:** As we look at the financial overview as well which is just below that.

**MR KGATHATSO TIHAKUDI:** Exactly.

20 **ADV LEAH GCABASHE:** That too was positive?

**MR KGATHATSO TIHAKUDI:** Ja this was a very positive. The order book was looking very healthy.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** At R35 billion and these would be orders that have been secured but yet to executed.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** In the business.

**ADV LEAH GCABASHE:** And is it correct that this would have been one of the highest levels of order book cover that Denel had had in a while?

**MR KGATHATSO TIHAKUDI:** That is correct. The – so I will speak to it later on. Denel performance was very pleasing in actual fact year to year they were exceeding the corporate plan that they had given to us. In fact every year we get together we will just bump it up a little bit to say you know we seem not to be stretching enough...

**CHAIRPERSON:** Because you realise that they were just exceeding the targets?

10 **MR KGATHATSO TIHAKUDI:** Yes we thought the thing will be too conservative how we [indistinct]. But really it was – this board and the executive team that was in place was doing a magnificent job.

**ADV LEAH GCABASHE:** In fact the board just prior to this one which was chaired by Mr Kunene really started this trek. This new way of doing things.

**MR KGATHATSO TIHAKUDI:** That is correct Mr Kunene's terms had come to an end by the previous financial year because he had served his nine years.

**CHAIRPERSON:** Yes.

20 **MR KGATHATSO TIHAKUDI:** And Mr Van Rensburg took over and she also was I must say quite an impressive Chairperson and she led the organisation in a very good way.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** As reflected in these results.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE:** Yes.

**MR KGATHATSO TIHAKUDI:** As you can see the revenues went up by 28% I mean

which is a great performance in anyone's book. The – I mean the equity this – on the next page 71 the second bullet point the total equity position tripled in three years. This was the – a business that was doing well and as I will later on explain but also it is still a fragile business because it is coming from years of losses. And we just starting to break and start to make some profit so it was really expecting that we make even better profits going forward.

**ADV LEAH GCABASHE:** Of course the Minister also just set out what you called areas of concern just to give a balanced overview.

**MR KGATHATSO TIHAKUDI:** That is correct yes.

10 **ADV LEAH GCABASHE:** And that is the next paragraph.

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** You may want to read that into the record?

**MR KGATHATSO TIHAKUDI:** Ja. In the – still on paragraph 71 there were three areas that we highlighted, commercial paper, redemption this is the – backed up by the guarantee from the National Treasury will be due the current financial Denel board need to ensure that the SOC is in a position to fulfil these obligations. So this was a very important task for the SOC to ensure that it is fulfilled.

**ADV LEAH GCABASHE:** Could you tell the Chairman what the guarantee at that point was?

20 **MR KGATHATSO TIHAKUDI:** It was...

**ADV LEAH GCABASHE:** That government had provided.

**MR KGATHATSO TIHAKUDI:** It was sitting at about at one point R85 billion. And if the institutions, the financial institutions and the asset managers that are providing that funding if they are not able to come through it means that government has to step in because that is what the guarantee is for. Government must fund R1.85 billion. It was

important to highlight it to them to see we expect you to do all you can to ensure that this – that this facility is renewed by those institutions. And then of course we speak to the current liabilities being the highest they have been. The – that the [indistinct] balance with the assets side of the – needs to be maintained but also it was a product of a business that was growing. So as you grow you tend to have to take – you need money to be able to fund your operation so your liabilities will obviously go up as well. You tend to – to also – ja okay let me leave that. But I think the point is that you are extending yourself now. As you extending yourself you need more support so you go to third parties to assist you.

- 10 **ADV LEAH GCABASHE:** You have dealt with the shareholder compact and the fact they – in fact exceeded their objectives could you then have a look at page 71 the comments relating to research and development etcetera.

**MR KGATHATSO TIHAKUDI:** Ja.

**CHAIRPERSON:** Maybe before you do that. Just on the achievements of the shareholders compact targets 88% had been achieved by the outgoing board and was that quite a high performance? Was that taken as quite a high performance in – compared to other years?

**MR KGATHATSO TIHAKUDI:** Yes Chairperson it was quite – it is quite a high score to achieve. The AG normally would say 80%.

- 20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Is what I am looking for but

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** If you had to look at our SOC's at the time in general they were hovering around 50 to 60% so this was quite a pleasing performance for us.

**CHAIRPERSON:** So this was very impressive?

**MR KGATHATSO TIHAKUDI:** This was very impressive yes.

**CHAIRPERSON:** Yes okay thank you.

**ADV LEAH GCABASHE:** You might as well just go through the other bullet points under shareholder compact. These are all the positives that the minister pointed out?

**MR KGATHATSO TIHAKUDI:** That is correct yes. Because one of the points that we had been raising with Denel was with regard to transformation you know representation of our people in the programmes that they are doing meaningful work and of course the representation of females in the business was also something that was very important. So we had – and we were quite happy to see that they have done something about it.

10 It had now gone up to 53% at that particular time that is of black people in general and we were happy with where it was going. One the reasons we had raised this point as well was that because Denel had gone through some very difficult times. Now when that happens you tend to cut back on training for instance on taking on new staff. So what will happen is that your – the average age of your workforce will tend to go up. And now if you have the capability line people who in their late 50's, early 60's they are bound to retire at some point and the numbers were showing us that they were going to be leaving en masse and that is – and we called it you know stealing from the financial and called it a skills cliff. And that is why it was important for us to really drum on this point to say Denel you need to be doing something in this particular area.

20 **ADV LEAH GCABASHE:** And in any event the defence is this [indistinct] is fairly conservative so – and you had inherited a Denel that well – an organisation that was pale male orientated really. So transformation was a critical KPI for Denel?

**MR KGATHATSO TIHAKUDI:** Correct and that Chair should not be underestimated because Denel by virtue of the products it produces was really at a heart of the security state that defined our country before 1994. And of course by virtue of that it was – the

complexion of it was as per – what the Counsel has defined. So now to have an organisation now that at this particular point was now majority ADI representative was quite an achievement for Denel. Yes. And of course we speak to the maintenance of strategic and sovereign capabilities and its alinement to the 2014 defence review and we saying – because what had [indistinct] – because the relationship between Denel, DOD Armscor has been quite difficult in the past. The fact that it was looking up was something that we really appreciated and possibly I know definitely Riaz also played quite a significant role in that being Riaz Saloojee was the CEO of Denel at the time. He was an ex Brigadier General in the defence force so he understood that space quite well which helped a great deal in terms of Denel mending relationships there. And of course we were quite happy with the execution that is third point of strategic acquisition protocol as reflected in the performance there if you look at the revenues level.

**ADV LEAH GCABASHE:** Yes. Research and development transformation she encouraged a little movement in that area.

**MR KGATHATSO TIHAKUDI:** Ja correct yes.

**ADV LEAH GCABASHE:** But she was not complaining about the strides that had been made?

**MR KGATHATSO TIHAKUDI:** That is correct yes.

**ADV LEAH GCABASHE:** We then get to skills development which again is on page 73 and she was quite impressed with what had been done on this front?

**MR KGATHATSO TIHAKUDI:** That is correct and one of the projects that we – had been highlighted there was what Denel was doing in Gauteng and North West in terms of preparing young people in the STEM field in the science technology engineering mathematics. We having schools in the townships that we achieving 100% passes in these particular area and some of these children went on to be sponsored by Denel to

become engineers. So that was good work that was being done.

**ADV LEAH GCABASHE:** Yes. If you go ...

**MR KGATHATSO TIHAKUDI:** But we wanted more of course we wanted to stretch Denel.

**ADV LEAH GCABASHE:** Yes. If you go to page 74 and look and read into the record the message of the Minister to the outgoing board of directors that would be useful.

**MR KGATHATSO TIHAKUDI:** The message reads as follows:

10                   “The SOC and the department developed a turnaround plan in 2012 which was approved by government. This was a condition of a R1.8 billion guarantee to restructure the SOC debt. The quality of the plan and its implementation was a critical role played by the board. I commend you on a job well done.”

**ADV LEAH GCABASHE:** Indeed. Now in all of what the minister had to say to the outgoing board I do not see any complaints at all about the EXCO that was part of that. Also you had the CEO who was Riaz Saloojee, you had the CFO who was Fikile Mhlontla they were part of the directors, part of the board and there are no complaints at all that are filed against EXCO?

**MR KGATHATSO TIHAKUDI:** That is correct Chair.

**ADV LEAH GCABASHE:** Would you agree?

20                   **MR KGATHATSO TIHAKUDI:** There was not and I must say that the – Riaz and Fikile and also done a decent job in terms of developing the management teams especially at added divisions. You had you know for instance the intro – because from our side we need to see more transformation it created deputy CEO's at divisions of black professionals and whom over time started to come through. They became the CEO's at those particular divisions. So it was – it really a decent job had been done at Denel.

**ADV LEAH GCABASHE:** And in fact they were very important to the transition from one board to the next as expressed by the Minister in her concluding paragraph on page 75. Could you read that compli – that particular paragraph into the record?

**MR KGATHATSO TIHAKUDI:** Chair it reads as follows:

“To the executive management continue to do your best to ensure that the SOC fulfils its primary mandate. You are an important constant in the transition between the incoming and outgoing board. We are counting on you to ensure this process is managed properly.”

10 **ADV LEAH GCABASHE:** So she was very aware of the transition that was going to kick in as soon as the old board left and the new board came through and I would like to think that she would have appreciated why an EXCO of the calibre that she had at Denel was critical to managing that transition. That is what I take from reading this paragraph anyway?

**MR KGATHATSO TIHAKUDI:** Correct. And especially as we later see that you having quite extensive change at the board level. It was very important that you at least maintain stability at an executive level and because ultimately the people that induct the board are the executives. They are the ones that understand the business better. They are the ones that understand the risks within the business. They understand the stakeholders so in a way as much as a board is the accounting authorities and trusted with leadership and direction of the business but – because they are part timers. They only come there for board meetings. The people are constantly there, is the executives so it is important that they remain behind so that you do not have a situation where you have new people at executive level as well as new people at a board level. That – to put it quite bluntly that would be a recipe for disaster.

20

**ADV LEAH GCABASHE:** Mr Tihakudi unless there is something specific you want to deal with in the following pages between 76 and 95 I would like to take you to page 95 of the documentation. This document is the address by the Minister page 95 when she inducted the new board.

**MR KGATHATSO TIHAKUDI:** That is correct.

**ADV LEAH GCABASHE:** Just explain...

**CHAIRPERSON:** I am sorry you confirm that there is nothing that you want to say about the intervening pages that Ms Gcabashe...

**MR KGATHATSO TIHAKUDI:** I am confirming Chair.

10 **CHAIRPERSON:** Ja okay alright. Thank you.

**ADV LEAH GCABASHE:** The – can you just explain the process, the AGM process and the induction process? What is the overlap, what is the interchange, how does that happen? The change of guard if you just explain that to the Chairman?

**MR KGATHATSO TIHAKUDI:** Ja. Chair the annual general meeting would have been held in the old board because they had overseen the performance of the business during that particular financial year. So their best position really to speak to the content of the annual report they are putting before the Minister. Since we are – now you are having a rotation you then – in order to appoint the new board because you cannot have the old and the new in the same room so to speak so you then call a special  
20 general meeting as the shareholder and then you would then appoint [indistinct] resolution to appoint the new members that are coming in therefore the necessity for this special general meeting.

**ADV LEAH GCABASHE:** So the induction of the new board would have taken place the very next day on the 24 July?

**MR KGATHATSO TIHAKUDI:** That is correct Chair.

**ADV LEAH GCABASHE:** I note at page 96 that the Minister sets out the purpose of that induction?

**CHAIRPERSON:** I am sorry just to have some clarity on this. Would the membership of the outgoing board come to an end - would their directorship come to an end at the conclusion of the AGM or not really?

**MR KGATHATSO TIHAKUDI:** Chair you are asking a very technical question.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** I think I should leave it to the lawyers to answer it.

**CHAIRPERSON:** Ja.

10 **MR KGATHATSO TIHAKUDI:** But [indistinct] my engineering understanding – an engineer's understanding rather when you appoint a new board that board would then – then the mandate of the previous would then – then would come to an end.

**CHAIRPERSON:** Oh upon the appointment.

**MR KGATHATSO TIHAKUDI:** Appointment.

**CHAIRPERSON:** Of the new board taking effect.

**MR KGATHATSO TIHAKUDI:** Correct.

**CHAIRPERSON:** So that there is no overlapping but at the same time there is no gap?

**MR KGATHATSO TIHAKUDI:** That is correct.

**CHAIRPERSON:** Yes.

20 **MR KGATHATSO TIHAKUDI:** And what would have happened also prior to the bringing in or the rotation it had also had – would have notified the outboard that I do intend to rotate you at the AGM in this particular case.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** And the weight – ideally should not have a gap but we have had instances where you would have gap.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** And I understand best practice then – then the executive would assume the responsibility of the board.

**CHAIRPERSON:** Of the board during the gap?

**MR KGATHATSO TIHAKUDI:** Exactly.

**CHAIRPERSON:** Ja.

**MR KGATHATSO TIHAKUDI:** So it is catered for.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** In some of – in our legal prescripts.

10 **CHAIRPERSON:** Okay. Okay thank you.

**ADV LEAH GCABASHE:** So we are at page 96 but I would also like you to go back to page 7 and have a flag at page 7 of your statement of the paginated papers.

**MR KGATHATSO TIHAKUDI:** Okay.

**ADV LEAH GCABASHE:** And hold onto page 96 as well because at page 7 you set out the whole appointment process whilst 6 really speaks to the induction.

**MR KGATHATSO TIHAKUDI:** That is correct yes.

**ADV LEAH GCABASHE:** It might be more opportune to go to start at page 7 and just very quickly summarise what you understood of that appointment process? What your role was in that appointment process and essentially when you first heard of certain  
20 board members names being bandied about or suggested or spoken of.

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** So all of that material really starts from about page 7 and goes through. Then we go back to the induction of the people who were ultimately selected.

**MR KGATHATSO TIHAKUDI:** Chairperson leading up to the – to an AGM what a

department would do and I am here I am talking to paragraph 17 guided by the legal and governments unit in the department we would start to review on the performance of the entity. We would look at the shareholder compact performance, we would look at the annual financial statements, we would look at [indistinct] 7.2 – 17.2 at the board evaluation report to get a sense of where the business is at. And also between these we would be asking ourselves you know do we – for the next phase of this business do we have the right people directing it? Should we be looking at augmenting the team because the – we are going to be traversing a different terrain so to speak.

**CHAIRPERSON:** And I am sorry this process where you begin to look at where the  
10 business of the entity is ahead of the AGM more or less how long before the AGM would it start?

**MR KGATHATSO TIHAKUDI:** Well typically you would wait for the end of the financial year. We do get a draft annual financial statements not long after that I have just – just forgotten the exact time period after – so you will get the financial statement that will give us a sense of how the business is performing. But ideally what you would wait for you would want to have the complete pack the annual report because now it also gives you an opportunity to hear from the board itself because you have the Chairperson's statement in there, you have the directors report in the annual report so – and those in terms of PFMA should be with the Minister five months after the end of the financial  
20 year. So this would be by the end August.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** Ja. So ideally that is where you need to be looking at things. But there is – for instance the shareholder compact negotiations would have started during the first...

**CHAIRPERSON:** Earlier?

**MR KGATHATSO TIHAKUDI:** Much earlier so the elements that inform the AGM will have started rolling quite earlier on in the year. So ja so the – so it is quite a – also quite an iterative process if I may say. So but really to get – so you would have sense as well amongst I must add as well at that point as we see – because you have been having quarterly reports. You would have some sense of the state of the business. What are the areas of concern?

**CHAIRPERSON:** So it starts off about a few months before the AGM more or less?

**MR KGATHATSO TIHAKUDI:** A few months before the AGM but you have...

**CHAIRPERSON:** Yes but as you say as each year progresses you are getting quarterly reports. You are getting monthly reports and therefore is you are keeping an eye you have a sense of what is likely to be the picture when you get the final – the annual report?

**MR KGATHATSO TIHAKUDI:** Correct yes.

**CHAIRPERSON:** Ja okay.

**MR KGATHATSO TIHAKUDI:** And really that is – when you get that annual report you have the AGM pack put together. That is when you can you know with certainty be able to advise Minister let us strengthen in this area you know, please note this particular director's mandate is – tenure is coming to an end let us make a change there. So that is when you can really now with certainty be able to go and brief the Minister in terms of what should be done.

**ADV LEAH GCABASHE:** So there is a direct nexus between the information that is put into and that comes out of the annual report and your recommendation as a team within the department to the Minister on how well the board is doing whether they ought to be given a second term or a third term depending on where a board member sits. That is actually critical information in determining what your advice to the Minister might be?

**MR KGATHATSO TIHAKUDI:** That is correct Chair. Because it is a – you know it is task that cannot be taken lightly. You are dealing with people’s reputations and if you are – you do – if you make arbitrary decisions they may affect you going forward because as you can imagine people to sit on the board they are volunteering their time. You know sitting on state owned and private company board by the way it is not a lucrative role in actual fact the risks that you expose yourself to are much more than what you may be receiving in remuneration. So – and what it may do is that those that you may be seeking to attract later on may be a little bit reluctant to avail themselves because they would not want to be subjected to that kind of treatment.

10 **CHAIRPERSON:** To take the risks that are involved?

**MR KGATHATSO TIHAKUDI:** Correct ja.

**CHAIRPERSON:** Ja. Okay.

**ADV LEAH GCABASHE:** Yes you speak of arbitrary decision making just hang onto those two words but please go – take us through the process that actually unfolded

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** When consideration was given to a new board?

**MR KGATHATSO TIHAKUDI:** Ja. Counsel should I – should I maybe finish paragraph 17 then I can come to that point?

**ADV LEAH GCABASHE:** That is in order.

20 **MR KGATHATSO TIHAKUDI:** And then Chair what would happen out of that process you have sort of a long list of board members that would be presented to the Minister for his or her consideration in terms of the gaps that we would have identified. Typically what as a department would say ‘here is long list Minister but there are these skills that we need.’ And say for instance we need finance people and typically a CA to augment the audit and risk committee. You maybe need a very strong commercial lawyer

because we seeing a gap here. We need someone who is strong technically in this particular area as also would [indistinct]. So we say as you deliberate on the long list please do not forget our requirements. So –and that list would be presented and we later on say that we also understand that the Minister is a politician and she operates in a political space, and what would happen and we are not privy to those processes. She would go and consult with her counterparts, other Ministers maybe the party that is deploying her to say these are the appointments that we seek. Then what would come out there out of that would be at least then that would inform the appointment and that appointment there must be a Cabinet memorandum that get put together to, for her to

10 get the consent of Cabinet make the appointment. So that is how that process unfolds and ideally we want that process to unfold before the AGM, but also what you do not want to do is if you do it to long ahead of the AGM you know information has a way of coming out. You can imagine you are sitting on the Board and then three months before you get to know that you are going to be removed and you are not being given an opportunity to make your representation or you have not even finished your work so to speak. It does not really sit well. So we, so ideally the timing is important and your representation to come in at the AGM where you would make the appointment. *Ja*, and then of course I have spoken to the Cabinet memorandum. Now coming to Denel the process started a lot earlier than usual in 2014.

20 **ADV LEAH GCABASHE SC:** In 2014 you say?

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE SC:** Is when it started?

**MR KGATHATSO TLHAKUDI:** In 2014 that is correct.

**ADV LEAH GCABASHE SC:** That was before the end of the financial year which was.

**MR KGATHATSO TLHAKUDI:** Before the end.

**ADV LEAH GCABASHE SC:** In March 2015?

**MR KGATHATSO TLHAKUDI:** *Ja* that is correct.

**ADV LEAH GCABASHE SC:** Continue.

**MR KGATHATSO TLHAKUDI:** In 2014.

**CHAIRPERSON:** What do you say started in 2014?

**MR KGATHATSO TLHAKUDI:** In 2014 for the 2015 AGM and let me say.

**CHAIRPERSON:** Oh, you say the process that you have been talking about?

**MR KGATHATSO TLHAKUDI:** No, I am saying the process of appointment.

**CHAIRPERSON:** Yes.

10 **MR KGATHATSO TLHAKUDI:** Not the AGM process.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** Because we could not commence the AGM process.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Before we have come to the end of the financial year.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** But I understand you to say what was unusual this time was that you actually started considering new Board members prior to the end of the financial year and this was rather unusual.

**MR KGATHATSO TLHAKUDI:** It was.

20 **ADV LEAH GCABASHE SC:** I think that is what the Chairman was trying to understand.

**MR KGATHATSO TLHAKUDI:** [Intervenens].

**CHAIRPERSON:** *Ja* that is what I was trying to, yes.

**MR KGATHATSO TLHAKUDI:** *Ja*. I am speaking now to the appointment of Board of Directors.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And.

**CHAIRPERSON:** Before you proceed just to make sure we are on the same page, the Board of Directors that was in place before 2015 had largely been there from 2012?

**ADV LEAH GCABASHE SC:**

**MR KGATHATSO TLHAKUDI:** From 2011 also.

**CHAIRPERSON:** And the dates of appointment might.

**MR KGATHATSO TLHAKUDI:** It might be, *ja*.

**CHAIRPERSON:** Not be the same but largely were they, most of them would have  
10 been from 2012?

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** More or less.

**MR KGATHATSO TLHAKUDI:** Chair maybe I should take you to page 10, page 10.

**CHAIRPERSON:** Of your statement?

**MR KGATHATSO TLHAKUDI:** Yes, of the statement.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** *Ja*, you will see there is, the last paragraph, the last  
column rather there.

**CHAIRPERSON:** Yes.

20 **MR KGATHATSO TLHAKUDI:** Speaks to the appointment dates.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** You will see that the Chairperson at the time  
Ms Van Rensburg had been on the Boards since 2010, August 2010.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And she had been chairing from August 2014 from the.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** From the AGM in 2014.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** But just to complete that thought, sorry to interrupt you.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** So she could possibly have been re-elected for a final third year, three year consecutive term, because she had been there for.

**MR KGATHATSO TLHAKUDI:** Yes.

**ADV LEAH GCABASHE SC:** Two consecutive terms of three years.

10 **MR KGATHATSO TLHAKUDI:** That is correct.

**ADV LEAH GCABASHE SC:** And she could have stayed on. This is just by way of example.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** She could have stayed on for her final three years.

**MR KGATHATSO TLHAKUDI:** That is correct.

**ADV LEAH GCABASHE SC:** If you could do that with each one of these.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** Board members, not the Executive Directors but the non, the independent, non-Executive Directors. If you could just go through how much time  
20 they could possibly still have spent on the Denel Board. The Chairman might.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Appreciate that.

**CHAIRPERSON:** And maybe before you do that is the position that usually; so is the position that your three year term as a member of the Board, you referred us earlier on to the relevant document that said a term is three years and then can be renewed but it

cannot be, you cannot serve for more than nine years. Now we know that the starting time might be different.

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** Does that necessarily mean the finishing time will also be different in the sense that it cannot be that you, a particular Board its term ends all of them ends on the same day, because they would have come on different dates.

**MR KGATHATSO TLHAKUDI:** Ultimately still it is the prerogative of the shareholder, because although the MOI is saying that the appointment is for three years, but it is always subject for review at each.

10 **CHAIRPERSON:** Annually?

**MR KGATHATSO TLHAKUDI:** Annually.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** If there is any reason.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** Informed by some of the processes I have referred to.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** For a Minister to feel that a member acts.

**CHAIRPERSON:** *Ja.*

**MR KGATHATSO TLHAKUDI:** Is not helping on this Board.

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** She can rotate that specific member at.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Now it has happened of course where you find that there is an extraordinary issue that arises with regard to how the Board as a collective are directing an entity. That the Minister would then choose to rotate the whole Board.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** But I guess what I am looking for is confirmation.

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** That when you talk about a term of three years.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** Because every member of the Board, of a Board under Denel.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** His or her term of office at any one time is three years?

10 **MR KGATHATSO TLHAKUDI:** That is correct.

**CHAIRPERSON:** But the point you have just made is that although your term is three years at any one time you can be removed earlier?

**MR KGATHATSO TLHAKUDI:** That is correct.

**CHAIRPERSON:** That is fine, but the three year term simply gets calculated from your date of appointment as a member of the Board. So each one has got his or her own three years so to speak?

**MR KGATHATSO TLHAKUDI:** That is correct.

**CHAIRPERSON:** That is what I wanted to confirm.

**MR KGATHATSO TLHAKUDI:** That is correct Chair.

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** It is not a collective term. It is a.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Each one of the members is appointed individually.

**CHAIRPERSON:** Individually, yes.

**MR KGATHATSO TLHAKUDI:** So we can have different.

**CHAIRPERSON:** *Ja.*

**MR KGATHATSO TLHAKUDI:** Starting and finish time, dates.

**CHAIRPERSON:** Which makes it quite important for you as the department to keep an eye on whose term ends when.

**MR KGATHATSO TLHAKUDI:** Yes.

**CHAIRPERSON:** For purposes of preparing to fill or renew where it is renewable.

**MR KGATHATSO TLHAKUDI:** That is correct.

**CHAIRPERSON:** Okay, thank you.

**ADV LEAH GCABASHE SC:** Chair just to bring a little more clarity to this of course  
10 the shareholders prerogative extends to appointing a Board member for one year. There is no obligation to appoint a Board member for a three year term and in fact Minister Gigaba appointed some of these Board members for one year as opposed to extending their contracts, their terms of office rather for three years.

**MR KGATHATSO TLHAKUDI:** Correct.

**ADV LEAH GCABASHE SC:** I mean it is a flexible prerogative?

**MR KGATHATSO TLHAKUDI:** *Ja*, it is yes.

**ADV LEAH GCABASHE SC:** And really Chair that prerogative is found in MOI at Clause 13.2.1 which is one of the governing documents.

**CHAIRPERSON:** Oh, okay. So in other words when we talk about the term of office of  
20 three years for members of the Board at Denel that is still subject to the Minister being able to make it less than three years?

**MR KGATHATSO TLHAKUDI:** That is correct Chair.

**CHAIRPERSON:** Okay. It is a rather strange term. Okay, alright. Thank you.

**MR KGATHATSO TLHAKUDI:** Now.

**ADV LEAH GCABASHE SC:** So you are on page 10 and you are dealing with.

**MR KGATHATSO TLHAKUDI:** *Ja*, [intervenes].

**ADV LEAH GCABASHE SC:** Different members.

**MR KGATHATSO TLHAKUDI:** *Ja*. Like on paragraph 22.1 that is Martie, we have dealt with her and she was member of the Audit and Risk Committee until her appointment as a Chairperson of the Board and then going down to 22.2.

**CHAIRPERSON:** You are at 10 now?

**MR KGATHATSO TLHAKUDI:** On page 10 [intervenes].

**CHAIRPERSON:** *Ja*, okay.

**ADV LEAH GCABASHE SC:** Mr Tlhakudi just for completeness sake you might as  
10 well deal with the qualifications as well.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE SC:** Because it gives the Chairman a sense of the skill set.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE SC:** Of that particular Board. You were going to come back to it anyway, but because you are on this particular schedule I think it might just be convenient to deal with the skill set and deal with which particular Committees they sat on and how long then their term of office was or had been.

**MR KGATHATSO TLHAKUDI:** *Ja*. With regard to Ms Van Rensburg as you can see she is a Chartered Accountant and she had had a career as an Executive as well as  
20 leading Boards and prior to her appointment to this position she had been on the CTA Board. She is also represents the Audit Fraternity on their association. So that is the kind of calibre of person who we have there. If you go down to Advocate Ghandi Badela. As can be seen he is an Engineer with Masters Degrees, two Masters Degrees in Engineering and one in.

**CHAIRPERSON:** Is it not three?

**MR KGATHATSO TLHAKUDI:** That is 22.4, Advocate Badela.

**CHAIRPERSON:** Is it not three?

**MR KGATHATSO TLHAKUDI:** *Ja*, the third that one is in Engineering Management.

**CHAIRPERSON:** Oh, okay.

**MR KGATHATSO TLHAKUDI:** *Ja*, so.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** So *ja*. So, and then he also has an MBA and an LLB and he is an admitted advocate. Is that how it is referred to and he had been appointed in July 2011 and had by the time the [indistinct] came around he was still eligible to  
10 continue with his second term. So, and then we have Dr Gert Cruywagen who is a Risk Specialist who has a PhD and *ja* MBSoc. That would be a medical qualification, but he is quite one of the prominent Risk people we have in this country. As you can see, he also a background in security. He has a certificate in advanced security and he had been on the Denel Board since September 2008 and would have been eligible to finish his term which would have been by 2017 if he would go for a maximum three terms and.

**ADV LEAH GCABASHE SC:** Yes that is correct.

**MR KGATHATSO TLHAKUDI:** And he was appointed as a Chairperson of the Auditor and Risk Committee when Ms Van Rensburg was elevated to the chairing and then we  
20 have Ms Ziphozethu Mathenjwa who also she had a BSc Financial and Business qualifications, two Masters Degrees. One in Business Administration as well as one in International Business and she had been appointed to the Board in 2011, July 2011 and she was a member of the Audit and Risk Committee and then we come to Mr Motseki whose qualifications are a certificate in Forensic Investigations and Crime Intelligence and of course he is under the same level as the other people who I have referred to

now, the Board that I have spoken to now and he had been appointed in July 2011 to July 2015. At this point I must just say Chairperson Mr Motseki was retained when there was a rotation going forward.

**ADV LEAH GCABASHE SC:** Retained and kept on the 2015.

**MR KGATHATSO TLHAKUDI:** 2015.

**ADV LEAH GCABASHE SC:** 2016 Board?

**MR KGATHATSO TLHAKUDI:** Board that is correct, yes and then we have Mr Mavuso Msimang who is quite well known. He has a BSc and a MBA and he has also led a number of organisations, SITA, Department of Home Affairs, SANParks. So  
10 he is quite a renowned business and political figure in this country. So he was also appointed in July 2011 and was also rotated in 2015. He was a member of the Social and Ethics Committee and we also have Mr Bafana Ngwenya who had certificates in Defence Management, Project Management, Strategic Management whose background is or qualifications are also not at the same level as others, but he was rotated in 2015.

**ADV LEAH GCABASHE SC:** I note that both Mr Motseki and Mr Ngwenya were not members of any particular subcommittee of the Board.

**MR KGATHATSO TLHAKUDI:** That is correct.

**ADV LEAH GCABASHE SC:** Yes, continue.

**MR KGATHATSO TLHAKUDI:** Hm.

20 **CHAIRPERSON:** So, so far the only name we have come across of somebody who was retained beyond 2015 is Mr Motseki. Is that right?

**MR KGATHATSO TLHAKUDI:** Mr Motseki, yes.

**CHAIRPERSON:** Okay, alright.

**MR KGATHATSO TLHAKUDI:** For that duration actually. It should have been corrected Chair. He served beyond; he resigned during the next Board term. He was

not rotated. He opted to resign and then we have Professor Stella Nkomo who is a professor at, the last time I checked was at, University of Pretoria. She is quite a leading figure in the academic space and she was also a member of the Personnel Remuneration and Transformation Committee as well as a member of the Social and Ethnics Committee. She actually served and chaired the Committee on Personnel Remuneration and Transformation and then we have Advocate Melissa Ntshikila who has an LLB as her highest qualification as a member of the Personnel Remuneration and Transformation Committee and then lastly we have Mr Matodzi Ratshimbilani who has a BProc and specialises in mining law as reflected there and also has a Business  
10 qualification and he was Board from July 2011.

**CHAIRPERSON:** Do not lower your voice too much Mr Tlhakudi. Do not lower your voice too much.

**MR KGATHATSO TLHAKUDI:** Oh, my apologies.

**CHAIRPERSON:** *Ja.*

**MR KGATHATSO TLHAKUDI:** So *ja*. So the last two members Ms Ntshikila who has an LLB and also is a member of the Personnel Remuneration and Transformation Committee, Mr Matodzi Ratshimbilani who has a BProc and specialises in mining law and also has those qualifications as reflected. They were appointed in July 2011.

**ADV LEAH GCABASHE SC:** If it is convenient for you to look at the new Board at this  
20 point in time. You will find that schedule on page 17.

**MR KGATHATSO TLHAKUDI:** *Ja*. Chair the incoming Board in July 2015 is reflected on page 17. Let me start by looking at them collectively. I am saying the Board's collective qualifications, experience as well as leadership in business is quite a gulf and that is my personal opinion. As reflected on the, and [intervenes].

**CHAIRPERSON:** Well that is important Mr Tlhakudi, because you were the leader of

the team.

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** Whose job was to look these things.

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** And to advice the Minister.

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** And you had been doing it before?

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** Okay, but that was your reaction when you saw it immediately?

10 **MR KGATHATSO TLHAKUDI:** That is correct.

**CHAIRPERSON:** That was your immediate reaction?

**MR KGATHATSO TLHAKUDI:** That was the immediate reaction.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** And one of the immediate reactions was with regard to Mr Mantsha who is the Chairperson and typically what you do these days Chair is you google these people. You want to know who they are.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And we going into detail as well later on and we find Mr Mantsha's appointment was struck off the Roll of Attorneys. Well that does not  
20 seem to be a good background to bring on to chairing an entity like Denel.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** But he of course was reinstated?

**MR KGATHATSO TLHAKUDI:** Of course he was.

**ADV LEAH GCABASHE SC:** By the time he became Chairman he was back on the Roll of Attorneys?

**MR KGATHATSO TLHAKUDI:** He had been back on the roll, yes.

**CHAIRPERSON:** But [intervenes]?

**ADV LEAH GCABASHE SC:** But what you?

**CHAIRPERSON:** Oh, I am sorry.

**ADV LEAH GCABASHE SC:** You go.

**CHAIRPERSON:** The point you are making is even though he may have been reinstated.

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** The fact that he had had that situation of being struck off the roll for  
10 the reason that he was struck off the roll was not a good thing for somebody to be put  
in the position of chairing the Board of Denel. That is the point you are making?

**MR KGATHATSO TLHAKUDI:** That is correct Chair.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** And which is quite a sophisticated business also. It is  
also a top one hundred defence company in the world and has a significant  
international business portfolio and of course there was also no, he had no significant  
Board experience that he was bringing with which, which was quite concerning. I must  
add.

**CHAIRPERSON:** That last statement you are making is still in relation to Mr Mantsha?

20 **MR KGATHATSO TLHAKUDI:** Mr Mantsha that is correct, yes.

**CHAIRPERSON:** *Ja*, okay alright.

**MR KGATHATSO TLHAKUDI:** And then the next Board member is  
Ms Mpho Kgomongoe who had a BCom and as my memory recalls had some audit  
experience and ended up being.

**CHAIRPERSON:** So you are skipping those who were retained from the previous

Board. Is that right?

**MR KGATHATSO TLHAKUDI:** The two, Riaz Saloojee and Fikile Mhlontla were the Executive Directors.

**CHAIRPERSON:** Oh, those were Executive Directors, okay.

**MR KGATHATSO TLHAKUDI:** *Ja*, they out of the management team.

**CHAIRPERSON:** Yes, okay. No that is fine. So the next non-Executive.

**MR KGATHATSO TLHAKUDI:** Is.

**CHAIRPERSON:** Member of the Board was Mpho Kgomongoe.

**MR KGATHATSO TLHAKUDI:** Kgomongoe.

10 **CHAIRPERSON:** Okay, yes.

**MR KGATHATSO TLHAKUDI:** *Ja* and.

**ADV LEAH GCABASHE SC:** Can I just ask with Mpho Kgomongoe, having a BCom and being Chairperson of the Audit and Risk Committee did not reduce the obligation on her, was Mpho male or female?

**MR KGATHATSO TLHAKUDI:** If you can speak into the mic?

**ADV LEAH GCABASHE SC:** Mpho is male, female?

**MR KGATHATSO TLHAKUDI:** She is female.

20 **ADV LEAH GCABASHE SC:** Female, thank you. So it did not reduce the obligation on her to supervise the CFO who was a CA. So you are looking at a situation where the Chairperson of the Audit and Risk Committee is not as qualified as the person who is bringing the numbers to her Committee. Did that not raise a concern for the department?

**MR KGATHATSO TLHAKUDI:** Of course it did, but this is the list that we are working with, you know. This.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** She was the one that had some commercial and audit background, but as you correctly put it the fact that you are less under qualified for a role does not mean that your responsibilities are diminished and that is basically what one of the challenges that we had to deal with, with this Board.

**CHAIRPERSON:** If you can remember the previous Chairperson of the Audit and Risk Committee was somebody with what qualifications?

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Well if you go back to Martie Van Rensburg and then.

**MR KGATHATSO TLHAKUDI:** *Ja.*

10 **ADV LEAH GCABASHE SC:** To Cruywagen.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** And that is on page 10.

**MR KGATHATSO TLHAKUDI:** That is on page 10. As I indicated Martie was a Chartered Accountant and Dr Cruywagen had a PhD and also is quite a well-known Risk Specialist and had been on the Audit and Risk Board for quite some time and I must just say that we also had a bit of a disadvantage even with the Denel Board at the time, because Martie was the only CA that was on there.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** So when she became the Chairperson.

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** It means we did not have another CA, but Dr Cruywagen.

**CHAIRPERSON:** *Ja.*

**MR KGATHATSO TLHAKUDI:** Had the gravitas, the knowledge.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Because the Audit and Risk Committee has two functions.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** The Audit side as well as the Risk Management.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** Portion, so in terms of the ability to oversight the work being done by the CFO who did not have, we did not have a worry. We did not have a concern there.

**ADV LEAH GCABASHE SC:** Yes, continue.

10 **MR KGATHATSO TLHAKUDI:** And then we come to Mr Pinkie Martha Mahlangu who has a BProc and he was a member of the Personnel Remuneration Committee. Then you had Nonyameko Mandindi who is a Quantity Surveyor.

**CHAIRPERSON:** Can I take you back to Ms Mpho Kgomongoe?

**MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** It does not appear here at page 17, but maybe you do know what was she working as, you know, this is not her full time job. It is part time. So what was she working as in whatever job she was working or what business was she running if she was running a business or is that something you would not know?

20 **MR KGATHATSO TLHAKUDI:** *Ja*, Chair I have to rely on my memory here and I stand to be corrected, but I think she was in an entrepreneurship business. I think she had a franchise that she was running.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** So she was not for instance running an audit firm.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** Or something like that would be linked directly to the

responsibilities that she.

**CHAIRPERSON:** Because she was not a Chartered Accountant. She was an Auditor.

Okay so that is as far as your recollection is?

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** Her CV at the time reflected some audit experience. I must say.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** So that basically.

10 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** What set her apart with regard to the role.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Because as you go through the list you will realise that from that space for someone to lead that kind of function we are not that and doubt.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** With the other members.

**CHAIRPERSON:** Yes and with regard to Ms Pinkie Mahlangu it says BProc. Do you know what her job was? Was she an attorney or something or is that something you cannot recall?

20 **MR KGATHATSO TLHAKUDI:** I cannot recall.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** I cannot recall Chair.

**CHAIRPERSON:** No that is fine.

**MR KGATHATSO TLHAKUDI:** And I must say as I go through those that I can recall.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** I will speak to it.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** And we have Ms Nonyameko Mandindi who is a Quantity Surveyor. She has a Quantity Surveying and Project Management qualification and she was also a member of the Personnel Remuneration and

10 Transformation Committee. I do not know much about her Chair.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** I do not recall much about her.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** Ms Refiloe Mokoena I knew who she was and she had served on the Board of Armscor. She had actually a Deputy Chair of the Board of Armscor which is chaired by General Motau when I was at Armscor.

**CHAIRPERSON:** Yes

**MR KGATHATSO TLHAKUDI:** *Ja*, so she was one would say had [indistinct].

**CHAIRPERSON:** Some sector experience?

20 **MR KGATHATSO TLHAKUDI:** Exactly and also her Board experience.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And she is also [indistinct] I think she has also acted as a Judge as well. It so happened to know her from my time that I was at Armscor. There is Mr Nkopane Motseki who we have spoken to earlier and then we have Mr Thamsanqa Msomi who has a Law Degree here, but I know he was the Chief of

Staff for Minister Gigaba when Minister Gigaba was the Minister of Public Enterprises and so went on to become the advisor when Mr Gigaba went onto Home Affairs and to National Treasury, but he will not practice law.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** So he studied law, but he had not practiced law.

**CHAIRPERSON:** Do you recall if he had any Board experience?

**MR KGATHATSO TLHAKUDI:** No, I do not recall him having any Chair, *ja*.

**CHAIRPERSON:** Okay and I guess for the sake of completeness I think you did say that those in respect of whom you recall something additional to what is here you will  
10 mention, but if you do not mention anything it means you do not remember?

**MR KGATHATSO TLHAKUDI:** I do not, *ja* I do not remember.

**CHAIRPERSON:** Okay, alright.

**MR KGATHATSO TLHAKUDI:** *Ja*, and then we Mr Themba Nkabinde. He is actually General Nkabinde. has an MBA and a military degree as well as Project Management and I had known of General Nkabinde from my time at Armscor he was in the Department of Defence and had retired by the time he was appointed here as a director, so that's where I knew him so he was – he is a Lt General, he is a quite well experienced general if I may call him that.

**CHAIRPERSON:** Yes, okay.

20 **MR KGATHATSO TLHAKUDI:** And then Ms Nkubutso Chaveni she has an MBA in Labour Relations Development and Political Science is her space, I really didn't know much about her, later on I got to know that she had worked at SITA for instance the State Information Technology Agency as well as she had been a spokesperson at some point for the ANC in Limpopo but I didn't really know much about her, and that completes the list Chair.

**ADV LEAH GCABASHE SC:** Mr Tlhakudu can I then take you back to page 8 because on page 8 you set out the role you played or tried to play in advising the Minister on whom to consider for the incoming Board, if you can just talk us through that very briefly.

**CHAIRPERSON:** And maybe either in the course of answering that question or at some stage I would like you to go back to looking at this Board and looking at what the Department used to do before this Board in identifying possible members of the Board to be appointed and what guided you, what used to guide you before and be able to say normally as a department we would have made sure that at least the following featured  
10 in any particular Board and whether it was featured here. I know you have already said there was no chartered accountant in this one and that was a matter of concern, but there may be other features that the Department used to look for to say in a Board for Denel at least one – there must be one member of the Board who has got this kind of qualification, and then the others maybe we can see but these are essential, we consider them to be important so at some stage if you can talk to that as well, but for now just answer that question that Ms Gcabashe has put to you.

**MR KGATHATSO TLHAKUDI:** Chair the compilation of what I call a long list is informed by a number of considerations and it is a process that legal and governance is the custodian of. Now myself coming from a sector unit my role, because I work with  
20 the entity on a regular basis I go through the quarterly reports, monthly reports, I engage quite extensively with the Executive, would be to – and also I mean evaluate the strategy and the strategy evaluation would be our – we will have to in a way have a sense of where the business is going, for instance with regard to Denel there was a strategy good to grade where you know in fact at some point we had a – we challenged the Executive Committee and we were saying by 2020 you must get your turnover to

R10billion because we believed that they could do that, and in fact they were on track to achieve that until the changes of this Board happened. With that insight we then consulting obviously with – looking at the Board members that are there, collective – there's a collective with – you get the Board members that are there and say where should we, which skill in a way has become redundant now on here, who can we remove and then put, and what will inform that would be there's a database that the department maintains. The database every so often the Department goes out and invites people who would like to serve on our Boards to submit their CV's which they would do and ...(intervention)

10 **ADV LEAH GCABASHE SC:** So you actually place an ad in the papers?

**MR KGATHATSO TLHAKUDI:** Place an ad yes in the papers.

**ADV LEAH GCABASHE SC:** Yes.

**MR KGATHATSO TLHAKUDI:** And that exercise had been done in October 2014 to refresh our database. What we do is then we would go in that – informed by the Skills Matrix then we will say how many for instance for a Board like Denel we say you need a Chartered Accountant that will chair the Audit and Risk and that's obviously someone that also has to be quite experienced, you maybe need another Chartered Accountant on there so that person has a soundboard and maybe that's a person that also can become – can be trained up, who may not be as experienced as the Chair of the Audit  
20 and Risk Committee, you would say you know we need maybe a lawyer, one or two on here, we need someone who can chair the Human Resource Committee, sometimes called the Nominations Committee, also typically someone that has an HR or Social Sciences background to come and chair that you would say maybe we need one or two engineers on this Board, or people with a scientific background who understand technology development, understand, have a sense of manufacturing, because it's a

manufacturing business. You would say it is Denel, we need some military person on here, this person should be able to act as a liaison to the DOD fraternity obviously in support of the Board, but also what tends to happen as well is that because we're selling weapons to militaries and governments, when they come here it's always good to have someone who speaks their language, and so those are the considerations we go after, and obviously we will say who can chair this Board, you will tend to look for someone who is experienced, who has good board experience behind that and if I may counsel is also refer to the current Board, the one that we have today as we're sitting here, we have Ms Monhla Hlahla, who is the Chair of Royal Mafikeng Holdings, who

10 also used to be the CEO of ACSA, and today we see I mean ACSA is a world class organisation, it has operations in Brazil, they're running an airport in Brazil and in Mumbai as well they have helped in the development of that airport so that's the calibre of people that I mean I can even refer to Eskom, where Mr Jabu Mabuza who was the Chair of Telkom, so you look for that kind of person who would have – who is bringing that kind of experience because directing a Board and leading an organisation is a tough task, so ideally you would want someone who would have that.

So those are the considerations and in doing so we also are cognisant of the fact that you need to spread the pool as well. There must be what I will call developmental directors, those people that have good executive background and now

20 have availed themselves for boards, they have not served on boards so you put them on, so they learn from others, but – so they must have – but they must have solid background of achieving things, that's what you want, and if you look at the Transnet Board today we have a few young people and we have a young engineer who happens to have been the CEO of Mercedes Benz Fleet Management Company, so you know this was the first time he was put on a big board, so ja, so if I - so those are the – so

we would prepare that long list that would put to the Minister and then she can run her process of getting the necessary concurrences from political counterparts and then obviously then it comes back and into the Department and normally there will be discussions as well with the Minister on this, where she obviously will get feedback, this is what I've been – and you expect one or two what I'll call political appointments onto these boards and the previous board that I referred to you had those kind of appointments on there and you understand that's the reality of politicians and being in the political space.

10 But ultimately what you would want you want to end up with a Board that collectively has the capability to run the business.

**CHAIRPERSON:** Ja.

**MR KGATHATSO TLHAKUDI:** That's what you're looking for.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** Can I then ask you to explain to the Chairman how different the experience of appointing ...(intervention)

**CHAIRPERSON:** Maybe we should take the lunch break.

**ADV LEAH GCABASHE SC:** Oh indeed, indeed Chair, we will come back to that matter after lunch.

**CHAIRPERSON:** Yes, let's take the lunch break, we will resume at two, we adjourn.

20 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes you may proceed Ms Gcabashe.

**ADV LEAH GCABASHE SC:** Thank you Chair. Thank you Chairman. Mr Tihakudi we were dealing with the appointment of the new board and you were going to take us through your specific role and I think of importance is to establish whether you made a

recommendation on the appointment of the members of the new board and if you did make a recommendation as a unit what that recommendation might have been?

**MR KGATHATSO TIHAKUDI:** Ja. Chair as I indicated earlier the process of review of boards let me put it that way including that of Denel had started a little bit earlier than usual. In 2014 we had had an election. Minister Brown had come in as a Minister of our Department and in October that year we had sent out an advert as a department to refresh the list as we would normally do. Now this was as closely followed by a directive to say review the boards. As you can imagine we still quite far away from the end of the financial year and this process commenced. Be that as it may we – that  
10 being asked to do let us do this job. Now what happened it was that the governance unit which is headed by Ms Ratnam in fact herself delivered the files with the names from the refreshed [indistinct] lists to my office where myself and my team and her team we can now get the process going in terms of her putting together the proposed list. This was towards the end of 2014 after the adverts had gone out which was in October. In fact I think the adverts had closed on the 17 October. Hardly – it was not even a day, on the same day Mr Ratnam comes back to collect the lists – the files to say the Minister will be taking care of this process now there is no need for you to get involved. Which was quite strange because that is what we would normally do and in the time that I had been at the department we had – had to augment a [indistinct] board so I was  
20 quite au fait with what – how things must unfold.

**CHAIRPERSON:** If you are able to tell me please tell me how long had the process that you were used to – for how long had it been in place of reviewing members of boards?

**MR KGATHATSO TIHAKUDI:** It had gone on even before my time. I arrived in 2012 at the department as to when it began I cannot say.

**CHAIRPERSON:** You do not know?

**MR KGATHATSO TIHAKUDI:** Chairperson but it was quite an established practice within the department.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TIHAKUDI:** The files were collected and literally I did not hear of the process until a list came up and this list came with a decision memorandum and as well as a cabinet memorandum which I indicated earlier that we could not locate which is supposed to KT2. I think it is on a later pages. And this list had these names which I did not obviously know and the two names which were constant of these lists when  
10 compared to the board what was eventually appointed was Mr Mantsha and Mr Msomi. There were other names that eventually did not make it when the process was initiated later on. Then of course seeing this list, seeing this memo that is put on my desk to say you need to sign here so that this thing can be processed I was quite reluctant to get involved because you know I was – seeing that - but I had really had nothing to do with particular process.

**CHAIRPERSON:** And this was a list of how many people if you are able to remember that was put before you for your signature?

**MR KGATHATSO TIHAKUDI:** I stand to be corrected it must have been a similar number to the board that eventually had.

20 **CHAIRPERSON:** That was eventually or more or less the same number?

**MR KGATHATSO TIHAKUDI:** More or less the same number.

**CHAIRPERSON:** Okay, okay.

**MR KGATHATSO TIHAKUDI:** Ja. But I basically was quite reluctant and raised my concerns as I relayed later on with this list and why must I sign against it.

**CHAIRPERSON:** And who brought the list to you?

**MR KGATHATSO TIHAKUDI:** The – it was the governance unit. I am not – whether it was Ms Ratnam or one of her subordinates but it was delivered to my office.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** To my PA

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** To say you need to approve this basically sign as one of the supporters of this list which will eventually go to Minister Brown for her sign-off.

**CHAIRPERSON:** What was your understanding at that stage of who had made – who had identified these individuals as the people whose names must be put before you?

10 **MR KGATHATSO TIHAKUDI:** All I understood at the time was that the list emanated from Ministry – from the Minister.

**CHAIRPERSON:** Yes okay.

**MR KGATHATSO TIHAKUDI:** As to who had compiled it.

**CHAIRPERSON:** Yes, yes you do not know?

**MR KGATHATSO TIHAKUDI:** I was – I did not know and I did – I was not even aware that of anyone else in the department who would have worked on it.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Because if – because my unit and that of legal governance and we sit on the same floor.

20 **CHAIRPERSON:** Yes, yes.

**MR KGATHATSO TIHAKUDI:** And typically we would ...

**CHAIRPERSON:** You would liaise with each other?

**MR KGATHATSO TIHAKUDI:** Ja.

**CHAIRPERSON:** But your understanding was that this was the list that the Minister would be happy to appoint? This was the list of people that the Minister would be

happy to appoint?

**MR KGATHATSO TIHAKUDI:** Correct.

**CHAIRPERSON:** Okay alright.

**MR KGATHATSO TIHAKUDI:** And there was a cabinet name already appended and this was around November 2014.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** So this was on its way to cabinet. And I do not know what transpired but that cabinet member was withdrawn it was never follow through on.

**CHAIRPERSON:** Yes.

10 **MR KGATHATSO TIHAKUDI:** And...

**CHAIRPERSON:** That was a draft memo?

**MR KGATHATSO TIHAKUDI:** That was a – ja there is normally...

**CHAIRPERSON:** It had not...

**MR KGATHATSO TIHAKUDI:** Two sets of memos.

**CHAIRPERSON:** Ja.

**MR KGATHATSO TIHAKUDI:** It would have a decision memo internally that Minister signs off and then you have a cabinet memo that must be submitted to cabinet.

**CHAIRPERSON:** Together with the names?

**MR KGATHATSO TIHAKUDI:** Together with the names.

20 **CHAIRPERSON:** YEs.

**MR KGATHATSO TIHAKUDI:** So that the cabinet memo will have the names.

**CHAIRPERSON:** YEs.

**MR KGATHATSO TIHAKUDI:** So typically the decision memo, internal document.

**CHAIRPERSON:** Ja

**MR KGATHATSO TIHAKUDI:** Would explain to the Minister that the logic that

informed.

**CHAIRPERSON:** Ja.

**MR KGATHATSO TIHAKUDI:** The list that has been put before her.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And as I said earlier Chairperson that is an iterative process she would have been involved anyway.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Because we had produced a long list.

**CHAIRPERSON:** YEs.

10 **MR KGATHATSO TIHAKUDI:** She had gone off with it.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And she has come up so we would have a very sense of how this process should unfold.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Yes.

**CHAIRPERSON:** Now this list or – that was put before you on your understanding it was a list with which the Minister was happy on your understanding. Why was it brought to you for your endorsement if that is what it was because you were supposed to sign? Is it because there is an – there was an instrument within the department or  
20 there was a provision in some legislation or policy or regulation that said such a list must have been endorsed by the person occupying your position?

**MR KGATHATSO TIHAKUDI:** It was more of a practice Chairperson.. There was no legal instrument.

**CHAIRPERSON:** Yes, yes.

**MR KGATHATSO TIHAKUDI:** That required me to sign off against that.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And there was no policy within the department that would require me to sign off.

**CHAIRPERSON:** Yes

**MR KGATHATSO TIHAKUDI:** We always understood that ultimately as we do this work we are doing it on behalf of the Minister.

**CHAIRPERSON:** Yes. Yes okay.

**MR KGATHATSO TIHAKUDI:** Ja. Well then obviously as a senior official that is someone that has – who has some experience in the sector that I am being asked to  
10 give oversight over I valued the solicitation of my advice and my input on documents like this one. Because ultimately if the entity does not perform well I share responsibility. So that is – that is really my reluctance and my concern emanated from but there was nothing that compelled you might put it that way the Minister to bring it to me. And it was rather strange that having compiled a list or having had a list compiled that she would it to me to sign.

**CHAIRPERSON:** Bring it back to you yes.

**MR KGATHATSO TIHAKUDI:** To sign off on.

**CHAIRPERSON:** Yes. Well there are – well I do not know what view you took of the whole act of bringing the list to you at the time or what you take of it now but one  
20 option, one possible reason why it was brought to you may have been that if you are happy with it you can sign off but if you have reservations or you do not agree you must – you would be expected to articulate your disagreement or raise issues. It is – another option would be that it was being brought to you for rubber stamping.

**MR KGATHATSO TIHAKUDI:** Chair I do not...

**CHAIRPERSON:** I do not know whether you are able to say...

**MR KGATHATSO TIHAKUDI:** It was more - it was more the latter point.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** That my assessment of it.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And the options that you have referred to at that particular point were not options.

**CHAIRPERSON:** Were not options?

**MR KGATHATSO TIHAKUDI:** Were not options.

**CHAIRPERSON:** Yes.

10 **MR KGATHATSO TIHAKUDI:** Available to me by virtue of the environment that prevailed in the department.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Which I go into detail about later on. But one of these is – one of the things Chairperson that Minister Brown emphasised very strongly when she arrived at the department was that she is the shareholder representative.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And that as officials literally we should know our place. And that you know we cannot act without her direct – without her directive let us put it that way.

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Even the fact that we would meet quite – as our job requires quite often the SOC's did not really sit well with her. And in fact she made these utterances at one of the SMS sessions we staffed the senior managers in the – of staff. So and these points you know at every – in fact even the first meeting we had with her after she came in – in fact the first time I got to understand the word 'capture'

was when she used it. Because she referred to us as senior – as the ex [indistinct] the DDG's that we are captured. So there was – that is – what I am really getting to when I say there was no – the options that you are relating were not really options.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** I am explaining the...

**CHAIRPERSON:** In the context in which...

**MR KGATHATSO TIHAKUDI:** In the context ja exactly ja.

**CHAIRPERSON:** In which this was happening.

**MR KGATHATSO TIHAKUDI:** Ja and Chair that is – this is where I would say that I  
10 wish I was braver than some of my counterparts we have met.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And sad end to their careers.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** But I was not. I was not and I will explain later on.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Why I was not but I had to consider the fact that as  
things were unfolding that it is my career that is on line.

**CHAIRPERSON:** Yes. Yes.

**MR KGATHATSO TIHAKUDI:** Ultimately this is Ministers memo cabinet memo that she  
20 is submitting. I would have wished at that point to have a [indistinct] a lot stronger in  
my position but I was not.

**CHAIRPERSON:** Yes. Yes, yes.

**MR KGATHATSO TIHAKUDI:** I was not.

**CHAIRPERSON:** Yes well I must just say that it is quite important that all those  
affected in one way or another including those who may have been able to act in a

certain way to stand up to wrong doing they must be able to make an honest assessment of what they did or did not do and I will be quite alive in looking at the evidence and the situations of people. I will be alive to the effect that I should try and avoid an armchair critic kind of approach and look at the situation at the reality that people may have been faced with. It is true that as a nation as we hear more and more of some of these things and hear what – how individuals handled them. It is true that we would like to see as many people as possible who stood up. But we – in those expectations we also need to want to look at the reality that people may have been faced with and assess the situation. And I think the more we get people who say I

10 looking back now I think I should have been bolder or I think I wish I could have been bolder but this is the situation that I was confronting that with and this is how I dealt with it. The more we understand what really happened so this is just another way of saying we do want to hear all of those situations where you might feel that you wish you had dealt with the situation in a more courageous way but we want to hear also what the real situation is that you were faced with. Okay you may proceed.

**MR KGATHATSO TIHAKUDI:** Yes.

**ADV LEAH GCABASHE SC:** Can I – can I just ask you a couple of questions in relation to this area? Because you are now dealing with material that you set out in paragraph 20 on page 8 of your statement and material you have set out on page 16 of

20 your statement which really goes from paragraph 27 to paragraph 32. Now from what you have written here and I am going back to paragraph 20. You say that you pointed out this is paragraph 20 the last sentence. That the appointment of the proposed chairman could raise questions and that the Ministry should have a response to the inevitable questions that would be raised.

**MR KGATHATSO TIHAKUDI:** Yes.

**ADV LEAH GCABASHE SC:** You raised this issue with whom?

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE SC:** Because I read this to say you did not simply fold your arms and do nothing. You tried to engage with the issue.

**MR KGATHATSO TIHAKUDI:** Ja. Chair the – an email was actually sent I think to one of the advisors. I think it was I stand to be corrected and because the person actually had picked this up was one of my staff my chief financial analyst Vuyo Tlale when she looked through – when she did her google and she sent this email. And the email was shared with one of – I think it was Mr Plaatjies, Daniel Plaatjies and the – to say we  
10 have a concern with this particular individual. And that is – and basically even the manner in which it was being raised was saying as we put it was we are being [indistinct] quite a polite stance to say you better have an answer for this. I have been looking back now it should have been a lot stronger than that to say you cannot have this person as a chairperson.

**ADV LEAH GCABASHE SC:** Mr Tihakudi Mr Plaatjies sits in which office? In the Ministry in the Ministry office?

**MR KGATHATSO TIHAKUDI:** He was an advisor I think it was ja and I stand to be corrected.

**ADV LEAH GCABASHE SC:** No sorry I interrupted you. In which office?

20 **MR KGATHATSO TIHAKUDI:** Ministry.

**ADV LEAH GCABASHE SC:** In the Ministry.

**MR KGATHATSO TIHAKUDI:** Ministry ja. And I mean the Chairperson or rather the DG was also Matsietsi Mokholo at the time. This would have also been brought to your attention and my apologies I think we should have brought this that communication out.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Ja so – so ja that is how it was raised in the department yes.

**ADV LEAH GCABASHE SC:** Can I also ask you about what you might have found out in relation to some of the other members? So by way of example the Public Protector in her report State on Capture and I have annexed the relevant pages to W5B – W5B at page 494. She has set out a number of allegations that were brought to her attention in relation to Denel and some of these relate to this appointment process, appointment of the board.

**MR KGATHATSO TIHAKUDI:** Ja.

10 **ADV LEAH GCABASHE SC:** She says at paragraph Sub Q. That the following:  
“Momentum for the...

**CHAIRPERSON:** Did you say page 49...

**ADV LEAH GCABASHE SC:** It is page 493 Chairman.

**CHAIRPERSON:** 493.

**ADV LEAH GCABASHE SC:** Paginated page 493. The report itself starts on paginated page ...

**CHAIRPERSON:** Yes I have got 483.

**ADV LEAH GCABASHE SC:** 490 thank you Sir. So this is paragraph 20 of the Public Protector’s Report 4.20.

20 **MR KGATHATSO TIHAKUDI:** My apologies which annexure – which ...

**ADV LEAH GCABASHE SC:** W5B

**MR KGATHATSO TIHAKUDI:** Okay.

**ADV LEAH GCABASHE SC:** So it is the reference document.

**MR KGATHATSO TIHAKUDI:** And which annexure?

**ADV LEAH GCABASHE SC:** And the page number it is right at the end.

**MR KGATHATSO TIHAKUDI:** Okay.

**ADV LEAH GCABASHE SC:** Section 8. The page number is 493.

**MR KGATHATSO TIHAKUDI:** Okay I have got it.

**ADV LEAH GCABASHE SC:** Are you there?

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE SC:** And the Public Protector says that the Mail and Guardian article raised certain allegations against Denel and one of them was the following:

“That momentum for the joint venture that is the Denel Asia Venture appeared...

**CHAIRPERSON:** That is Q hey?

10 **ADV LEAH GCABASHE SC:** That is Q.

**CHAIRPERSON:** It is right at the bottom?

**ADV LEAH GCABASHE SC:** Q Chairman yes. Momentum for the joint venture appears to have built after Public Enterprises Minister Lynne Brown appointed a new board Denel board in late July. She retained only one member of the outgoing board Johannes Sparks Motseki and I quote “for purposes of continuity” I would like your comment on the purpose that this particular report says Sparks Motseki was retained for. Would you have thought that he was the type of person to deal with that transition that we spoke about earlier and that for continuity and for purposes of that transition he was the right – he had the right skill set to assist the new board?

20 **MR KGATHATSO TIHAKUDI:** Well it is a rather strange comment that Mr Motseki would have been retained for continuity because as we saw from going through the qualifications and experiences of the board at the time I would with due respect to him say he is one of the weaker members of that particular board. And the fact that he was not serving on committees as per that is testimony to that and he is actually quite – a very quiet member of the board as well. I mean in fact I cannot remember him uttering

a word when everybody had engagements with the board obviously with the Minister. So that – that definitely – he would not have been my first pick if someone has to say who do we retain for the sake of continuity.

**ADV LEAH GCABASHE SC:** Of course there is also the allegation that is set out on page 494 at paragraph R that Mr Motseki had a 1.3% interest in a Gupta led consortium that bought a Uranium mine now named Shiva Uranium in 2010. Do you know anything about that? Did you at the time as you googled these particular members hear about this at all?

**MR KGATHATSO TIHAKUDI:** No not at that time but the media reports came in later  
10 on I think it was early I am just trying to...

**CHAIRPERSON:** 2015, 2016?

**MR KGATHATSO TIHAKUDI:** 2016 – early 2016 the media reports started coming out and this is one of the information that came out at the time that Mr Motseki was a shareholder in this particular mine.

**ADV LEAH GCABASHE SC:** But as I understand your evidence even if you had had this information at your disposal there was nothing you felt you could do about it because the prerogative to appoint board members rests with the Minister.

**MR KGATHATSO TIHAKUDI:** Indeed the ultimate decision is that of the Minister. But as a department we have a role to play. The department and its senior officials  
20 especially the DDG's we are – by virtue of us also being subject matter experts in our specific sectors that we were overseeing we are – I will say as much as she has advisors we are the ultimate advisors.

**CHAIRPERSON:** Yes, yes.

**MR KGATHATSO TIHAKUDI:** So that is – that is the ..

**CHAIRPERSON:** So certainly there would be something you could do namely to bring

it to her attention that as far as you are concerned this is something to be taken against making a particular person a member of the board.

**MR KGATHATSO TIHAKUDI:** Correct.

**CHAIRPERSON:** Ja and then she could then make her decision but you certainly could express your objection or reservations about a particular person being put on the board

**MR KGATHATSO TIHAKUDI:** Exactly and that is really how our internal decision memoranda is set out. We give a recommendation to the Minister and she can accept or not accept it is her prerogative in that regard. But we do have a role to play as a department and as senior officials then because if you do not play that role then why  
10 are we are there?

**CHAIRPERSON:** But of course what you told me earlier about the process that unfolded in relation to the appointment of the 2015 board.

**MR KGATHATSO TIHAKUDI:** Ja.

**CHAIRPERSON:** Effectively did not give you a role to play?

**MR KGATHATSO TIHAKUDI:** That is correct.

**CHAIRPERSON:** Because on the same day on which your colleague brought files relating to various people who could be considered of – for purposes of reviewing the names or the board members same day that those files were taken away and you were told this is a process that must be managed by the Minister and you never heard from  
20 anybody about those files. The next thing you saw you were given a list to ...

**MR KGATHATSO TIHAKUDI:** Endorse.

**CHAIRPERSON:** Not to consider and comment on your version but to just rubber stamp.

**MR KGATHATSO TIHAKUDI:** That is correct.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Yes but what would be helpful to the commission because you are in the peculiar position that you sit in you are a very senior manager, you are a DDG in the organisation and you have suffered some form of for want of a better word victimisation in relation to your skill set where you are there, you are able to advise the Minister because you are a technocrat and yet that communication with the Minister becomes or is made ineffectual. So for purposes of assisting the commission not only in establishing the facts of what happened but in – for the commission to be able to make recommendations if it the Chair so pleases that would assist government departments in their relationships. How does one manage that tension? How does one  
10 manage that tension between giving due difference in a sense to your technocrats because they are your technical experts yet at the same time giving the Minister space to say these are my preferences and being able for that Minister to be able to justify those preferences. It is that tension I would like you to assist the Commission with so that some constructive outcome at least can be placed on paper from somebody who has at least experienced the most awkward part of being in Government.

**MR KGATHATSO TLHAKUDI:** I think one of the areas Chair that must be looked at is the issue of security of tenure or how senior officials are contracted in. Just giving them that security so that they can be able to exercise the powers entrusted upon them. Like for instance I work on a contract and my contract at the time was due to end in 2016.

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Those are considerations you know that come in and that must be looked at and also clarifying the way we structured our Government. We said that you will have a Ministry and you will have a department. That line is, the line between the Ministry and the department needs to be very clear. At this point it is not that clear. It is very blurry. The movement and by virtue of hierarchy Ministries can

easily encroach on the role of a department and on processes like this one the role that the, and that is one of the weaknesses that we have, the role of the department; we do not have a founding legislation as a department and that is one of the weaknesses. So typically that legislation must define what the role of the Director General is in relation to that of the Minister when it comes to performing a shareholder, a [indistinct] shareholder role on behalf of the State. So those I would say are some of the instruments that could be looked at and of course you know one of the things that could be looked at is also the issue of should the appointment of Boards for State Owned Companies be left solely to the prerogative of a Minister and Cabinet. Should there not  
10 be another independent body that comes in that looks at that. Like for instance in appointment of Judges you have the Judicial Services Commission for instances. So that it is a transparent process where the public gets to know well ahead of time these are the people who are being considered to go and run that particular entity and people can raise their hand and say X, I know him. He has these weaknesses. He would not be suitable for that particular role. So it becomes a much more open. It is not.

**CHAIRPERSON:** Transparent?

**MR KGATHATSO TLHAKUDI:** Transparent.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** Yes. It is not left you know to.

20 **CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** To processes away from the public eye in the departments and they get subject to.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** To some of the weaknesses that I have committed, *ja*.

**CHAIRPERSON:** So part of the point, one of the points you are making is that if you

are senior official such as a DG or a DDG and you have to stand your ground to a Minister who in your view maybe wanting wrong things to be done and that is the same Minister who must either renew your contract or recommend that your contract be renewed and you know your contract is soon going to have to be considered for renewal. It places pressure on you in terms of standing up for what is right. Is that the point you are making?

**MR KGATHATSO TLHAKUDI:** You put it right Chairperson.

**CHAIRPERSON:** Okay, thank you.

**ADV LEAH GCABASHE SC:** Thank you Chair. I want to explore this just a little more  
10 and for purposes of my next question could you please go to page 217 of the same file, file W5B? So it is just towards the front and the area I would like to explore is connected to evidence that you gave before lunch and that evidence was that there had been talk of certain persons being nominated or being accepted as Board members. There had been talk prior to the formal process of looking at the database and making recommendations to the Minister kicking in. If you look at paragraph 6 on page 217 in the middle of that, this is an extract Chairman from the evidence of Mr Pravin Gordhan who did give evidence on some of these issues when he appeared at the Commission.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And these are extracts from a Daily Maverick,  
20 amaBhungane Report.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** And these reporters note that it would appear that Denel's Acting CEO, now this is after Saloojee had been.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Suspended. Zwelakhe Ntshepe and its Land Systems

Boss, Stephan Burger, told colleagues that and this is the important part:

“They had been interacting with certain members of the new Board three months before the new Board members appointment.”

Now three months.

**CHAIRPERSON:** Sorry, where about at 217 are you reading?

**ADV LEAH GCABASHE SC:** That is correct Chairman. 217.

**CHAIRPERSON:** Where about.

**ADV LEAH GCABASHE SC:** And it is paragraph 3 from the bottom. I did not start, it  
10 starts with:

“...and there are other hints.”

That is the paragraph.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** I went straight to the centre.

**CHAIRPERSON:** Yes, does it start with and when or and there?

**ADV LEAH GCABASHE SC:** No Chairman. The one just above that.

**CHAIRPERSON:** And there are other?

**ADV LEAH GCABASHE SC:** Yes sir.

**CHAIRPERSON:** Okay, alright. Yes, thank you.

20 **ADV LEAH GCABASHE SC:** So what I am exploring with you is here you have two Executive Directors who know who is coming onto the new Board. How is it that they are able to interact with these persons and yet in the department it would appear that it was towards the very end that the departmental unit that was advising the Minister was able to start engaging with these issues? There just seems to be a bit of a disjuncture there.

**MR KGATHATSO TLHAKUDI:** *Ja.* Well that process obviously requires a lot of I will say it needs to be dealt with in confidence. That is why I was saying earlier that ideally you want to be dealing with this process closer to the AGM, because in this information we to [indistinct] it is never good for the business. It is quite unsettling in actual fact for management to hear you know well ahead of time or even for the people who are on there. As I said you would have a challenge going forward you know attracting people if you deal with this that does it this way, but it is not surprising that this would have happened for the simple reason that the new Board came in, in 2015, in July 2015 and already you have a memo that was served and withdrawn in November 2014 which was  
10 on the first iteration of the Board members and this process was then restarted again in the New Year. So the reason I am saying it is not surprising, I mean those names are already in the system. Wherever they came from someone would have been privy to them, but it is, I think it is; those Board members who are engaging the Executives I do not think they acted correctly Chairperson, because until the Cabinet is pronounced, until there is a public announcement and they are officially notified they should not be behaving in that way. So, but as I say there are just too many things that were left loose here that would result in that kind of thing happening and *ja*, you have to question the integrity of those Board members who would go and engage in that case for instance Mr Ntshepe and Mr Burger would have been subordinates for instance to  
20 Mr Saloojee and Mr Mhlontla. I mean for those people to go and speak to the people at that level you wonder what their motives were for going and speaking to those lower level employees when you have Executive Directors who are entrusted with that business. I wonder what, what they sought to achieve by doing that, but it does not look right.

**ADV LEAH GCABASHE SC:** I think what is also more concerning is the fact that the

department had no clue that there were Executive Directors from business units within Denel.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Who were talking to people who were about to be nominated onto the Board. So that means that when it comes to consequences for deviating from set procedures or set conventions people know that there are no consequences which is why they can engage in conduct of this nature.

**MR KGATHATSO TLHAKUDI:** Counsellor you have hit is on the head and the question that would arise, what would give them so much confidence that they would  
10 entertain this sort of discussion.

**ADV LEAH GCABASHE SC:** Well what is your answer to your question?

**MR KGATHATSO TLHAKUDI:** Well it goes back to this whole cycle of state capture as to how it has been defined to say you replace the Board, you replace the Executives and possibly these people who have been prepped to assume that a vacuum of Executive Leadership in that entity when it does arise. I do not know. I am just speculating I must say.

**ADV LEAH GCABASHE SC:** You had intimated earlier in your evidence that something similar to this process of appointment happened in Alexkor and in SAFCOL. Can you just summarise that? What in fact are you saying happened in the other SOEs  
20 that you had oversight of and what was your response to that? Your response is important, because it again helps with corrective action and we can only correct because you are able to point to certain things that you are saying ought not to have happened.

**MR KGATHATSO TLHAKUDI:** So what basically happened is the same, the list emerged in a similar manner with the other two entities. We did not have the privilege

of even been presented with the memo to rubberstamp with those two entities, because the Minister changed the process.

**ADV LEAH GCABASHE SC:** Which Minister was this?

**MR KGATHATSO TLHAKUDI:** Minister Brown.

**ADV LEAH GCABASHE SC:** Thank you.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** And the other two entities being Alexkor?

**MR KGATHATSO TLHAKUDI:** And SAFCOL.

10 **CHAIRPERSON:** You say the list for new members of the Board emerged in an unusual way there as well?

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** And without any memo.

**MR KGATHATSO TLHAKUDI:** [Intervenes].

**CHAIRPERSON:** Without the department playing the usual role that it used to play before?

**MR KGATHATSO TLHAKUDI:** Well the department played a role, but I will say it was a rubberstamping role, but the sector teams.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Were no longer involved.

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** So now this was left only to Legal and Governance.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** To manage that particular process.

**CHAIRPERSON:** Okay.

**MR KGATHATSO TLHAKUDI:** And that was also; that was a product of the Executives

in the department at the time engaging with the DG, the Acting DG at the time Ms Matsietsi Mokholo to say we are uncomfortable with this, what is going on here. Please if you, do you have an opportunity to engage the Minister please raise this and the Minister decided from now on only LGR will run the process and I must, because when I say LGR.

**ADV LEAH GCABASHE SC:** LGR being the Legal Governance.

**MR KGATHATSO TLHAKUDI:** Governance and Risk and even in saying that I have to qualify that, because not all the colleagues in that unit were involved. Ms Rathnam whom I had referred to earlier then became a constant presence in Cape Town with the  
10 Minister with regard to that compilation of these memos for appointment of this Board. So in actual fact the other members in that department were rubberstamping, if I may put it that way. So that is basically what happened. The Minister literally took control of this process including what should have been unfolding within the department.

**ADV LEAH GCABASHE SC:** I understand your evidence however to be that it is this particular Minister who took this attitude to her prerogative powers?

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Minister Gigaba did not have the same problem.

**MR KGATHATSO TLHAKUDI:** [Intervenues].

**ADV LEAH GCABASHE SC:** Or the same attitude is what I should really call it.

20 **MR KGATHATSO TLHAKUDI:** You are correct ma'am.

**ADV LEAH GCABASHE SC:** And the current Minister certainly does not have the same attitude.

**MR KGATHATSO TLHAKUDI:** Exactly. I mean in our, when we are looking at Boards it is a collective exercise. We sit around the table with the Minister. We go through the list. We ask ourselves what skills do we need and as you will see with these Boards

that we have now they are very strong Boards. They have very strong sector knowledge people who are on there, because we have an opportunity to make that particular input. So within the department the sector leaders, the DDGs are very much involved in deciding who gets onto the Boards, yes.

**ADV LEAH GCABASHE SC:** Would you have any idea as to why Minister Brown acted out of kilter with convention and even with the processes followed by her predecessors and by her colleagues in other departments?

**MR KGATHATSO TLHAKUDI:** I would not know. All that I will be doing, I will be speculating but I must say it was rather discomfoting to notice that we understand that  
10 you know politics has a role to play, but you know the role of a Minister as an official I would expect her to manage that, to create room for the department to be able to perform its job and coming into the department with Minister Gigaba that is what I experienced. That she created that, he rather created that room for us as officials to be able to perform that role. The same way this Minister that we have now, Minister Gordhan, he is doing he is playing that particular role and it really it empowers you as an official knowing that you have a Minister who can do that for you.

**ADV LEAH GCABASHE SC:** Of course the decisions of Minister Brown in relation to and Cabinet, because she took that memo to Cabinet.

**MR KGATHATSO TLHAKUDI:** *Ja.*

20 **ADV LEAH GCABASHE SC:** Led to what you have set out on page 21 of your statement. So we are back to EXHIBIT W1A where you deal with what you title “Denel Decline”. Can you in a very short summary but even shorter than just a summary take us through the decline?

**MR KGATHATSO TLHAKUDI:** In answering that Counsel can I refer you to page 13?

**ADV LEAH GCABASHE SC:** Yes, please go ahead.

**MR KGATHATSO TLHAKUDI:** On page 13 Chair what you will see there, you have a graph which shows, which is showing.

**ADV LEAH GCABASHE SC:** Chairman it is in W1A, yes.

**MR KGATHATSO TLHAKUDI:** *Ja.* What it.

**CHAIRPERSON:** Yes, I see the graph.

**MR KGATHATSO TLHAKUDI:** What it shows, it shows the financial performance of Denel from 1999 to 2018. What it shows in the earlier years from 1999 Denel was showing some recovery, but what it does not show is that Denel prior to 1994 the turnover was very strong. Informed by our country spending a lot of money on arms  
10 obviously to protect the regime at the time and to do some things that we said they were up to in our neighbouring countries. Now in the new dispensation there was no need to spend that kind of money on arms. So what you had was, you had Department of Defence budgets which were shrinking and of course Denel's business started to get affected. It was quite an expansive business. Denel, for instance, Denel Aviation where I started out as an Engineer in training they said at some point that they were over 10 000 people working there. Today there is less than 1 000 who are working at that particular business and then what happened is in the mid-2000s Denel started to restructure itself and some of the equity partnerships came in there from, between, I think 2004. I speak on the next paragraph. The [indistinct] deal happened in 2002  
20 there, but the others came in, in 2006, 2007, 2008. So what would happen is that Denel now started to become a little bit more focussed on the top line that was related to the divisions that were sold off, came off, but what also was happening was that there is a price to pay for doing the restructuring that Denel did, but the great thing was that then the business started to recover but as you will see there are very few years even before, they arranged by is the profit that Denel was making profits. I was making

quite significant losses in the late 2000s, but around 2010 things started to look up. As you will see by 2012 it had made a little bit profit. 2013 it started to go up and in that 2012, 2013, 2014, 2015 that growth that I referred to earlier started to come through. By 2016 the Board had been changed in July 2015. By 2016 it hit, Denel hit R8.2 billion worth of turnover.

**ADV LEAH GCABASHE SC:** But that was off the back of the previous financial year?

**MR KGATHATSO TLHAKUDI:** Well this was the momentum that was carried through, by the hard work that had been done by the previous Boards. I mean the Boards, you know, if the Chair can recall the bulk of the Board members that were replaced had  
10 come in around 2011.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And if you look at that you will see from 2011.

**CHAIRPERSON:** It begins to go up, performance.

**MR KGATHATSO TLHAKUDI:** It goes and aggressively so.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And that momentum carried through by, remember the new Board, Mantsha's Board came in, in July. It carried through that momentum. You still had the Executive Team there. You still had Riaz and Fikile there. So they hit 8.2 billion, but then from 2017 things started to unravel.

20 **ADV LEAH GCABASHE SC:** *Ja*, but just a small correction. Riaz and Fikile.

**MR KGATHATSO TLHAKUDI:** [Intervenues].

**ADV LEAH GCABASHE SC:** Were suspended in September 2015.

**MR KGATHATSO TLHAKUDI:** In September 2015. You are correct, *ja*.

**ADV LEAH GCABASHE SC:** Yes, but I would agree with you just from what you are saying here that it was the work that they and the other members of Exco and the

Boards had served under.

**MR KGATHATSO TLHAKUDI:** Correct, *ja*.

**ADV LEAH GCABASHE SC:** Had put in.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE SC:** That brought them to the point where you had those numbers showing in 2016.

**MR KGATHATSO TLHAKUDI:** Exactly. So, *ja*. It is obviously about what it would have been September. That would have been two or three months after they came in. Riaz, but that is the momentum and the, and in that year the budgeted numbers were  
10 exceeded. In 2017 things started to unravel. What you see there, the past year looks great Chair.

**CHAIRPERSON:** Am I?

**MR KGATHATSO TLHAKUDI:** 2017.

**CHAIRPERSON:** Am I right to read the graph as meaning that the highest performance is seen, was seen in 2016 but that was the work that had been done by the previous Board, but that in 2017 or soon thereafter then the performance went down drastically?

**MR KGATHATSO TLHAKUDI:** That is correct.

**CHAIRPERSON:** Yes. Okay, yes.

**ADV LEAH GCABASHE SC:** And this is what you refer to as the decline in Denel?

20 **MR KGATHATSO TLHAKUDI:** Exactly and.

**CHAIRPERSON:** In other words I mean I see the note on the graph just above 2016 says:

“Mantsha led Board appointed on 23 July 2015”.

It looks like within two years or so of the new Board there was a drastic drop in the performance of Denel financially. Is that right?

**MR KGATHATSO TLHAKUDI:** You are correct Chairperson.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** And when we are coming from a history of a Board that would be given a target they would exceed them. They would give us a corporate plan. They would exceed.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** That plan.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And in 2017 though the bar looks healthy.

10 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** It is about R8 billion, but themselves a target of R8.5 billion.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** For that particular year.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And the profit was about 360 million that the business set itself.

**CHAIRPERSON:** Hm.

20 **MR KGATHATSO TLHAKUDI:** And now we are entering in the first year of the new Board being in control of this entity they did not meet their corporate plan and the following year the revenues is almost halved and that is really the decline that I am referring to and the current Board that we have at Denel is still having to deal with the repercussions of the era that has just passed.

**CHAIRPERSON:** Hm.

**MR KGATHATSO TLHAKUDI:** And *ja*.

**ADV LEAH GCABASHE SC:** You attribute that decline in paragraph 42 of your statement that is at page 21 to:

“The appointment of an ill equipped Board which proceeded to make poor decisions that set off a race to the bottom.”

**MR KGATHATSO TLHAKUDI:** That is correct.

**CHAIRPERSON:** And what you say about the drastic drop of the company’s performance financially within a short space of time after the new Board had been appointed you say must be contrasted especially with regard to them not meeting their targets.

10 **MR KGATHATSO TLHAKUDI:** Hm.

**CHAIRPERSON:** Must be contrasted with what you said earlier on that in respect of the Board that had left that Board you said you would set targets for them. They would exceed them and you would say it looks like we are not stretching you enough. Then you would try and stretch them.

**MR KGATHATSO TLHAKUDI:** Exactly.

**CHAIRPERSON:** And they kept on performing very well and exceeding targets. So now with this Board they were not meeting at least, *ja* they were not meeting targets.

**MR KGATHATSO TLHAKUDI:** Their own plans. They were not meeting.

**CHAIRPERSON:** Their own plans.

20 **MR KGATHATSO TLHAKUDI:** Their own plans. If anything the business went into freefall.

**CHAIRPERSON:** *Ja*.

**MR KGATHATSO TLHAKUDI:** That is what you see here.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Yes Chair.

**CHAIRPERSON:** Okay, thank you.

**ADV LEAH GCABASHE SC:** Thank you Chair. Some of these decisions are of course set out in paragraph 42. If you could very quickly go through those for the Chairman.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Just to underscore your views on why Denel went into decline.

**MR KGATHATSO TLHAKUDI:** *Ja.* Chair the, maybe something that I have not mentioned here is the change in Executive Leadership that you know you have a leadership that is that seems to be doing the right thing. Remember earlier on I said  
10 you cannot change the Board and then change the Executive. It is not a good, it destabilises the business. So that would be the first one that I would, I have not put it here, but the Denel [intervenes].

**CHAIRPERSON:** So there was a change of the Executive Leadership?

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** In particular do you want to specific exactly the extent of that change. Who left and how many left or what percentage of the Executive Leadership left or?

**MR KGATHATSO TLHAKUDI:** Well.

**CHAIRPERSON:** Were dismissed or whatever?

20 **ADV LEAH GCABASHE SC:** You deal with it actually over the page at 42.3.

**MR KGATHATSO TLHAKUDI:** At 42.3.

**ADV LEAH GCABASHE SC:** Very briefly.

**MR KGATHATSO TLHAKUDI:** Oh, *ja.* I did.

**ADV LEAH GCABASHE SC:** Yes, you do.

**MR KGATHATSO TLHAKUDI:** My apologies then.

**ADV LEAH GCABASHE SC:** But I am not stopping you from answering the Chairman's question.

**MR KGATHATSO TLHAKUDI:** *Ja.* We had Mr Saloojee and Mr Mhlontla. I believe they were suspended in September. I think it was on.

**ADV LEAH GCABASHE SC:** That is correct.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** I think just before the holiday that they were suspended. There was also a COO whom I have not mentioned.

10 **CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:**

**MR KGATHATSO TLHAKUDI:** Mr Jan Wessels

**CHAIRPERSON:** Russells?

**MR KGATHATSO TLHAKUDI:** Wessels.

**CHAIRPERSON:** Wessels.

**MR KGATHATSO TLHAKUDI:** Wessels, Jan was his; he was shifted from his position as the COO and sent to one of the minor divisions to go become a COO. A head of that particular division.

**ADV LEAH GCABASHE SC:** He was obviously an effective man?

20 **MR KGATHATSO TLHAKUDI:** Well they seem to have been quite an effective team the three of them at; let me say the collective.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Executive Team, because later on also you had the HR Executive resign and leave.

**ADV LEAH GCABASHE SC:** The Company Secretary?

**MR KGATHATSO TLHAKUDI:** The company secretary of course, though she is not directly involved in the running of the business, she was one of those that with the suspensions of Mr Saloojee and Mr Mhlontla she was also suspended.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And she also ended up leaving.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** So there was that, at corporate office there was that instability that set in.

**CHAIRPERSON:** And what was Mr Wessels position before he was changed or moved  
10 elsewhere.

**MR KGATHATSO TLHAKUDI:** Before he was changed to go to a division.

**CHAIRPERSON:** Before the new Board, what was his position?

**MR KGATHATSO TLHAKUDI:** He was the Chief Operations Officer.

**CHAIRPERSON:** Of Denel?

**MR KGATHATSO TLHAKUDI:** Of Denel yes.

**CHAIRPERSON:** Okay thank you.

**ADV LEAH GCABASHE SC:** Do you want to very briefly deal with the 4.1 and 4.2 and  
4.4.

**MR KGATHATSO TLHAKUDI:** Alright, ja ...(intervention)

20 **ADV LEAH GCABASHE SC:** It's 42.1 I beg your pardon, 42.2, 4.24.

**MR KGATHATSO TLHAKUDI:** Ja, on page 21, Chair the Denel Asia and I made a statement earlier to say Denel was quite a fragile business, the profit margins showed they were not that healthy, and it's coming from long years of losses. Now Denel is a business that's quite reliant on funding, on financial institutions because it was dormant in terms of the 1.8billion that we spoke to earlier that provides a guarantee, they still

had to go to the banks and to the asset managers to say loan us money against this guarantee. Denel in order to – the order book that we referred to earlier when an order is placed with Denel and there's an advance payment from the client that advance payment has to be secured by a bank guarantee, so Denel must go to a bank and say to the bank we need to have this facility in place to secure this money that is being advanced so that the client can have that as collateral in case things don't go well, we don't execute it, so it was a business that was very reliant on financial institutions because obviously any funds that Denel would have accumulated over the years would have been eroded by the losses that I referred to.

10                    Now when you go and establish Denel Asia in the manner that Denel Board did and you go pick a fight with the Minister of Finance you don't send a good signal to both funders as to the security of the money that they have advanced to you. Now obviously what happens is that they become reluctant to extend further facilities to you and what also happens is that as the current facilities that you have expires they say no, no we will not be renewing because you are a risk to us, and also when you undertake projects like for instance the acquisition of (indistinct) Denel vehicle systems, Denel acquired that on the basis that it needed to, it needed that capability for starters and the banks advance because Denel didn't have cash, the banks advanced money to enable Denel to purchase that business, on an understanding that there is an equity  
20 partner that is going to come into the business to take up a minority, significantly minority stake, in fact we're talking about 49% of that business. Now what you then do is you abandon those plans, you come in as a board to say no we won't be going forward with those particular plans, now the bank now say what's going – we understood that you are going to be taken out when this equity partner comes in, now you've abandoned, by the way this facility was a bridging facility for six months, can we

have our money back, so now the business starts to get squeezed because those who are funding the business, the banks have stepped back and that's really what happened here, this Board sort of set off this snowball which resulted in the performance that we have seen here at this business.

**ADV LEAH GCABASHE SC:** Of course with that LSSA deal that you speak to, and the equity partner who had been secured that particular transaction had gone through all the regulatory hoops, it had been approved.

**MR KGATHATSO TLHAKUDI:** Correct.

**ADV LEAH GCABASHE SC:** Can you just take the Chairman very briefly through that  
10 approval process, because it will be similar to what we will discuss under Denel Asia.

**MR KGATHATSO TLHAKUDI:** Exactly, Chair it was quite a – we worked very closely with National Treasury on that transaction. What – the volume that is firstly you had quite a capable business that had been established and had supplied vehicles around the world but the strategy of the owners of the business which was an American company had been that they want to withdraw and it had the capabilities – the necessary infrastructure from manufacture of vehicles which would be critical for Project Hoefyster which is you know an infantry fighting vehicle that Denel is producing on behalf of the Department of Defence, and instead of now going to spend money on setting up the infrastructure at Denel LAN Systems which should have been the case to say let's  
20 acquire this business and of course there's interest in exploiting that business capability to supply into the key markets where Denel is at, and there's quite good vibes that Denel is getting from those markets, those two markets to say if you get it we are in with you, that's why when the transaction was brought to us, and we did the proper due diligences on those, we looked at there was EY had done the evaluation of the business, we were quite happy with it, we looked into Denel's – you don't have the

funds but please make this, this equity partner must come in, the Minister of Finance approved that that equity partner come in, the Minister approved that equity partner to come in as well and what I do recall is I had to assure my Minister a few times to say I am putting my head on this one, we have done a decent job on this, I even at the time I brought in a contracted resource to come and help us in the Department on that particular – to augment my team, so I was quite confident with how it had gone. I mean I had – of course we will have engagements with executives but I also went and met with (indistinct) at the time, with the Chairperson, to also get a sense from herself and I left quite assured that this was a good transaction.

- 10 **ADV LEAH GCABASHE SC:** And of course having an equity partner was a condition that was set by the shareholders and by Treasury.

**MR KGATHATSO TLHAKUDI:** That's correct.

**ADV LEAH GCABASHE SC:** And once that equity partner was cut out and the deal collapsed Denel had difficulties in raising that money.

- MR KGATHATSO TLHAKUDI:** They created a hole for themselves ja, because immediately you have to find 435million to settle the bridging facility, which you don't have, so what do you, you take it from your operations. This money that should be funding your working capital you take it out of the business so now the business tends to squeezed because you need money in order to keep the operations going, so that's
- 20 basically what this Board did and even today I would really to understand why they would make such a decision and - because it didn't make sense, because you had a key customer that was prepared to get – to purchase equity in this business that was saying there's a thousand vehicle order that will be coming through, so they just – and that would further improve the value of this business, so the 51% that Denel would have ended up would have even been – have been of a higher value without that particular

order. So those are – that's what transpired there, that's why I'm saying, that's why I use the word ill-equipped because I can't think of any other description of why this Board would arrive at such a decision.

**ADV LEAH GCABASHE SC:** And of course there had been no consequences for that particular board, that's always the difficulty we face.

**MR KGATHATSO TLHAKUDI:** There wasn't I mean they continued, getting obviously quite tighter from that point inwards.

**CHAIRPERSON:** When you say you think this Board was ill-equipped to deal with – that's the explanation you can think of for the decision they made do you think that may  
10 have been a result at least in part of the skills gap that you testified about that you saw in the Board when you saw the list for the first time?

**MR KGATHATSO TLHAKUDI:** Chair that would be one of the factors.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** Definitely but I believe if you had the best – even if you do not have collectively the right skills make-up if you have the best interests of the business at hand you would see the value of such a transaction, you would.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** You would but they chose not to see it.

**CHAIRPERSON:** So there are two possibilities, maybe more, the one maybe it's the  
20 result of not having the right expertise or knowledge or advance, another one may well be, I don't know, may well be a situation where you want a particular objective that you want to be achieved and you want or you may be aware of what is required but you ignore that, or you may be aware that you are not, you don't have the expertise to make this decision but you decide not to ask for, seek advice, relevant advice, because you so much want to achieve the particular objective those are some of the possible

explanations one can think of, I don't know if you are able to comment on that or you are not able to?

**MR KGATHATSO TLHAKUDI:** Well Chair as we have come to understand State Capture that institutions and entities of the State are diverted away from performing the mandate for which they were created to serve other interests, that's another logical explanation that we can come to, especially as we came to understand the Denel Asia transaction that you know what should have been logical decisions that were made – that should have been made in terms of entering the Asia market, a convoluted process through Hong Kong was developed to serve a particular interest which is not interest of  
10 the business itself, so ja, so it's a combination of factors that would have led to what we have come to know as the Denel decline, we had a Board that ordinarily should not have been entrusted with this level of responsibility, that chose to dispense with management that had been critical in turning around the business and once they did that then they started to make these kind of decisions which look like bad decisions, maybe they were bad decisions for Denel but maybe they were not bad decisions for whichever interest that was intended to be served here.

**CHAIRPERSON:** Thank you.

**ADV LEAH GCABASHE SC:** I will come back to Denel Asia in a minute, but maybe in closing the area of Denel's decline I suppose in a corporate environment what would  
20 happen to a Board like this is the shareholder would simply got them all out of office.

**MR KGATHATSO TLHAKUDI:** Ja.

**ADV LEAH GCABASHE SC:** What are the possibilities of trying to institute something like that with SOE's given the prerogative, we always come back to that prerogative of the shareholder.

**MR KGATHATSO TLHAKUDI:** Ja.

**ADV LEAH GCABASHE SC:** Because that must be then a consequence that you are fired when you take decisions that are not in the interests of the company that you are stewards of.

**MR KGATHATSO TLHAKUDI:** Well the shareholder has to come to that realisation for whatever reason the shareholder is not coming to that realisation then that blind instrument of firing the Board will not be exercised, I hope the counsel understands what I'm saying, and what we have here we have a very strange arrangement Chairperson when it comes to our SOC's, especially those that are in DPE, what we have is we have independent and non-executive directors, in fact all the non-executive  
10 directors are independent non-executive directors, you don't typically in a business what you would have, the shareholder will have a representative sitting in that Board if you are a 100% shareholder typically as a private shareholder you definitely want to be chairing that Board so that you're directed in the direction that you want, but we don't have that, what other countries have done is they would appoint senior officials onto this Board but also that brings up its own challenges.

**ADV LEAH GCABASHE SC:** You mean senior government officials?

**MR KGATHATSO TLHAKUDI:** Senior government officials, onto these Boards, so that someone who speaks on behalf of government is sitting there. I recall seeing Debswana in Botswana here that some of the senior officials typically your DG's are  
20 sitting in there looking after the interests of government, we have seen a similar thing in Singapore so that's one of these countries, because the thing you – if bad decisions are made there or they're acting without mandate there you have other instruments within the department to deal with that particular individual, even IDC here at home it puts some of its executives onto businesses that they acquire and if they may misbehave like it has been reported in the news recently they are able to deal with them, so I don't

know how you can say you go about but firing a Board every time is such a blunt instrument because it tends to happen also so late and the mess has already happened.

**ADV LEAH GCABASHE SC:** Except of course where you're going to be able to take steps to declare them to be delinquent directors, so you follow through with firing them and make sure that they will not serve on any board.

**MR KGATHATSO TLHAKUDI:** I agree fully with you and that's the plan currently with this current Minister to say those that are found have been found wanting through processes like this one should not be given an opportunity to run another entity in the  
10 future, and of course what that will do it will send a very strong signal to those that will be appointed afterwards to say behave in this manner you literally are ending your career as a director, that's what you are doing. That is one way that this blunt instrument could maybe be enhanced to ensure these sort of things do not happen.

**ADV LEAH GCABASHE SC:** Thank you. I think we should move on to page 23 which specifically deals with Denel Asia.

**CHAIRPERSON:** Maybe I can mention this, I don't remember that you deal in your statement with what happened at the first AGM of the new board and the second AGM because the first AGM I don't know if the first AGM would have been in 2015 for the new Board, no, no it would have been 2016 I would imagine when they would have had  
20 about a year in office, so bearing in mind what the Minister had to say about the previous Board at the last AGM they attended, you know in terms of the good work they had done and bearing in mind the graph that we went to, we looked at earlier on where it started, the performance of the company financially began to take a knock and was going down drastically and quickly as I read the graph. It would be interesting to see what the Minister's address to the Board was to the new Board was at the 2016 AGM

and the 2017 AGM because 2017 the situation had become very bad, and particularly bearing in mind that at the end the last AGM of the previous Board she had said something to the effect that it was clear that the performance that they had been able to achieve was going to be sustained you know as I read her statement if the same Board had continued the expectation would have been that that good performance was going to continue so now the opposite was happening so it would be interesting if we could see what she had to say to this new Board, one year old and two years old in the light of the performance. As I say I don't remember reading that in your statement but if it is not here it will be good if there could be a supplementary statement after the dealing  
10 with that.

**MR KGATHATSO TLHAKUDI:** I'm looking for my notebook Chair, there it is.

**CHAIRPERSON:** Thank you.

**MR KGATHATSO TLHAKUDI:** Ja, Chair we can provide those two addresses but what I can say to you is that for the 2017 financial year Minister did not attend the AGM, and thus the AGM were – it was becoming very clear that this Denel Asia thing is not working, it's creating a lot of problems, and the entity was instructed through the address that Minister would have delivered to exit that entity so the tone of 2017 address I would say was very harsh.

**CHAIRPERSON:** Okay, okay.

20 **MR KGATHATSO TLHAKUDI:** In fact it just so happens that I had to deliver it  
...(intervention)

**CHAIRPERSON:** On her behalf?

**MR KGATHATSO TLHAKUDI:** On her behalf.

**CHAIRPERSON:** Okay, okay.

**MR KGATHATSO TLHAKUDI:** And ja, so that's what I was about – we will provide

both segments just to conclude the ...(intervention)

**CHAIRPERSON**: Yes ,okay no thank you, thank you. And of course if there is anything in what was said in both AGM's 2016/2017 in what was said by or on behalf of the Board to explain some of the things that called for an explanation it would be good to know this is what the Board said.

**MR KGATHATSO TLHAKUDI**: Ja.

**CHAIRPERSON**: Ja, okay thank you.

**ADV LEAH GCABASHE SC**: Thank you Chairman. Mr Tlhakudi we are now at page 23 and we're dealing with that PSMA application, so it's – the issues really here are  
10 there was a pre-notification application that was put through, then there was the formal application that was put through by the Denel Board, we are now working with the new board which is Mhanshla Board, can you tell us what your role was in matters that transpired in the establishment of Denel Asia?

**MR KGATHATSO TLHAKUDI**: Counsel if I may, if you can just allow me please before I get to page 23 to refer the Chair to page 20.

**CHAIRPERSON**: 20?

**MR KGATHATSO TLHAKUDI**: Yes paragraph 36.

**ADV LEAH GCABASHE SC**: Yes.

**CHAIRPERSON**: Thank you, I've got it.

20 **MR KGATHATSO TLHAKUDI**: Because this is important to – for a Chair to understand what the state of mind as we've seen in 35 I'm saying that that memo that was presented to me in November of 2014 I'd signed reluctantly.

**CHAIRPERSON**: Is that the one with the list?

**MR KGATHATSO TLHAKUDI**: The one with the list.

**CHAIRPERSON**: Yes, okay.

**MR KGATHATSO TLHAKUDI:** As I said, because matters were no longer under my control, and the political atmosphere I mean I did not, if I did not sign the memo I would be victimised, that's what I'm saying.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And ...(intervention)

**CHAIRPERSON:** Do you want to elaborate on that?

**MR KGATHATSO TLHAKUDI:** That's what I intend to do Chair and in paragraph 36 I said I did not stand in the way (indistinct) but for the reason amongst others the first thing was my experience with my previous employer, with Armscor. Chair as I related  
10 to you earlier I was the senior manager for aircraft acquisition, the Board of that – of General Mathawu when it came in it started with the eight of the executives there, started to tamper with the process, as you know Armscor is an acquisition, it's a procurement agency, it buys weapon systems on behalf of the State. It started to tamper with our acquisition our procurement processes where the Board now was inserting itself into processes of procurement. Of course the Board acts as a Tender Board, but the Board in making that decision acts on submissions that are put before it by the Executive by the Executive compiled by management.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And myself and another senior manager, Mr Pierre  
20 Meiring on behalf of the senior managers we decided we're going to raise this issue, because it's a problem, it is creating fertile ground for corruption to happen if the Board doesn't insert itself here, and certainly the Board will also come up with a strategy that was not resonating with the mandate of Armscor, which seems to – they are now entering the terrain of industry and we're saying you can't be doing things, then we wrote a formal letter to the executive to say we have a problem here, you are creating

it. The result of that was that ...(intervention)

**CHAIRPERSON**: The executive you mean the executive authority?

**MR KGATHATSO TLHAKUDI**: No, no the executive in Armscor.

**CHAIRPERSON**: Oh, as senior management?

**MR KGATHATSO TLHAKUDI**: As senior management.

**CHAIRPERSON**: Yes.

**MR KGATHATSO TLHAKUDI**: And we raised these things with them and this was quite – it was covered quite widely in the media at the time, though obviously we chose to keep quiet because we had just made our lives worse and it was ...(intervention)

10 **CHAIRPERSON**: And this would have been around what year?

**MR KGATHATSO TLHAKUDI**: This was 2012.

**CHAIRPERSON**: 2012 okay.

**MR KGATHATSO TLHAKUDI**: Ja, and we were – I was suspended first time around, and I appealed to the Executive Authority of Armscor, that was Ms Lindiwe Sisulu was the Minister of Defence, Minister Sisulu intervened to say that really I don't see, follow what these people are – they are raising legitimate issues and I was brought back. When I was (indistinct) Ms Sisulu was removed and Ms Mapisa-Nqakula came in, I was suspended this time with Pierre Meiring.

**CHAIRPERSON**: I mean did you say you were suspended.

20 **MR KGATHATSO TLHAKUDI**: Yes I was suspended for the second time.

**CHAIRPERSON**: For the second time, for the same thing?

**MR KGATHATSO TLHAKUDI**: For the same issues yes.

**CHAIRPERSON**: Oh, how – if you can remember the first suspension was when and the second suspension was when?

**MR KGATHATSO TLHAKUDI**: It was early in 2012.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And the second one was around the middle of 2012.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** But it actually meant that for most of the year I was  
...(intervention)

**CHAIRPERSON:** On suspension?

**MR KGATHATSO TLHAKUDI:** On suspension.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** And you say you were suspended with Pierre Meiring.

10 **MR KGATHATSO TLHAKUDI:** Pierre Meiring ja.

**CHAIRPERSON:** On both occasions, both of you?

**MR KGATHATSO TLHAKUDI:** No, no first time I was suspended alone.

**CHAIRPERSON:** Alone.

**MR KGATHATSO TLHAKUDI:** Second time with Pierre Meiring.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And solely for raising the issues that we had raised.

**CHAIRPERSON:** Mmm.

**MR KGATHATSO TLHAKUDI:** And Chair the ...(intervention)

20 **CHAIRPERSON:** And now who was making the decision to suspend on each  
occasion?

**MR KGATHATSO TLHAKUDI:** It was the CEO at the time.

**CHAIRPERSON:** The CEO at the time?

**MR KGATHATSO TLHAKUDI:** It was the Acting CEO Mr Siphon Kunazi.

**CHAIRPERSON:** Yes, okay, on both occasions.

**MR KGATHATSO TLHAKUDI:** On both occasions yes.

**CHAIRPERSON:** Yes okay.

**MR KGATHATSO TIHAKUDI:** And on – obviously on instigation of the board.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And Chair that experience left quite a mark on me. You can imagine you are – I had [indistinct] decided not to get legal support in I had to go and pay for lawyers to come I mean I even had to get an advocate because I had to go to Department – to Labour Court and I had to go to Labour Court. It cost me a lot of money.

**CHAIRPERSON:** So you had to go to court to challenge that second suspension?

10 **MR KGATHATSO TIHAKUDI:** That second suspension.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE:** Can I just ask did you appeal to the Minister again?

**MR KGATHATSO TIHAKUDI:** Yes I did.

**ADV LEAH GCABASHE:** In this instance?

**MR KGATHATSO TIHAKUDI:** Yes I did.

**ADV LEAH GCABASHE:** What was her response the new Minister?

**MR KGATHATSO TIHAKUDI:** We never got a response. I appealed through – we wrote through my lawyer at the time.

**CHAIRPERSON:** Yes.

20 **MR KGATHATSO TIHAKUDI:** To her to say please be aware of this and this is what had happened before.

**CHAIRPERSON:** Ja.

**MR KGATHATSO TIHAKUDI:** Ms Sisulu came in and I was brought back, this thing has happened again please intervene?

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** It – I do not know whether she ever received it.

**CHAIRPERSON:** But you...

**MR KGATHATSO TIHAKUDI:** But it was – but my lawyers ...

**CHAIRPERSON:** You never got any response?

**MR KGATHATSO TIHAKUDI:** Exactly we never got any response. But – and – but it left quite a – you can imagine you – the – I remember the disciplinary hearing that was called you walk in, you have one of the very prestigious lawyers here in Johannesburg that partner is sitting across prosecuting I am coming in with my attorney. You know they literally the – the company was prepared to use as much resources as possible to  
10 ensure that I leave. I eventually left. We got to the Labour Court the Judge said to Armscor you have to negotiate with this man which they did. I walked out of there with about a four month's salary most of it went to the – in fact all of it went to the lawyers and including my own reserves as well. So that is the experience that I had. Pierre Meiring today is sitting here he does not have a job, he has never worked since. None of them...

**CHAIRPERSON:** Is that so. Did he go to court? He did not go to court?

**MR KGATHATSO TIHAKUDI:** Well he chose to go through the CCMA.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** He was – but he did not really I think that whole thing  
20 fizzled out. So then I think he decided well ...

**CHAIRPERSON:** He did not pursue it any further?

**MR KGATHATSO TIHAKUDI:** He did not pursue it any further.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** And one of the – in the defence electronics one of the top specialists we have in this country he has never been able to work again. So that is

what had left a mark with me. And if you start to look irresponsible. I am a father of five children that now you leave that work you are in trouble. Now you come to another work you causing another trouble what is wrong with you? You know it starts to – so that is why I am saying...

**CHAIRPERSON**: That works inside you.

**MR KGATHATSO TIHAKUDI**: It works inside...

**CHAIRPERSON**: As you face the situations.

**MR KGATHATSO TIHAKUDI**: Exactly. And really I thought I just really make that point very strongly here.

10 **CHAIRPERSON**: Yes.

**MR KGATHATSO TIHAKUDI**: And if at – if there is anything I want to...

**CHAIRPERSON**: No it is very important.

**MR KGATHATSO TIHAKUDI**: To bring across is that there is – the – because normally when these things happen people inside the company do not want to get involved – if you want – you are victimised you want [indistinct] they do not want to get involved.

**CHAIRPERSON**: Yes.

**MR KGATHATSO TIHAKUDI**: So what happens is these – the executives and these people in decisioning they go and get people from the outside.

**CHAIRPERSON**: Yes.

20 **MR KGATHATSO TIHAKUDI**: And these people get paid to literally come and oversee what a [indistinct] who can only be termed to be [indistinct] calls within these and that is what happens Chair. So I just wanted to leave that very strongly here is that that experience informed what I will say was a lack of courage on my side.

**CHAIRPERSON**: Yes. Well just going back to your experience relating to the suspensions. You might not be able to say or you might not wish to say but if you are

able to it might be a good thing if one has an idea of financially how much that set you back having to go to court to challenge this?

**MR KGATHATSO TIHAKUDI:** Ja.

**CHAIRPERSON:** But as I say feel free not to say if you do not want to say.

**MR KGATHATSO TIHAKUDI:** Ja Chair let us – let me not [indistinct].

**CHAIRPERSON:** Not say.

**MR KGATHATSO TIHAKUDI:** What I can say ...

**CHAIRPERSON:** Is that it was a lot of money?

**MR KGATHATSO TIHAKUDI:** Is that it took me a long time to recover.

10 **CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** I do not even – I am not even sure whether I was able to recover.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** As you know the likes of a senior counsel here they do not come cheap.

**CHAIRPERSON:** And you are looking at one of them. They do not come cheap.

**MR KGATHATSO TIHAKUDI:** They do not come cheap definitely.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE:** But you were of ...

20 **CHAIRPERSON:** Okay no that is alright.

**ADV LEAH GCABASHE:** I beg your pardon, I beg your pardon.

**CHAIRPERSON:** No, no that is alright. No, no that is true. But have you got documentation relating to that saga because it might be helpful to get some documentation to – in regard to what happened. So maybe with a supplementary affidavit Ms Gcabashe what do you think?

**ADV LEAH GCABASHE:** I think that I am sure Mr Tihakudi will oblige Chairman.

**CHAIRPERSON:** Yes, yes.

**ADV LEAH GCABASHE:** Because if it is a supplementary all we have to do is to file it with these. He does not have to come in and give evidence on the [indistinct].

**CHAIRPERSON:** Ja that is fine ja. No he does not have – it could be a supplementary affidavit that says something like I – when I testified I referred to these incidents here is an affidavit that I filed in the Labour Court that explained what had happened and here is an affidavit that had been filed by the employer or whatever, whatever just to give a full picture. Okay thank you.

10 **ADV LEAH GCABASHE:** Of course Mr Tihakudi you are one of the few who was lucky enough to get a job. There are many as you say Pierre Meiring being one of them who do not get jobs>

**MR KGATHATSO TIHAKUDI:** Yes. And that is – there are many others.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Chair there is many others out there whose lives have been destroyed.

**CHAIRPERSON:** Yes.

20 **MR KGATHATSO TIHAKUDI:** Because typically what happens is especially as a senior person in an organisation when you – people do not normally want to hear why you left your previous – or you were let go. They do not want to hear. It becomes a red flag. So – and what happens is that you can normally go so long [indistinct] that is what happens. And many people end up literally having their families destroyed as a result. You have seen that. I personally know of people that also have gone through especially at [indistinct] as I said earlier some of them have written to our Minister trying to appeal for him to get involved. That is really that is what happens. So like I say I

was – I was fortunate in that in the midst of all that I was head hunted by DPE because they had been looking for someone to come and perform this particular function under Minister Gigaba and I must say I must comment DG Matona because when I said to him DG Matona I need to tell you what happened at Armscor I do not want to you to feel like I have hidden something.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** You know. He said to me Kgathatso come and work you know.

**CHAIRPERSON:** Ja. Ja.

10 **MR KGATHATSO TIHAKUDI:** Ja you know and that was – ja because I remember it was when after I was informed that I was of getting the job I called him because I wanted to – to just make him aware so that you know because I was quite sensitive that I am moving from an entity that overseen by another department and I am moving into a department so I wanted him to understand ja.

**CHAIRPERSON:** Well I think that people who have genuine cases of having been really – of having really been victimised for standing what is – standing for what is right in the interest of government departments state or parastatals and so on who are still out there should come forward. I do not know what recommendation if any I could make in regard to them at the end of the whole thing- the whole work of the function but

20 I can imagine that if I was one of them sitting at home having had my career destroyed when I had done nothing wrong but stand for what is right I probably would have taken the attitude that I would like to tell a forum such as this and let the nation know that this is what happened to some of us who tried to stand for what is right. Let the nation and let this commission see what it can recommend. Because it may well be that the commission might have to recommend that something be done. What that thing is I am

not sure. Something be done to try and bring justice for those – bring justice to those people where it is genuine cases of being victimised for standing for what is right in the context of state capture and corruption. So if you know more of such people do encourage them to come forward and share their story with the commission. Ja thank you.

**ADV LEAH GCABASHE:** Thank you Chair. Mr Tihakudi of course again at page 20 there was a second element to paragraph 36 and that concerned the political atmosphere. You may just want to briefly speak to that matter?

**MR KGATHATSO TIHAKUDI:** Ja the reason I had not touched on it I had earlier  
10 spoken about the you know the whether I would say was the attitude as to the role of the department from the Minister the Mister Brown spoken to that. That is really what I am talking to when I talk about the political atmosphere and of course as I go into detail later on you will see that that atmosphere you know took a different – went to a different level with the DG that was appointed in the department.

**ADV LEAH GCABASHE:** Thank you. Can we then move to the Denel Asia matter which you will find on page 23 of the paginated papers?

**CHAIRPERSON:** What page?

**ADV LEAH GCABASHE:** Page 23 Chairman of the paginated papers that is W1A.

**CHAIRPERSON:** You left me behind a bit.

20 **ADV LEAH GCABASHE:** Chairman it is...

**CHAIRPERSON:** Did you deal with that important point at paragraph 38 where according to Mr Tihakudi the Minister said the sector DDG should be removed from the process and they should – and the governance unit should just provide sectoral services?

**ADV LEAH GCABASHE:** Chair I will ask Mr Tihakudi to elaborate on that. He

mentioned...

**CHAIRPERSON**: Oh he mentioned okay.

**ADV LEAH GCABASHE**: That the Minister walked in with an attitude.

**CHAIRPERSON**: Yes, yes.

**ADV LEAH GCABASHE**: And this was one of the consequences of the attitude she took.

**CHAIRPERSON**: Yes.

**ADV LEAH GCABASHE**: Where she said that I can do this on my own I actually do not need you.

10 **CHAIRPERSON**: Yes.

**ADV LEAH GCABASHE**: You units withdraw. But Tihakudi you may just want to deal with this very briefly again?

**MR KGATHATSO TIHAKUDI**: Chair the counsel is correct. That really was the consequence of this.

**CHAIRPERSON**: Yes.

**MR KGATHATSO TIHAKUDI**: And as I explained earlier on the memo process changed.

**CHAIRPERSON**: Yes.

20 **MR KGATHATSO TIHAKUDI**: Not only legal governance and risk would be the ones that would sign off.

**CHAIRPERSON**: Ja.

**MR KGATHATSO TIHAKUDI**: On the memos and [indistinct].

**CHAIRPERSON**: Yes okay I think I remember you mentioning it.

**MR KGATHATSO TIHAKUDI**: And I was – I refer to the head of governance as to the role that she was playing in this regard.

**CHAIRPERSON:** Okay no that is fine. So we are at page 23 now?

**ADV LEAH GCABASHE:** Thank you Chairman.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE:** Mr Tihakudi PFMA it is a central piece of legislation to SOE's please talk us through this process? And I am quite aware that there are two very critical sections that you deal with in your affidavit.

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** The one is Section 54 and the other is Section 51.1G.

**MR KGATHATSO TIHAKUDI:** That is correct yes.

10 **ADV LEAH GCABASHE:** Can you talk us through your role in this pre-notification process that Denel triggered and the final product that essentially broke the camel's back and those court papers served on parties.

**MR KGATHATSO TIHAKUDI:** Ja. Chair the Section 54 of the PFMA is basically says that if the entity intends to undertake a significant business or to dispose of significant part of its business or a significant transaction that obviously has the potential of putting the business at risk that the executive authority must give approval. And I – what we have done is that – the – or rather the informed by National Treasury Regulations we have what you call the significance and materially different framework. So what we do is we different types of transaction whether it is an acquisition of a business whether it  
20 is a major procurement undertaking those would come to the [indistinct] will say if they constitute so much percentage of your turnover for instance or so much of your assets business of your assets to be disposed of get the Minister's approval. So that is what really the Section – have we have dealt with Section 54. Section 51.1G speaks to when that – when you must get the Treasury's permission to start what basically would be another SOC limited or and that is the difference between those two. Section 54

does not always trigger go with Section 51.1G.

**CHAIRPERSON**: Is that like if you want to start like another subsidiary or something?

Is that...

**MR KGATHATSO TIHAKUDI**: Yes.

**CHAIRPERSON**: Is that if you want to establish a subsidiary?

**MR KGATHATSO TIHAKUDI**: If you want to establish a subsidiary that is correct.

**CHAIRPERSON**: Okay okay.

**MR KGATHATSO TIHAKUDI**: Or even – it does not even have to be a – it can be an associate when you are taking significant shareholding.

10 **CHAIRPERSON**: Yes.

**MR KGATHATSO TIHAKUDI**: Then another – it is going to be an associate company.

**CHAIRPERSON**: Okay.

**MR KGATHATSO TIHAKUDI**: Then you must still come ...

**CHAIRPERSON**: To Treasury?

**MR KGATHATSO TIHAKUDI**: Ja to – to executive authority for permission and of course the – but if you are starting this – a subsidiary 51.1G.

**CHAIRPERSON**: Yes.

**MR KGATHATSO TIHAKUDI**: It typically be triggered yes.

**CHAIRPERSON**: Okay.

20 **MR KGATHATSO TIHAKUDI**: Ja.

**ADV LEAH GCABASHE**: In fact if I may Chair Mr Tihakudi I have just very quickly looked at Section 54 which is what you are dealing with.

**MR KGATHATSO TIHAKUDI**: Ja.

**ADV LEAH GCABASHE**: And the types of transactions that approval must be sought for from the Public entity

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** That has control over a SOE are the following.

- a. On the establishment or participation in the establishment of a company.
  - b. Participation in a significant partnership trust unincorporated joint venture or similar arrangement.
  - c. Acquisition or disposal of a significant shareholding in a company.
  - d. Acquisition or disposal of a significant asset.
  - e. Commencement or cessation of a significant business activity.
  - f. A significant change in the nature or extent of its interest in a significant partnership trust unincorporated joint venture of similar arrangement.
- 10

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** So we are really saying that Denel Asia fell...

**MR KGATHATSO TIHAKUDI:** Under one of these.

**ADV LEAH GCABASHE:** Under one of these.

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** Please proceed?

**MR KGATHATSO TIHAKUDI:** And Chair what we have in place is we are saying we are about to call the pre-notification phase and that is what we are speaking to in paragraph 47.1. Because with that we are saying give us a heads up it is not prescribed in the PFMA it is a process that we have put in place to say give us a heads up and typically these would come into places – what should normally happen is that in your corporate plan you would indicate this sort of transaction. Because sometimes it is an opportunistic transaction that you are undertaking. So you say but give us a heads up so that you are – while you are busy doing all the other work of putting together the business case, doing your due diligences and so on so that the Minister can then say

20

do I want you to do that or not? Is this in line with your mandate or are you now deviating from that mandate? That is what this process does.

**ADV LEAH GCABASHE:** Can I just interrupt for a minute? What prompted the department to institute this pre-notification phase?

**MR KGATHATSO TIHAKUDI:** Ja what normally happened is that this PFMA applications literally would come out of the blue if you want to put it that way. And you have 30 days in terms of the – of Section 54 in which to respond to PFMA application. Now 30 days is never enough so it helps if ahead of time we are aware of this transaction and it also gives us an opportunity to maybe say let us in order to help your  
10 process so that when this information gets familiar with you can embed yourself – ourselves in that process of the SOC. For instance if that entity that you want to acquire you will be doing a site visit we can go and look at it ourselves to satisfy ourselves to the quality of the assets that you will be taken over if the application had to be successful. So that is really what had led to this – and this was introduced before my time Chair that is the explanation that was given when it – and it is quite a – I must say it was a good supplement to the PFMA process.

**ADV LEAH GCABASHE:** I have no difficulty with the process my question really is how did the Denel Asia matter come to your attention – come to the department's attention

20 **MR KGATHATSO TIHAKUDI:** Oh. Alright so ja – because I thought the first thing that you wanted was for me to explain how the process works. So the Chair wants me to get to the heart of it. Let me do that.

**ADV LEAH GCABASHE:** I think that we have that explanation because we know that 54 governs these particular transactions.

**MR KGATHATSO TIHAKUDI:** Ja. The – on the – we – on the 29 October and this is

on paragraph 48 on page 25 Chair.

**CHAIRPERSON**: Thank you.

**MR KGATHATSO TIHAKUDI**: Ja the Denel submitted a pre-notification letter to the department giving us that heads up and this obviously reached our department on 30 October to say we are undertaking this transaction. We have – on Denel Asia and we obviously went through this and this notification and we basically on paragraph – in paragraph 50 we said Minister allow this to unfold because in a way this transaction was – is not you know it was within the realm of what I will say Denel has – Denel had done partnerships, they had done partnerships in the country with overseas OEM's. It  
10 had gone to the Middle East and established an entity with [indistinct] which is a UAE company to set up an entity there. And we also had understanding that we knew that like in a country like India there was a make in India policy which required that if you are going to be selling in this case armaments you must produce in the country. So we – but we said Minister – we evaluated this pre-notification and we said Minister we recommend that you allow them to go ahead but in doing so they must come back to us with the – in paragraph 50 Chair they must come back to us with a comprehensive business case to enable yourself and the Minister Finance to apply your minds. We said we want a comprehensive due diligence report on the financial regulatory requirements because this registration in – because this entity was being registered in  
20 Hong Kong. We said assets relates to foreign – we said we want the comprehensive due diligence on the VR Laser itself which was – which had been identified as a partner in this transaction. Its financial [indistinct] ownership capabilities as well as is client base. And we also called on Denel to ensure that there was adequate governance oversight regarding this and to ensure that there are no conflicts of interest that arise whether they are real or perceived. And also to ensure that the risk exposure to the

entity itself Denel and to shareholder is minimised that is covered in I think 50.2. So these are the conditions that we gave to Denel to say if you have intent on this transaction please meet this.

**ADV LEAH GCABASHE:** But when you look at this transaction I would like to again just go back to one of the newspaper articles that was part of Minister Gordhan's bundle and you will find it at page 203 of W5B. And this is really also what prompts the question ...

**CHAIRPERSON:** What is the page number?

**ADV LEAH GCABASHE:** The page number Chairman is page 203.

10 **CHAIRPERSON:** Thank you.

**ADV LEAH GCABASHE:** And if you – have you found it Mr Tihakudi?

**MR KGATHATSO TIHAKUDI:** Yes I am there Ma'am

**ADV LEAH GCABASHE:** If you go to the bottom of the page and you come up to the third paragraph from the bottom. These reporters write as follows:

“One day after Denel submitted its PFMA application to Treasury on 30 October 2015 Denel Chairman Dan Mantsha forwarded the confidential document to Ashu Chawla a senior Gupta executive.”

20 Do you know anything at all about this because you are saying this application would have arrived on the 29<sup>th</sup>?

**MR KGATHATSO TIHAKUDI:** Well it was dated the 29<sup>th</sup> arrived on the 30<sup>th</sup> at the department.

**ADV LEAH GCABASHE:** There is another reference I will find in a minute that links the DPE as well.

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** To the release of the same pre-notification application.

**MR KGATHATSO TIHAKUDI:** Ja.

**ADV LEAH GCABASHE:** Again to one of the Gupta associates.

**MR KGATHATSO TIHAKUDI:** Correct.

**ADV LEAH GCABASHE:** And I ask you this question in the context of what triggered the department's interest in the Denel Asia matter because as soon as it was approved that is the pre-notification was received I beg your pardon a message went out to the Gupta associates or to the Gupta family that this process is underway. Do you know anything at all about this?

10 **MR KGATHATSO TIHAKUDI:** Well the first – this Chawla email I do not know of I must say. But the one that links the department where I think there was a- was it an email I think a business email that is – that is being referred to in some other reports that we are aware of from the reports that documentation was leaked to one of the Gupta's associates through that particular email address.

**ADV LEAH GCABASHE:** But you do not know anything about that leak, your unit, nobody in your unit would know anything about it?

**MR KGATHATSO TIHAKUDI:** Ja. If the question that you are asking is that did we have anything to do with those leaks...

**ADV LEAH GCABASHE:** Yes more directly yes.

20 **MR KGATHATSO TIHAKUDI:** Definitely not. And in – and my team I have complete trust in them and I can say at this stage that none of them would have been involved in such an action.

**ADV LEAH GCABASHE:** So essentially in that conditional letter that the Minister wrote she took an unprincipled position that alright I hear what you are saying but deal with these issues, the conditions is set out. Now what did your – what was your unit's

contribution to preparing that letter? What advice did you give the Minister?

**MR KGATHATSO TIHAKUDI:** Well the conditions as they related to the pre-notification these would have been formulated in my unit. So that is the advice that we had given to Minister to say this transaction we have been given a heads up let us advise Denel as follows as per what is contained therein.

**ADV LEAH GCABASHE:** If you could just go to page 193 of Exhibit W1A.

**MR KGATHATSO TIHAKUDI:** What page again counsel?

**ADV LEAH GCABASHE:** It is page 193. That is where the letter that was received on the 30 October is filed. Now to be fair on the Chairman of the board at the time he set  
10 out in detail the rationale ...

**MR KGATHATSO TLHAKUDI:** Chair I am just trying to check are we at the same page 93?

**ADV LEAH GCABASHE SC:** No.

**MR KGATHATSO TLHAKUDI:** 193?

**CHAIRPERSON:** 193 on the.

**MR KGATHATSO TLHAKUDI:** [Intervenues].

**CHAIRPERSON:** On the file that has got your statement.

**MR KGATHATSO TLHAKUDI:** W5A.

**CHAIRPERSON:** On this, no she has changed the file.

20 **ADV LEAH GCABASHE SC:** It is KT4. Annexure KT4.

**MR KGATHATSO TLHAKUDI:** Oh, my apologies.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Back to your original statement.

**MR KGATHATSO TLHAKUDI:** Ja.

**ADV LEAH GCABASHE SC:** And it is.

**CHAIRPERSON:** Well.

**ADV LEAH GCABASHE SC:** One of your annexures, the annexures to your statement.

**MR KGATHATSO TLHAKUDI:** KT4, okay.

**CHAIRPERSON:** Mr Tlhakudi I also just became aware in the process she did not tell us she was changing files.

**ADV LEAH GCABASHE SC:** My apologies gentlemen.

**CHAIRPERSON:** Okay.

10 **ADV LEAH GCABASHE SC:** I am conscience of the time Chairman. I should not be conscience of the time.

**CHAIRPERSON:** No that is fine. No I think we should be able to continue until we finish. I am sure we will finish before five or I think so. You might not.

**ADV LEAH GCABASHE SC:** I.

**CHAIRPERSON:** But let us see how far we [intervenes].

**ADV LEAH GCABASHE SC:** Let us see how we go Chairman.

**CHAIRPERSON:** *Ja*.

**ADV LEAH GCABASHE SC:** But I think all of us would prefer to finish today.

**CHAIRPERSON:** *Ja*, okay.

**ADV LEAH GCABASHE SC:** Thank you Chair.

20 **CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** So we are at page 193 and that is the pre-notification letter in which the proposal to form Denel Asia is set out in great detail really.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** By the Chairman.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE SC:** This letter is signed.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** By Mr Mantsha.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** He sets out the rational very, very clearly in paragraph 3 of page 193. He deals with Denel's growth strategy as set out in its corporate plan. Now mind you this is a corporate plan that he found in place admittedly so, but he is trying to, he and his Board are trying to apply their minds to how they can.

**MR KGATHATSO TLHAKUDI:** *Ja.*

- 10 **ADV LEAH GCABASHE SC:** Grow the revenue stream of this company. So that is what he deals with on page 1. He goes on at page 194 to talk of the expansion into India in paragraph 2. I read, I am just looking at selective passages. He talks to the By Make India Program which you referred to earlier on in your evidence and then he speaks to the barriers to entry in this vast growing market of the Asia/Pacific Region. He says there is a lack of multilateral defence relationships. There is an inability to provide funding solutions. There is an inability to source local production and development partners particularly in India. There are frequent engagements with end user in industry from a distance and this is not feasible. He speaks to company visibility in the marketplace from a distance and he says this is limited.
- 20 the need for a conduit for developing or aligning with local business networks, active participation etcetera and then he concludes and he says given the above barriers it makes commercial sense for Denel to enter into a joint venture with a company that is already established in the region and which has an established network of potential business sources that will provide immediate and urgent solutions to the barriers raised above. What was your sense of what they were proposing, because you were the

Minister's workroom, work horses?

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Please take us through your thinking.

**MR KGATHATSO TLHAKUDI:** At this stage Counsel through you Chair we were not, we did not really, we knew about their relationship but we did not really know much about it. We did not know whether this, what is being said here that it has this significant presence and capability of opening markets in Asia. So we could not, we were not in a position really to say yea or nay. What would help us would be the due diligences that would be done on the business and those due diligences were done. In

10 actual fact the, if I can find it.

**ADV LEAH GCABASHE SC:** Are you looking for the E&S Report?

**MR KGATHATSO TLHAKUDI:** The E&S Report as well as the [indistinct] Report that the lawyers.

**ADV LEAH GCABASHE SC:** If you go to W1B.

**MR KGATHATSO TLHAKUDI:** Oh, *ja* there is it, *ja*.

**ADV LEAH GCABASHE SC:** You will find it at page 354.

**MR KGATHATSO TLHAKUDI:** *Ja.* 354.

**ADV LEAH GCABASHE SC:** And page 368. So you want to keep your finger on the E&S Report.

20 **MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Which is at 354 and then.

**MR KGATHATSO TLHAKUDI:** Yes.

**ADV LEAH GCABASHE SC:** The [indistinct] one is at page 368.

**MR KGATHATSO TLHAKUDI:** 368, because I just want to get to a point that was [indistinct]. If you go to page 370, the [indistinct] Report. If you look at historical

background of VR Laser in India, it says there if I can read it Chair. It says:

“This went to our extensive research on the website of Minister of Corporate Affairs and various other Ministries. We did not find any information relating to the presence of VR Laser or its principals in India either directly or through any branch office or liaison office or a wholly owned subsidiary. Further consequent to our general research by the name of the company we could not find any details of VR Laser or its principals present in the public domain.”

10 So that statement what it is saying is contradicting the eloquent case that is being made here as to the suitability of VR Laser and this information would have come through the PFMA application itself. So at the pre-notification stage we would not be, would not know you know the whether the case that is being put in the pre-notification is actually a solid one or not and of course once we got the PFMA application we realised that what was said in here as to the capability of VR Laser was actually not true and I am just trying to, the E&S Report.

**ADV LEAH GCABASHE SC:** You will find that at page 354.

**MR KGATHATSO TLHAKUDI:** *Ja.*

20 **ADV LEAH GCABASHE SC:** And the Executive summary which deals with the due diligence.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Is at.

**MR KGATHATSO TLHAKUDI:** Executive summary, *ja* okay.

**ADV LEAH GCABASHE SC:** 356.

**MR KGATHATSO TLHAKUDI:** Three, *ja*. It starts at 356, but I am, I want to get to is

also they did, they came to a similar conclusion.

**ADV LEAH GCABASHE SC:** At 357.

**MR KGATHATSO TLHAKUDI:** *Ja*, I am on page 357.

**ADV LEAH GCABASHE SC:** Paragraph 4.2.1.3.1, is that what you are looking for?

**MR KGATHATSO TLHAKUDI:** Okay.

**ADV LEAH GCABASHE SC:** In context.

**MR KGATHATSO TLHAKUDI:** *Ja*. Basically what that is what they are saying and that there is another report that we should provide you with. Oh, *ja* it is actually here. Let me see. It is on E&S. If you go to B4, 391. I think they put it much more nicely there  
10 sort of, if the Chair can just bear with us and this was the report of E&S that was done at very short notice. *Ja*.

**CHAIRPERSON:** Whose report is that one?

**MR KGATHATSO TLHAKUDI:** That is E&S.

**CHAIRPERSON:** 391.

**MR KGATHATSO TLHAKUDI:** *Ja*, on page 404, if you can go to 404 Chair.

**CHAIRPERSON:** I should go to 404?

**MR KGATHATSO TLHAKUDI:** 404, yes.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** And when you go there it says in paragraph 5.2.3, it  
20 says VR Laser does not appear to have an international footprint if business operation solely trading in South African market.

**CHAIRPERSON:** I am sorry. I am sorry.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**CHAIRPERSON:** I am at page 404. Did you say 5.3.1?

**MR KGATHATSO TLHAKUDI:** 5.2.3.

**CHAIRPERSON:** 5.2.3, okay thank you.

**MR KGATHATSO TLHAKUDI:** It says and in the statement they are looking at RSA, because as you see in 5.2.1 Chair they say:

“VR Laser Asia is a shell company registered in Hong Kong, but they look at Asia by virtue of it having a related, but they say it does not appear to have international footprint if business operation is solely trading in the South African an unfavourable publicity with regards to the former subsidiary trading in the American Defence Industry.”

- 10 So the combination of those two are telling you that Mr Mantsha’s letter as it relates to VR Laser you know is not supported by due diligences that were done. With regard to the case for Asia/Pacific Region indeed it is a lucrative market. It is a market that Denel has sold into in the past. They have presence there. I mean they used to have presence in countries. They still have presence today in Pakistan and they have a presence in Malaysia as well today. India is a big market. It is one of those, I think it is if not the largest it is probably the second largest important market for armaments. So, but it does not make sense then that you want to enter India but you go via Hong Kong and one of the points that we raised in the analysis that we made was that why Asia/Pacific Region such a massive region. Each country is different. Why would you
- 20 want to set up this company in Hong Kong to take care of the whole market? Why not have bilateral arrangements depending on the laws of each country? Why like in India they say they want you to, they have a Made in India Policy. You set up a partnership in India with an India partner and we asked this question to management of Denel. We said to them but why are you going this route. They said to us the major manufacturers, arms manufacturers in India everyone else, they have already

partnered with other people, because Denel has its own troubles in India at some point. It had been blacklisted. So they said we had tried to approach, but they have already partnered with other people. That is why are going with VR Laser but it; that strategy had witnesses and we highlighted these in our analysis for the Minister.

**ADV LEAH GCABASHE SC:** And you deal with really the sequence of events. I am again changing files and taking you to KT02. No, it is the same file. KT26, my apologies. KT26, your paragraphs 51, 52 and so forth.

**CHAIRPERSON:** What is the page number?

**ADV LEAH GCABASHE SC:** It is page 26 Chairman. It is back to the statement to the  
10 original statement at page 26. So you are essentially saying in the letter of  
23 November which is KT6 you set out your concerns and conditions.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** But by 10 December 2015 Denel had made a formal application?

**MR KGATHATSO TLHAKUDI:** Indeed.

**ADV LEAH GCABASHE SC:** And that formal application you assessed against the due diligences that you had been furnished with?

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** Hm.

20 **ADV LEAH GCABASHE SC:** And you came to what conclusion?

**MR KGATHATSO TLHAKUDI:** Well the conclusion we came to was that we are not in a position to do the assessment. For the simple reason that Denel had not satisfied the pre-notification conditions in terms of all the documents that they were supposed to provide and I have to say Chair it was quite a mild assessment, because based on some, the points that I have made it is quite clear this transaction was a no go, but what

had happened here was that we get this and you will see the date we write through Minister to Chairperson of Denel on 23 November and by the 10<sup>th</sup> we have our application which is literally a few days later, hardly two weeks later which and that would explain some of the gaps in the application, because the information that we had requested would require a lot of work to be done and in actual fact E&S in the report that I have got earlier they are saying they were given a very limited period to do their due diligence and even in that limited period they were able to raise the issues that they raised and to compound matters it gets us on 10 December and we are basically told by the Minister through the advisor at the time. It was Anneline Stander to say this

10 must be, have been analysed and proceeded before we close and the new DG had arrived on 1 December by the way and a lot of pressure gets put on us to say make a decision before the end of, before in fact it is not the end of the [indistinct], before you close and of course some of the team members are supposed to close before the 16<sup>th</sup>. But we all stayed on until 24 December and we gave that analysis reason we cannot make a recommendation and on that day on the 24<sup>th</sup> we emailed to all the advisors to Anneline and Daniel Plaatjies. We also sent it to the DG and we basically that was it and then we put it into the system, but that is why I am saying it was [indistinct] because were cognisant that three was more to this transaction considering especially the pressure that we were being put under. *Ja*, and *ja* that is it, *ja*.

20 **ADV LEAH GCABASHE SC:** If in fact Minister Gordhan deals with this particular application.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** If you have regard to the reference file.

**MR KGATHATSO TLHAKUDI:** *Ja*.

**ADV LEAH GCABASHE SC:** W5A

**MR KGATHATSO TLHAKUDI:** A, ja.

**ADV LEAH GCABASHE SC:** Right at the back we have an extract of Minister Gordhan's transcript.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** And it seems to accord with your thinking.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** On this what is written here. It goes a little further as well.

**CHAIRPERSON:** What was the page on Mr Gordhan's evidence?

10 **ADV LEAH GCABASHE SC:** He starts at page 184 Chairman.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Simply by saying he is now going to speak to the issues of Denel Asia. Then at page 185 in the middle of page 185 he says the following. That paragraph starts as follows, 185.

"So that is the issue around Minister Nene."

It just happens to start with that. Are you there Mr Tlhakudi?

**MR KGATHATSO TLHAKUDI:** Yes I am.

**ADV LEAH GCABASHE SC:** The important parts follow. He says:

"The rest of 61..."

20 That is paragraph 61 of his statement.

"...then deals with the creation of an entity called Denel Asia. I indicated to you previously and earlier on that no Government department or entity can create another commercial company without prior consent..."

That accords with what you said?

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** Mr Tlhakudi?

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** “...Both from the relevant Executive Authority that that entity or department falls under and further notification and approval in terms of Sections 54 and 51 of the PFMA and this is one of those instances...”

He says:

10 “...and *ja*, there is this so called pre-notification exercise that was engaged in by Denel and we today know from the Gupta emails and so that the Denel Board was captured. So was some of the Managers at some point in time and part of the cleaning up processes involved some of those elements.”

He goes on to speak of:

“30 October 2015 pre-notification exercise and the fact that National Treasury engaged in these processes.”

20 Can I pause at this point and ask you to explain the role of National Treasury given the requirements of Section 51 and the 1.85 billion guarantee? Can you just take the Chairman through why National Treasury in particular had an interest in this matter and why Minister Gordhan had an interest in this matter when he was placed in that particular portfolio again in December?

**MR KGATHATSO TLHAKUDI:** Well the Government guarantee that had been extended to Denel Chair. I think it was 2012, the 1.85 billion, had a condition that Denel cannot undertake major transactions without the consent of the Minister of Finance and it was a fair requirement, because you had an entity here that was

dependent on State support. So if it is to enter into transactions that can potentially create liabilities for the State the Minister of Finance is the custodian of the national purse would want to have a say in that and in terms of Section 54 ordinarily the Minister of Finance has no say. It is the Executive Authority's Province. I mean in this case the Executive Authority is the Minister of Public Enterprise. He would solely be the one to make a call on that, but in this case that condition of the guarantee had created a requirement for Denel to seek the approval of the Minister of Finance. Section 51 speaks to the Minister of Finance. That is his area and that is where now there is an issue of 30 days. Section 54 says 30 days for [indistinct]. Section 51 says reasonable  
10 time. So that is also what the difference is. So to answer you the guarantee, the Government guarantee had created the requirement for the Minister of Finance to have an interest in transactions at Denel on that date.

**ADV LEAH GCABASHE SC:** Yes.

**MR KGATHATSO TLHAKUDI:** And by the way the BAE Land Systems acquisition National Treasury had been involved with that. The Minister of Finance had approved it. So it was not long before this Denel transaction and Denel had complied with the process as specified.

**ADV LEAH GCABASHE SC:** Yes. In fact a concern that you expressed earlier as well was the fact that the timing of this was, it is as if it was urgent. It is a concern that  
20 Minister Gordhan expresses as well. He understand the urgency.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** For this particular application.

**MR KGATHATSO TLHAKUDI:** That is right.

**ADV LEAH GCABASHE SC:** To be pushed through in the manner that it was pushed through. You would agree with that?

**MR KGATHATSO TLHAKUDI:** That is correct.

**ADV LEAH GCABASHE SC:** Of course the additional point you have made is that they would not have had the time to properly respond to any of the issues that you raised in the letter of 23 November?

**MR KGATHATSO TLHAKUDI:** Correct.

**ADV LEAH GCABASHE SC:** That Minister Brown sent?

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** To the Chairman of Denel?

**MR KGATHATSO TLHAKUDI:** Correct.

10 **ADV LEAH GCABASHE SC:** Which letter is on page 222. We will not go back there.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** But it is there with all the conditions, but what Minister Gordhan also deals with is the ownership of VR Laser Asia.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** He says it is company owned and this is on page 186 Chairman right in the middle of the page. He is quoting from his paragraph 62. So the sentence starts as follows. So what 62 indicates Chair is that:

20 “VR Laser Asia is a company owned by Mr Salim Essa. I made reference to him earlier on. He is I think in self-declared exile. He is a Gupta, well known Gupta associate and he would be one of the brokers as we described under a previous hypothesis and as a sole shareholder and who has a relationship with VR Laser RSA. That is South Africa. Owned by Mr Duduzane Zuma and Rajesh Gupta.”

The ownership structure of one VR Laser South Africa two, VR Laser Asia was that

interrogated by you at all when you addressed the issues you needed to with the Denel Board?

**MR KGATHATSO TLHAKUDI:** Yes, it was Chair and I mean we got to obviously, because the information was provided that the, I mean sorry I cannot recall, I mean there is VR Laser South Africa had always gone and that is also in their due diligence report that Denel had done. Also that Salim Essa is a sole owner of VR Laser Asia. So you are quite aware of the ownership structure and the characters that were involved in that ownership, yes.

**ADV LEAH GCABASHE SC:** In fact what the E&S Report says is that:

10                   “Denel should be careful of being involved with politically  
                          exposed persons.”

**MR KGATHATSO TLHAKUDI:** Correct.

**ADV LEAH GCABASHE SC:** They flag that as a red flag amongst other things.

**MR KGATHATSO TLHAKUDI:** Exactly.

**ADV LEAH GCABASHE SC:** Which is the issue you.

**MR KGATHATSO TLHAKUDI:** Exactly.

**ADV LEAH GCABASHE SC:** You are talking to now.

**MR KGATHATSO TLHAKUDI:** *Ja* and of course it goes further and it talks about relatives and close associates of political figures. That is what it says, because it is one  
20 of the red flags that would be that they are picking up to say in fact, because I think one of the Gupta brothers was an advisor to the Prime Minister of Lesotho. They are raising that. They are saying that in itself raises a concern, *ja*.

**ADV LEAH GCABASHE SC:** What also compounded the issue is in the next paragraph again from Mr Gordhan’s transcript.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** It reads as follows:

“The joint venture was contemplated as I said to exploit Denel’s intellectual property and proprietary information. They do not even say that they are going to act as an agent to sell the products of Denel. It is to exploit the intellectual property. So they were actually going to sell intellectual property that is in fact the valued asset of the State it would appear.”

Was this your assessment as well of what this urgency arrangement if one could call it that appeared to be intended to achieve?

- 10 **MR KGATHATSO TLHAKUDI:** Well it was more than an urgency arrangement. You are having an entity that is set up in Hong Kong. That may eventually have a direct interest in an entity in India. If you are going to manufacture in India obviously you must transfer technology, you must transfer capability into that entity. So in a direct way what Denel Asia or VR Laser Asia has an interest in would have part ownership of all those capabilities that would have been transferred into India and by Denel, because as we have established VR Laser does not have the capabilities you know that Denel could leverage going into Asia. So ultimately that is what was going to happen. In a roundabout way what you are having is that you would have an entity in India that VR Laser Asia will have part ownership of and of that entity would have been built on the
- 20 intellectual capital of Denel. So it is, I think Mr Gordhan puts it a little bit more bluntly than I here, but that is what it means.

**ADV LEAH GCABASHE SC:** Yes. He goes further on page 188 of the same record to address the issue of the timing. He says that in the middle of the page:

“Before Mr Nene was removed as Finance Minister no formal application had been submitted.”

And we know Mr Nene was.

**MR KGATHATSO TLHAKUDI:** *Ja.*

**ADV LEAH GCABASHE SC:** Removed on 9 December.

**MR KGATHATSO TLHAKUDI:** Hm.

**ADV LEAH GCABASHE SC:** He goes onto say a little lower down.

“Of course a formal application would have to be filed because  
that is the law.”

That is the issue that is dealt with.

**MR KGATHATSO TLHAKUDI:** *Ja.*

10 **ADV LEAH GCABASHE SC:** However what I want to emphasise is the following.

Mr Gordhan says:

“Mr Nene had he not approved the transaction, the application  
there is now a new incident that raises its head if one could call  
it that.”

He says. He says:

“It is not even days later or a day later after Mr Nene was  
removed on 10 December 2015 when Mr van Rooyen was  
appointed as Finance Minister. That is on 10 December 2015.  
In terms of 69...”

20 That is his paragraph 69.

“By 11 December 2015 the formal PFMA application seeking approval for the  
establishment of Denel Asia was submitted addressed to the newly installed  
Minister.”

So this was just a day after his installation.

“Mr van Rooyen did not even have the opportunity to approve ...”

I beg your pardon, can I start that again:

“Mr van Rooyen did not have the opportunity to approve the joint venture prior to him being removed as Finance Minister.”

So he says really the timing of the lodgement of that application is curious because it comes just as Mr van Rooyen is appointed as Finance Minister. Would you agree that that timing was rather curious to use that word?

**MR KGATHATSO TLHAKUDI:** It is and if you look at the incomplete nature of the application that was served it sounds like – it looks like it was quite a rushed job so to speak, so I would concur with that statement Chair.

10 **ADV LEAH GCABASHE SC:** The remainder of the Minister’s evidence of course here speaks to the discussions that would have taken place between DPE and National Treasury, you were part of those discussions?

**MR KGATHATSO TLHAKUDI:** That’s correct.

**ADV LEAH GCABASHE SC:** We will deal with those in a few minutes when we look at Mr Fuzile’s evidence, but Mr Gordhan foreshadows that discussion at page 194 of this transcript. Page 194, second paragraph where he says now Mr Fuzile will describe other meetings that took place amongst the officials, between Denel and the National Treasury if you ask him to and that showed that that is the kind of conversation that needed to actually take place rather than the assumption that once the 30 day period is  
20 over that is the end of the story and you can go ahead and do what you like, so one must ask the question why the urgency. If you waited another three weeks or four weeks what would not have happened and what would the cost have been to whom and of course the flipside of that coin is who benefits by all of this by rushing it through. And that’s a question we ask constantly, who would have benefitted from the establishment and the operational liaising of Denel Asia. I don’t know if you want to

venture an answer to that?

**MR KGATHATSO TLHAKUDI:** I think the earlier discussion that we had we know if it was to be operationalised, if it was to enter the lucrative India market and follow through on the (indistinct) in India you know an entity that will be established there which will be formed on the back of Denel's intellectual capital would have a (indistinct) Asia which Mr Essa is the sole owner having quite a significant share of that so then that's the one beneficiary if I may put it that way that is rather obvious from the discussion we had earlier.

**ADV LEAH GCABASHE SC:** If I might then take you to file W5B, W5B, and I'm  
10 looking at the application that served in the High Court, so you've got a notice of motion, founding affidavit and answering affidavit that were filed I have extracted these again from Mr Gordhan's record, I am on page 388 of this bundle and at paragraph 25 and I will go straight to paragraph 25.2:

“National Treasury advised that the application for approval was still under consideration and that required approval from National Treasury had not been granted as yet.”

It deals with the 30 day issue at 25.3, over the page at page 389 it then sets out its views on this transaction, it says there was no compliance with the provisions of PFMA, in particular Section 51(1)(g) thereof, in that no decision has been taken by National  
20 Treasury in terms of that Section. You have spoken to this issue.

**MR KGATHATSO TLHAKUDI:** That's correct yes.

**ADV LEAH GCABASHE SC:** And you concur with this view?

**MR KGATHATSO TLHAKUDI:** I do.

**ADV LEAH GCABASHE SC:** A follow up meeting to determine a way forward should urgently be convened is what was suggested. Additional information is sought in 25.6,

in 25.7 there is a clear statement saying pending a decision on whether to approve or not the applicant may not proceed with the JV, and then at 25.8 the following is noted:

“Whilst the application for approval is under consideration all operations under the JV be ceased with immediate effect, pending National Treasury’s decision, the aim being to limit the negative consequences which may arise from potential non compliance with the PFMA.”

Now I refer to these because my understanding is that you would have concurred with this thinking, I’m not sure if you would have ...(intervention)

**MR KGATHATSO TLHAKUDI:** Ja, no I concur with what is pointed out here but I must

10 also say these are discussions now that are going on in April 2016.

**ADV LEAH GCABASHE SC:** Correct.

**MR KGATHATSO TLHAKUDI:** And by then Denel has already assumed the deemed approval so Denel was already in violation of the PFMA, especially Section 51(1)(g) as well as the requirements of the government guarantee, so that’s – so I agree with what is written here but I think I must just say that the horse has already bolted by now.

**ADV LEAH GCABASHE SC:** But this is precisely why the matter was going to court.

**MR KGATHATSO TLHAKUDI:** Well yes Denel literally was forcing the hand of Treasury here .

20 **ADV LEAH GCABASHE SC:** Mr Fuzile goes on to explain the importance of the JV in the context of the guarantee and if you go to page 404 at paragraph 56 he writes the following:

“The guarantee conditions qualify the terms of the guarantee and therefore have full legal effect. They create a distinct legal obligation on the applicant to obtain the Minister of Public Enterprises and the Minister of Finance’s approval prior to the entering into the type of transactions envisaged in

Section 54(2) of the PFMA.”

The implication of this is that 51(6)

“Even if the applicant is correct in its interpretation of Section 51(1)(g) and Section 54(2) of the PFMA it still has to obtain approval under the guarantee.

This approval is not subject to any express time bar.”

And at 56(2):

“There is no provision which deems the approval is granted after the lapse of a specific time period.”

In essence really at page 406 Mr Fuzile notes the following, at paragraph 61:

10

“The JV agreement contains various suspensive conditions;

(2) Clause 4 of the JV agreement states that the entire agreement save for the immediately operative provisions, that is clauses 1, 2, 4 and 28 to 32 is subject to fulfilling amongst others of the following suspensive conditions; approval under Section 51(1)(g) of the PFMA; approval under Section 54(2) of the PFMA; approval under Section 66 of the PFMA and the applicant containing the relevant approvals required of it from the National Treasury for the execution and implementation of the agreement.”

20

Because none of these approval had been obtained this JV did not stand a chance, it could not be seen to be, be deemed to be valid in any way, manner or form, that is your evidence.

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** I'm not sure if that is captured by the microphone, that answer.

**ADV LEAH GCABASHE SC:** I will rephrase the question, would you agree with his summation?

**MR KGATHATSO TLHAKUDI:** Ja, I agree with Mr Fuzile.

**CHAIRPERSON:** Okay was there something you want to say about qualification or anything?

**MR KGATHATSO TLHAKUDI:** No Chair.

**CHAIRPERSON:** No, okay alright, okay. Ms Gcabashe we are beyond half past four, that's fine, I am as determined as you are that we try and finish with the evidence of this witness but I do need you to give me an indication of your assessment about how long we might still be because I have to shift some arrangements.

**ADV LEAH GCABASHE SC:** No more than ten minutes Chair, probably much less than that.

10 **CHAIRPERSON:** No more than ten minutes, okay, then that's fine. Mr Tlhakudi you are still fine, we are beyond the time that you might have had in mind, are you still fine?

**MR KGATHATSO TLHAKUDI:** I am still fine sir.

**CHAIRPERSON:** Okay, alright thank you.

**ADV LEAH GCABASHE SC:** You see Mr Tlhakudi I ask these questions because in December early January, that's December 2015, early January 2016 Minister Brown seemed to have a different view of who was causing delays in relation to the approval of this Denel Asia deal, is my summary correct?

**MR KGATHATSO TLHAKUDI:** It's actually later than that Chair, it's actually in the new year in 2016.

20 **CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** That that starts to change because the analysis that we had done and the memos that he had put in place were not processed, the DG returned it back into the Department and from that point onwards what happens everything was quiet, in February – it's February 18 there's a meeting with Chairman Mantsha and the DG where now they sought to have the Minister ratify the approval, basically they

changed the memo that was put together in December to reflect that Minister has approved the transaction with conditions and as I say in my statement I am part of those discussions, reluctantly so because it was quite irregular you have a chairman of an entity on which the department must make a call sitting in a meeting and actually helping to draft both the memo and the letter, and this was allowed by DG Seleke besides protestations from myself and ...(intervention)

**CHAIRPERSON**: You say without?

**MR KGATHATSO TLHAKUDI**: I'm saying despite.

**CHAIRPERSON**: Oh despite.

10 **MR KGATHATSO TLHAKUDI**: Despite ja.

**CHAIRPERSON**: Oh okay.

**MR KGATHATSO TLHAKUDI**: Protestations from myself to say this is unusual.

**CHAIRPERSON**: This was irregular.

**MR KGATHATSO TLHAKUDI**: This has never happened in the time that I am there and I don't think it's correct, it's improper, but this continues, the memo gets produced, which memo never gets signed by the way, I never get to see a signed copy of it, but what happens then there's subsequent letters that gets written to both Mr Fuzile and Mr Gordhan at Finance, which are basically saying now we are in this situation we are in because the Department had not acted promptly in dealing with this matter, which is  
20 incorrect, because we had done so despite dealing with the timeframes that we were given at the end of 2015, to advise on the transaction.

So and those, counsel will I just have to advise the Chair as to those letters, I'm speaking to a document without going paragraph by paragraph.

**CHAIRPERSON**: Yes, she will help you.

**MR KGATHATSO TLHAKUDI**: Ja, so that's what – that's basically what happens, I

think it's 12 and 13.

**CHAIRPERSON**: Are you able to help Ms Gcabashe.

**MR KGATHATSO TLHAKUDI**: Chair KT12 and 13.

**ADV LEAH GCABASHE SC**: 521.

**MR KGATHATSO TLHAKUDI**: If you read that ...(intervention)

**ADV LEAH GCABASHE SC**: And 524.

**MR KGATHATSO TLHAKUDI**: Ja 521 and 524.

**CHAIRPERSON**: Of which exhibit?

**ADV LEAH GCABASHE SC**: It's Exhibit W1B Chairman.

10 **CHAIRPERSON**: My W1B doesn't seem to go to page 500.

**ADV LEAH GCABASHE SC**: W1B is a thick file Chair.

**CHAIRPERSON**: Yes, the one I have is quite thick, I'm saying that ...(intervention)

**ADV LEAH GCABASHE SC**: How far does it go Chair?

**CHAIRPERSON**: My one goes up to 497, or – no, no, I got confused with all the W's.

**ADV LEAH GCABASHE SC**: It's late in the day Chair.

**CHAIRPERSON**: So I'm looking at W5B.

**ADV LEAH GCABASHE SC**: It is late Chair.

**CHAIRPERSON**: It is late in the day. So it's W1B?

**ADV LEAH GCABASHE SC**: W1B.

20 **CHAIRPERSON**: And it's page 5.

**ADV LEAH GCABASHE SC**: First at 521, which is a letter to – from the Minister, Minister Brown to the Chairman, Chairman Mantsha, I don't know if you just want to very briefly take the Chairman through that letter.

**MR KGATHATSO TLHAKUDI**: Yes.

**CHAIRPERSON**: Okay.

**MR KGATHATSO TLHAKUDI:** On 521 Chair then Minister Brown to Mr Mantsha says that if you go on that paragraph it will be the second paragraph I am now convinced that Denel did not make adequate consultations with this ...(intervention)

**CHAIRPERSON:** Mine says did make.

**MR KGATHATSO TLHAKUDI:** Yes, or did, sorry did make adequate consultations with the Department and the National Treasury and followed the necessary steps required by PFM when undertaking a transaction of this nature. And she goes further and says my concern is that both DP and National were slow in reviewing the application despite Denel indicating the urgency of the application, both the pre-notification and the actual  
10 full PFMA application emphasize the urgency of the transaction. The least both Departments could have done was to ask Denel for additional time to revisit the instruction within the prescribed PFMA timeframe, which is not consistent with the facts to put it quite bluntly because you know though we had – we said we declared (indistinct) we said we can't make a call on this.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** The letter to that effect and the memorandum had been submitted to both the Minister's office as well as the DG's office, so this is not correct.

**CHAIRPERSON:** Correct.

**ADV LEAH GCABASHE SC:** But that the content of that letter is repeated at page 524  
20 when Minister Brown writes to Minister Gordhan.

**MR KGATHATSO TLHAKUDI:** Correct, yes he makes – she makes the same points to Minister Gordhan which is obviously not correct, I just want to get the specific sections, it says on page 525 Chair it says that it was apparent during the engagement and here she is referring to a meeting that she had with the Denel Board on the 23<sup>rd</sup> of June 2016 on page 524 where she says on 525 it was apparent during the engagement that

the conduct of my department and yours in managing PFMA applications can be improved upon with Denel Asia as a case in point. So ja, so that's – that now shows I would say, we will say an evolving stance but it's – we never got to know what the Minister's original stance was because she never commented kind of on the original analysis so but as you can see that is now inconsistent with what was the Department analysis, she is saying the Departments are the ones that have not acted properly here, while I think from the evidence that was led earlier including the statements by Minister Gordhan from the time he was Minister of Finance it's quite clear that Denel in actual fact the Denel Board is the one that had not acted properly by deeming approval  
10 without even giving the courtesy to both Ministers to at least have a say, they are the ones that have acted with haste here, it's not the – and from our Department we can say that at least we show the urgency, because we had no choice, we are being told that we must have this processed before we go home in December of 2015.

**ADV LEAH GCABASHE SC:** Hence the decision memorandum of the 24<sup>th</sup> of December, the day before Christmas, you will find that at page 536, just a few pages further, 536, briefly tell the Chairman how this particular memo came to be prepared?

**MR KGATHATSO TLHAKUDI:** Ja, this is the memo Chair that I referred to on the 18<sup>th</sup> of February of 2016, I handed up in that meeting ...(intervention)

**CHAIRPERSON:** I'm sorry what page is that memo?

20 **ADV LEAH GCABASHE SC:** 536 Chairman.

**MR KGATHATSO TLHAKUDI:** 536.

**CHAIRPERSON:** Oh.

**MR KGATHATSO TLHAKUDI:** I was in this meeting that Minister – or rather Chairperson Mantsha was in which reproduced this particular memo in his letter and in a sense you can say he is giving conditional approval to Denel, if you go to 539 Chair,

paragraph 5.2.

**CHAIRPERSON**: Yes.

**MR KGATHATSO TLHAKUDI**: It says the Minister grants conditional approval to enter into strategic (indistinct) so it's giving conditional approval to the transaction, which is a departure from the earlier stance to say we can't make it because we don't have adequate information and nothing has changed from December to this point, we still don't have enough information.

**CHAIRPERSON**: Mmm.

**MR KGATHATSO TLHAKUDI**: So that's basically what happened here.

10 **CHAIRPERSON**: So is the change of stance now because of the pressure or what?

**MR KGATHATSO TLHAKUDI**: Well yes and now the DG that has arrived 1<sup>st</sup> of December has taken literally full control of this particular process.

**CHAIRPERSON**: Yes. And he came in when again?

**MR KGATHATSO TLHAKUDI**: On the 1<sup>st</sup> of December 2015.

**CHAIRPERSON**: Yes, okay, and we are now in 2016.

**MR KGATHATSO TLHAKUDI**: 2016.

**ADV LEAH GCABASHE SC**: But that particular memo was drafted on the 24<sup>th</sup> of December 2015?

**MR KGATHATSO TLHAKUDI**: So it was already there.

20 **ADV LEAH GCABASHE SC**: And he and the Chairman of the Board Mr Mantsha had discussions with you about the content of that memo?

**MR KGATHATSO TLHAKUDI**: You mean the prior one, no, this is the one that the discussion happened.

**ADV LEAH GCABASHE SC**: Yes.

**MR KGATHATSO TLHAKUDI**: The one before that had been done, the analysis had

been done by myself and my team on our own, the DG was not even involved with it, so we did have a process so we emailed it, we didn't even have a discussion with him on it, and therefore the conclusion to say we can't give a yes or no on that memo of December 2015, so this one is now – takes a step further in terms of approval of this transaction to say we're giving a conditional approval.

**CHAIRPERSON**: And this was prepared by you?

**MR KGATHATSO TLHAKUDI**: That's correct it was prepared by myself, the DG and Mantsha, we all sat in the same meeting. Literally what I was doing is I was taking instruction but if there was one thing I was saying it was we can't – my position was you

10 can't give ...(intervention)

**CHAIRPERSON**: You were for testing?

**MR KGATHATSO TLHAKUDI**: Ja we can't give a full approval because the – it contradicts the position, you can give a conditional – so the conditions must still be met.

**CHAIRPERSON**: Yes, yes.

**MR KGATHATSO TLHAKUDI**: So but the – and I go extensively Chair in my statement on the (indistinct) with the new DG and what was happening in that particular year, in fact the first address of – to senior managers he basically says to the managers I am going to thin you out, you know ...(intervention)

**ADV LEAH GCABASHE SC**: This is DG Seleke?

20 **MR KGATHATSO TLHAKUDI**: DG Seleke ja, and ...(intervention)

**CHAIRPERSON**: Ja, you say that is in your statement?

**MR KGATHATSO TLHAKUDI**: It is yes.

**CHAIRPERSON**: Okay.

**ADV LEAH GCABASHE SC**: If you go to page 30 Chairman.

**CHAIRPERSON**: But before maybe we go there just on this memo at 546 so this

memo is a product of a discussion involving yourself, DG Seleke and Mr Mantsha?

**MR KGATHATSO TLHAKUDI:** Yes.

**CHAIRPERSON:** And during this time you protested and said you could not be – approval could not be done because nothing had changed from the previous memo.

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** But they took a different view.

**MR KGATHATSO TLHAKUDI:** Correct.

**CHAIRPERSON:** And said approval needed to be done and it needed to be granted but you insisted that at least there should be conditions.

10 **MR KGATHATSO TLHAKUDI:** That's correct.

**CHAIRPERSON:** And that's why the memo then talks about conditional approval.

**MR KGATHATSO TLHAKUDI:** That's correct Chair.

**CHAIRPERSON:** Yes okay, alright.

**MR KGATHATSO TLHAKUDI:** And I must just add that then they had a meeting with Minister.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** They took the memo and went to see Minister but I was left behind.

**CHAIRPERSON:** Oh okay, same day?

20 **MR KGATHATSO TLHAKUDI:** Same day.

**CHAIRPERSON:** Okay. Maybe straight from the meeting?

**MR KGATHATSO TLHAKUDI:** Immediately after this was done they went through to see the Minister but I was left behind so I don't know what transpired in that discussion.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** But this I have this memo because it was on my

computer when the changes was done.

**CHAIRPERSON**: Okay.

**MR KGATHATSO TLHAKUDI**: But it never entered the registry system in the Department so we never got ...(intervention)

**CHAIRPERSON**: In the normal way?

**MR KGATHATSO TLHAKUDI**: Ja, we never got to know what happened to this.

**CHAIRPERSON**: To the memo?

**MR KGATHATSO TLHAKUDI**: To the memo, nor the letter.

**CHAIRPERSON**: After you had prepared the memo you gave it to the DG.

10 **MR KGATHATSO TLHAKUDI**: Yes.

**CHAIRPERSON**: And both of them?

**MR KGATHATSO TLHAKUDI**: Both of them at the same time left to go to this meeting.

**CHAIRPERSON**: Yes, but then you never heard what happened to it?

**MR KGATHATSO TLHAKUDI**: I never got to know.

**CHAIRPERSON**: Till today?

**MR KGATHATSO TLHAKUDI**: Till today.

**CHAIRPERSON**: Okay.

**ADV LEAH GCABASHE SC**: And with respect to that meeting the irregularity that you point to is the fact that the Chairman of the Denel Board ...(intervention)

20 **MR KGATHATSO TLHAKUDI**: Correct.

**ADV LEAH GCABASHE SC**: ...was participating in taking decisions about Denel at a forum he ought not to have been at. This was something for the Department to consider.

**MR KGATHATSO TLHAKUDI**: Correct.

**ADV LEAH GCABASHE SC**: He ought not to have been sitting with you and deciding

on what recommendation to make to the Minister.

**MR KGATHATSO TLHAKUDI:** Thank you, that's correct, you put it right.

**CHAIRPERSON:** And what was – did DG Seleke respond to your protestations particularly the role that was being played by the Chairperson of Denel in regard to that issue, did he respond to that and what was – did he say no there's nothing wrong or did he not respond but allowed the whole meeting to carry on?

**MR KGATHATSO TLHAKUDI:** Well he allowed it and – but his posture in the meeting was more to quieten me down, because it was like you know I was quite ...(intervention)

**CHAIRPERSON:** Vocal?

10 **MR KGATHATSO TLHAKUDI:** Ja quite vocal and quite confrontational.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TLHAKUDI:** With Mr Mantsha because he is quite an abrasive character as well I must say Chair.

**CHAIRPERSON:** Yes, yes.

**MR KGATHATSO TLHAKUDI:** So that's the position he took but ultimately you know in a way it was his meeting.

**CHAIRPERSON:** So he was not expressing ...(intervention)

**MR KGATHATSO TIHAKUDI:** He was not concurring ...[intervenes].

20 **CHAIRPERSON:** He was not expressing any disagreements with the points you were making or agreement.

**MR KGATHATSO TIHAKUDI:** Correct.

**CHAIRPERSON:** But he was kind of calming you down and allowing the meeting to continue.

**MR KGATHATSO TIHAKUDI:** You have put it right, Chair.

**CHAIRPERSON:** Okay. All right. Thank you. There was still that issue that we

wanted to go to.

**ADV LEAH GCABASHE SC:** Yes, Chairman. Very briefly. Your relationship with the Director General, Mr Seleke. Just very briefly, because it is an area that you – we had wanted to touch on, I know.

**MR KGATHATSO TIHAKUDI:** *Ja*, if I have... I am referring to a couple of incidents here to just emphasise what had happened. And then if you may recall, I said 2016 was the last year of the five-year contract.

**CHAIRPERSON:** Yes, yes.

**MR KGATHATSO TIHAKUDI:** And what happened is, I referred to the incident of  
10 thinning out in 17.2.1. I have covered it there on the page 31. And of course  
...[intervenes].

**CHAIRPERSON:** At what page are you in your statement now?

**MR KGATHATSO TIHAKUDI:** Page 31.

**CHAIRPERSON:** Oh, okay. Thank you.

**MR KGATHATSO TIHAKUDI:** I am referring to that. And of course, what he does. You know, it sends quite a strong message to the employees to say, you know, he drops.... He carries on the line here. And some of the officials, of course, say in the coming months or so, the other pastures(?).

And then in 17.2.2 on the 4<sup>th</sup> February, myself and my team, we were having  
20 a planning session. A work session, actually. At a conference centre close to our building. That was at Protea Hotel Manor. I think that is what it is called. On Festival Street.

We have delegates(?) on that day coming and he says to us, he has heard inquiries on this Denel ...[indistinct] transaction from Mail & Guardian Newspaper and the Mail & Guardian Newspaper published on the 5<sup>th</sup> February these connections that

we have been speaking to today.

And once he comes in and says to my team, this information that Mail & Guardian has must have been leaked by us.

**CHAIRPERSON**: Mr Tihakudi, I know we talked about time and so on, but I think these are important issues. So, do deal with them.

**MR KGATHATSO TIHAKUDI**: *Ja*, if I can go to ...[intervenes].

**CHAIRPERSON**: *Ja*, do deal with them. They are important. Even if it might mean we go beyond the time, but I think they are important.

**MR KGATHATSO TIHAKUDI**: *Ja*. So, then on 7.2.2. I am referring to that article and  
10 the fact that my team – I had my whole team there. So, these are senior managers in  
my team. I have some of the middle managers. I have some of the junior officials,  
including interns in the meeting.

I have Mr Sleeker walk in and he was coming from – there was a governor(?), Leghotla on that particular day. He leads(?) Governor Leghotla. He comes in very infuriated. He comes in. He sits into the meeting. He starts to accuse my team that someone in the team must have leaked the story to Mail & Guardian for it to have been published, including these connections that are cited here.

Which, obviously, I am the leader of this team and it was quite unsettling to see the young people being put, especially, into that particular position. So, this is what  
20 is happening now in the department.

And I go further on it on 17.2.2.1 and 17.2.2.3. Where he indicates that he has been up from early morning, filled in on these inquiries from the newspaper. And of course, from my side it leaves me with anxiety as to my own future, because clearly, as the head of the unit, you know, it is – this is what I am faced with here.

And 17.2.4. I covered the situation with my contract which was ending on

the 30<sup>th</sup> November 2016. So, that is, if... And after that meeting by the one on the 4<sup>th</sup> February, I called my senior managers and I have said to them: Look, I do not want you to go down with me.

That were my words to them. I said: Please, do all that you can to protect your – the young , the subordinates and I will handle this. But please, let us do that. I mean, let us – if any one is going to lose to a job here, I want it to be myself. I do not want it to be all of... That was my discussion with the – with my senior team members. So, that is – because ...[intervenes].

**CHAIRPERSON:** What in Mail & Guardian Newspaper that had been carried out was  
10 that it had said, according to your statement?

**MR KGATHATSO TIHAKUDI:** Sorry, Chair. If you can just speak into the mic. I am...

**CHAIRPERSON:** Oh, it is on. But maybe I started without putting it on. It is on now. What in the Mail & Guardian, according to your statement, that was said that in its edition of 5<sup>th</sup> February 2016. It had found that Salim Essa - and you say, a known associate of the Gupta family – was the majority shareholder in the VR Laser, South Africa and the VR Laser, Asia.

And you say the report also cited that Mr Duduzane Zuma was the shareholder through JIC Mining Services and VR Laser, South Africa and you say, Denel on 29<sup>th</sup> January 2016 had announced that tie up with VR Laser but had not  
20 indicated the personalities behind the transaction in its tie up with VR Laser, Asia.

**MR KGATHATSO TIHAKUDI:** *Ja*.

**CHAIRPERSON:** Yes?

**MR KGATHATSO TIHAKUDI:** *Ja*, Chair. I think, we just need to correct that. The entities were Westdawn and another individual also invested in ...[intervenes].

**ADV LEAH GCABASHE SC:** And Crayshaw.

**MR KGATHATSO TIHAKUDI:** And Cray... Which are invested in JIC Mining, as well.

**CHAIRPERSON:** Well, let us do a proper correction. You say in paragraph 7.2.2.1.

*Ja*, what line? Where?

**MR KGATHATSO TIHAKUDI:** That line that refers to JIC Mining. Under correct entities. There would be Westdawn.

**CHAIRPERSON:** So, we cross out JIC Mining Services?

**MR KGATHATSO TIHAKUDI:** *Ja*.

**CHAIRPERSON:** And write...?

**MR KGATHATSO TIHAKUDI:** *Ja*, plus ...[intervenes].

10 **CHAIRPERSON:** And then what do we put in its place?

**MR KGATHATSO TIHAKUDI:** Westdawn. It is Westdawn.

**CHAIRPERSON:** *Ja*?

**MR KGATHATSO TIHAKUDI:** And the second one...

**ADV LEAH GCABASHE SC:** Is Crayshaw.

**MR KGATHATSO TIHAKUDI:** Crayshaw.

**ADV LEAH GCABASHE SC:** I am just finding out from the reference bundle.

**CHAIRPERSON:** Okay, maybe while somebody is looking. Do you want to continue?

We will come and make the other corrections here.

20 **MR KGATHATSO TIHAKUDI:** *Ja*. Chair, the... I go on to relate what transpired in 2016. In 17.2.4 on page 32. I indicated that my... That I also had an episode. And this was right in the beginning when he started in 2015. That he had indicated that the minister had... Because I had acted as DG.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** I happened to have been appointed as Director of Human Resources without consul... But this is a process that had been undertaken

before I had acted and we had quite some challenges in HR and had appointed this person, minister. And Mr Seleke had continued to have discussion with me on the terms of... But this was in 2015. I must say, Chair.

And all I had said to him is: Look, put something formal before me. And my contract, it runs out in November 2016. You can pay me out. I will leave quietly. But he never followed through on that.

But that, in a way, also contributed to set the tone in terms of, you know, there are boundaries here. So, act carefully. So, that is really was what that he is seeking to do. And my contract – but it was extended by a month to the end of  
10 December.

And on the 22<sup>nd</sup> December when I packed my bags and left, I got an extension of a year. So, the question that – and typically, a contract will be three to five years. Now I have a three-year contract which was given to me by Minister Gordan.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** Yes. So, the picture I am putting to you. It is that, you know, those – you are literally, you are left hanging. You know, you are left at the mercy of these decisions. And what it does, it has a direct influence on how you behave. You make decisions. You start to be a little bit more cautious than ordinarily you would.

**CHAIRPERSON:** Yes.

20 **MR KGATHATSO TIHAKUDI:** For instance, the meeting that I relayed to you that happened on 19<sup>th</sup> February in Cape Town. Ordinarily, I would have stepped out and said: I cannot be part of this.

**CHAIRPERSON:** Yes.

**MR KGATHATSO TIHAKUDI:** But you become careful in terms of not aggravating what is already quite an uncomfortable situation.

**CHAIRPERSON:** Yes. That is the meeting on 16 or 18 February 2016.

**MR KGATHATSO TIHAKUDI:** Yes. I think we have established it was on the 18<sup>th</sup> February. We had looked at the flight records. 18<sup>th</sup> February.

**CHAIRPERSON:** Oh. So, that is on page ...[indistinct] of 75.

**MR KGATHATSO TIHAKUDI:** Yes, that is correct. Yes, 2016. 18<sup>th</sup> February 2016.

**CHAIRPERSON:** What was the objection to in that meeting? What did you find unacceptable that would have ordinarily resulted in your getting out of the meeting?

**MR KGATHATSO TIHAKUDI:** Well, you have a chairperson of an entity.

**CHAIRPERSON:** Yes.

10 **MR KGATHATSO TIHAKUDI:** Sitting in a meeting where a memo ...[intervenes].

**CHAIRPERSON:** About decisions to be made by the minister.

**MR KGATHATSO TIHAKUDI:** Exactly.

**CHAIRPERSON:** Yes. Same basis as the meeting that you had with Mr Mantsha and Mr ...[intervenes].

**MR KGATHATSO TIHAKUDI:** That is the one I was... Sorry, Chair. That is the one that I was referring to earlier. It was this meeting that I was referring to earlier.

**CHAIRPERSON:** Yes. Oh, okay.

**MR KGATHATSO TIHAKUDI:** So, I was rushing. So, at least you have slowed me down.

20 **CHAIRPERSON:** Oh, this is the meeting that you are ...[intervenes] .

**MR KGATHATSO TIHAKUDI:** This is the meeting I am referring to, yes.

**CHAIRPERSON:** Oh, okay. Oh, the minister was not there. It was jus the three of you.

**MR KGATHATSO TIHAKUDI:** The three of us.

**CHAIRPERSON:** Yes.



correction, we do not need to make it in this paragraph? So, it is not in this paragraph.

Mr Tihakudi.

**MR KGATHATSO TIHAKUDI:** *Ja*, it is the same paragraph.

**CHAIRPERSON:** Yes, but I was trying to establish exactly what name we must change into the second name that Ms Gcabashe has mentioned.

**MR KGATHATSO TIHAKUDI:** I think – I will have to go through the paper to find.

**CHAIRPERSON:** You have to. Okay.

**MR KGATHATSO TIHAKUDI:** Yes, to get the actual... But I think it was Westdawn according to the counsel.

10 **CHAIRPERSON:** I have put in Westdawn.

**MR KGATHATSO TIHAKUDI:** *Ja*, but I think we need to just put it in.

**CHAIRPERSON:** You need time to have a look?

**MR KGATHATSO TIHAKUDI:** *Ja*, to have a look.

**CHAIRPERSON:** Okay, No, that is fine. And then you can indicate to the extent that we need to make an amendment. You can do a supplementary statement, saying that you put in wrong name. This is the right name. Okay.

**MR KGATHATSO TIHAKUDI:** *Ja*.

20 **ADV LEAH GCABASHE SC:** Thank you. Finally, Mr Tihakudi. You have included the Ngidi Forensic Report. In one sentence, what do you want the chairman to take from that? And that is Annexure KT15.

**MR KGATHATSO TIHAKUDI:** *Ja*, that is correct. Chair, that is included. Because what is shows is how ...[intervenes].

**CHAIRPERSON:** What page is that report?

**MR KGATHATSO TIHAKUDI:** Okay, we are on... It is ...[intervenes].

**ADV LEAH GCABASHE SC:** Page 542.

**CHAIRPERSON:** Page 542.

**ADV LEAH GCABASHE SC:** Exhibit W1B.

**CHAIRPERSON:** 1B. Okay. Thank you. Yes?

**MR KGATHATSO TIHAKUDI:** What it shows is that VR Laser in South Africa received favourable treatment from Denel and that Denel Land Systems, which is headed by Mr Steven Burger with the authorisation of Denel Corporate, awarded this contract ten years or this business.

A ten-year contract for provision of metal work services for bending and welding and manufacture of metal work components, for ten years.

10 And this contract conservatively - the envy of the huge demand for artillery systems and other ...[indistinct] vehicle products is very ...[indistinct]. That is quite irregular to be entering into such a long term contract.

I mean, and this was awarded without a competitive bidding process. So, it shows that this relationship with VR Laser was not only around Denel, Asia but it extended to the conduct of business at Denel Land System, which is a division of Denel.

And did he perform the forensic investigations that is in here and this work was actually awarded to the detriment of Denel. Denel has a business called LNT which had this capable...

20 May not recalled if he was been there, but what you do, if it is your own business, you would invest money to bring the capability to the level where you can give them work. So, at least you keep the money within the group. That is what you do and this is what happened at Denel. Yes.

**ADV LEAH GCABASHE SC:** Thank you. Chairman. Mr Tihakudi, are there any other matters you would like to the bring to the chairman's attention at this point?

**MR KGATHATSO TIHAKUDI:** Chair, there is not. Nothing comes to mind. Thank you so much.

**ADV LEAH GCABASHE SC:** Thank you. Chair, that is the evidence from our side.

**CHAIRPERSON:** Thank you. You have dealt adequately with the issues that you had indicated earlier on that you wanted to deal with.

**MR KGATHATSO TIHAKUDI:** Yes, I have, Chair. Thanks so much.

**CHAIRPERSON:** Yes. Okay. No, that is fine. There is just one question I want to ask. You said that at the first meeting that Minister Brown had with, I think senior management of the department.

10 **MR KGATHATSO TIHAKUDI:** The DTG's, *ja*.

**CHAIRPERSON:** The DTG's. She accused you people of being captured. Is that right?

**MR KGATHATSO TIHAKUDI:** That is correct, yes.

**CHAIRPERSON:** Did she say who had been captured by?

**MR KGATHATSO TIHAKUDI:** No, she did not. She did not state who we were captured by. *Ja*, and we did not ask, because it was quite... A hit(?) in the meeting. In a way it was like a dressing down that we had been given. So, the last thing we do is to respond. Yes.

**CHAIRPERSON:** Yes. But this was her first meeting with... And already that was...

20 One would have thought that the first meeting would be very cordial.

**MR KGATHATSO TIHAKUDI:** No, it was not, Chair.

**CHAIRPERSON:** Oh. I wonder what would... Where had time been for she, for her and the senior management to have a fight? How much time had there been for there to develop fight about anything?

**MR KGATHATSO TIHAKUDI:** Well, I would assume that she maybe has an

intelligence gathering capability. Says that she would know what we are up to. If I may put it that way. And, *ja*. so, that is... It was quite strange, because of course, that would have been our expectation. That meeting would give us an opportunity and introduce ourselves to the minister.

You know, to give a sense of what each one of us are responsible for. And also, to give a sense of what are the priorities. What are the things that needs to be dealt with on that particular day and in the immediate future. But, no. It did not transpire in that way.

**CHAIRPERSON**: Yes. Okay, thank you very much. Thank you very much for coming  
10 to give evidence. It is appreciated and I hope more people will come forward. Particularly, at senior level. But other people who have got information within government departments or who worked in government departments or partistatals, should come forward.

Including those who feel that they were victimised or their careers were destroyed for standing up for what is right. They should come forward. But thank you very much and you are excused. Should there be a need for you to be asked to come back, you will be asked. But for now, you are excused.

**MR KGATHATSO TIHAKUDI**: Thank you, sir.

**CHAIRPERSON**: Thank you.

20 **ADV LEAH GCABASHE SC**: Thank you, Chair. So we resume at 09:30 tomorrow morning?

**CHAIRPERSON**: Yes.

**ADV LEAH GCABASHE SC**: We will be calling the evidence of the former chairman, Ms Martie Janse van Rensburg.

**CHAIRPERSON**: Yes. We will adjourn then for today and we will start at 09:30

tomorrow morning. We adjourn.

**INQUIRY ADJOURNS**