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CHAIRPERSON: Good morning. Advocate Lebala, if I'm not wrong yesterday you had finished leading the evidence of Mr Vermeulen?

ADV LEBALA: Morning Chair, Morning Commissioner Musi. Yes Chair. Chair if I may, adding parenthesis, we did mention that we were giving over to Solomon SC and Cane SC, and I beg your pardon, I don't know why I mentioned the incorrect surname of my senior colleague Ms Cane from Johannesburg, at this stage I'm certain that they would to raise some practical issues arising from the evidence in chief of Mr Vermeulen. Chair, at one time we were told that Ms Cane might be delayed and we are going to request for the short adjournment. I note her presence now.

CHAIRPERSON: Advocate Solomon.

ADV SOLOMON: Thank you Chair and Commissioner Musi. I think perhaps the order, if Ms Cane has some questions I should perhaps go after her in the sense that Mr Vermeulen is my witness and then I can re-examine him when she's completed, if she has any questions.

CHAIRPERSON: I haven't come to that stage as yet, I thought there was something that you are going to raise as far as the procedure is concerned. I know that you will come at the end if you want to re-examine, we haven't even started with cross-examination. I was under the impression that the issues that you want to raise have got nothing to do with cross-

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examination or re-examination, but I mean it was a procedural issue.

ADV SOLOMON: No Chair, then I'm at cross-purposes with my learned friend Mr Lebala. I don't want to raise any procedural issues at all.

CHAIRPERSON: Now am I right to say that the next step now is to find out if at all there is anybody who wants to cross-examine Mr Vermeulen and take it from there, then Advocate Solomon, if you do come, you will come after the cross-examination, am I right that that is the right procedure to follow?

ADV SOLOMON: Yes, yes Chair, we concur with that approach.

CHAIRPERSON: Thank you. Is there anybody who wants to cross-examine Mr Vermeulen?

ADV SNYMAN: Yes Chair and Commissioner Musi, I act on behalf of Andrew Feinstein, Paul Holden and Hennie Van Vuuren. We wish to reserve the rights to apply to cross-examine pending our receipt of this witness's statement and bundle of documents which we were informed we will receive during the course of today and that once we are in a position to have considered this along with his transcript we then wish to reserve our rights to make a formal application to cross-examine, but it was not possible to do so without this documentary evidence before us.

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CHAIRPERSON: For record purposes can we get your name?

ADV SNYMAN: Ms Snyman G.

CHAIRPERSON: Advocate Solomon, apparently there's a  
5 problem there with your mic.

ADV SOLOMON: Can you hear me Chair? I see the stenographer is giving me the thumbs-up, so I think the problem has been solved.

CHAIRPERSON: I'll tell you the problem that I have, the  
10 difficulty is that Mr Vermeulen has been testifying for the past three or four days, I thought everybody who will want to cross-examine Mr Vermeulen will be present during the proceedings so that after his evidence he is cross-examined, re-examined and then we finish with that witness and get to the next  
15 witness. I don't know what you mean when you say that you want to reserve your right to cross-examine. If we are going to excuse Mr Vermeulen don't you think that you are going to make life difficult for everybody by trying to ask the Commission to recall him at a later stage and then two, that is  
20 also going to confuse our records.

Unless if I'm told why you are unable to cross-examine now I think it's unacceptable for you just to simply say that you reserve your right to cross-examine. I'm not sure which right you are referring to because in terms of the  
25 Regulations you must apply if at all there's a good reason, then

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I have a discretion to allow you to cross-examine or not to cross-examine.

ADV SNYMAN: Thank you Chairperson. I appreciate your position that this might be difficult administratively for the Commission, our position however is that our clients and certainly we were of the view that as they have been subpoenaed to testify and are witnesses before this Commission they are in fact entitled to every statement in the bundle as a matter of course without having to lodge a specific request.

In addition the guidelines which were communicated by this Commission states that any person who is a witness before this Commission and on which testimony is relevant to their own evidence, is entitled to all these documents. With this in mind (indistinct) on behalf of our clients has been requesting access to the witness statements and to the bundles since at least July, repeated in August and repeated in September, it was not until yesterday in fact that we received a bundle of statements of some of the witnesses who have already testified and we are still awaiting, I'm advised during the course of today we will receive the witness statement and bundle.

While I appreciate that the transcripts are made available timeously on the website it's not sufficient either to follow the transcripts or to be present at the hearings certainly

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for this witness, which we have been, because during the evidence sections of the record of statements and the documents are referred to without being read into the record, this does not put us in a position to move straight from the  
5 close of the testimony into cross-examination. It is for this reason that once we receive the record we wish to reserve the rights to then make a formal application to cross-examine.

At this stage based on the evidence we have followed it is our preliminary view that we wish to cross-  
10 examine this witness based on the fact that he has testified to matters which Mr Holden has testified to, and to the fact that Mr Holden's statement has been put to him in evidence. Apart from those procedural reasons, also based on the content of the testimony that Mr Vermeulen has been testifying to the  
15 scoring and technical evaluation of the submarines and in particular the scores awarded with regards to the Integrated Logistics System, of course the chairperson has already acknowledged is a crucial element before this Commission, so I submit that our preliminary position is that we do wish to  
20 cross-examine this witness, it's been impossible to prepare to do so from today because of the procedures in place and because of our lack of access to documents to date.

CHAIRPERSON: I understand what you are saying, but as far as I can recall I haven't seen any statement from your  
25 clients, if you have looked at the guidelines properly,

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guidelines state that for you to be entitled to any documentation and/or information you must have made a statement to the Evidence Leaders. In other words you can only request the documents which relate to the evidence that you are going to render before the Commission, you can't just simply say that: "Let me have everything which is in the Commission's possession so that I can investigate".

You as a witness, you are entitled to documents that are relevant to the evidence that you are going to give before the Commission. Up to now if I recall we have only submission from your clients, I don't know what evidence they are going to lead and for that reason I don't think it will be correct for the Commission just to give you all the documents that we have in our possession because I'm sure your clients will not be in a position to testify about everything that we have as a Commission.

And I have discussed it with my co-Commissioner Musi JP, we are going to make an exception in this case and that must not be taken, it must not be assumed that this is what we are going to do in all cases, we are only going to give documents to witnesses, documents which are going to help them to give evidence before the Commission.

Two; in your case we are prepared to make an exception simply because from the literature that is available in the public space it appears as if your clients have a

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substantial interest in the evidence that is going to be led before the Commission and for that reason I'm going to request the Secretariat to make available to you copies of documents that were handed to the Commission by Mr Vermeulen, a copy of his statement and from there give your client an opportunity to prepare for cross-examination over the weekend and we start again on Monday morning with Mr Vermeulen because I want to make sure that by the time I say to Mr Vermeulen that he's excused, that he would not be recalled. We want to try and avoid a question of recalling witnesses because that also confuses our record and does not enable us to lead the evidence in a much more chronological manner. Will that be acceptable to you, to your client if at all those documents are made available to them today and we start with Mr Vermeulen on Monday morning?

ADV SNYMAN: Chairperson I appreciate your exceptions, I must seek instructions in this regard, I'm not sure if the Chairperson is aware that our clients Mr Holden and Mr Feinstein are based in London and not in Gauteng, and arrangements will have to be made for them to be present as well as for me to confirm that my senior will be available as he is also presently at the Marikana Commission, if I could revert to you during the course of today once I've taken those instructions?

CHAIRPERSON: Ma'am I'm afraid we would not be in a

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position to wait for somebody who is in London. I'm afraid we simply cannot do that and mind you, your clients are not the only people that we must take care of. You can see there's some (indistinct) that needs to be taken, that whose interests  
5 need to be taken into account. We are prepared to make an exception in your case but then you must be in a position to start with the cross-examination on Monday. Beyond that I think we might find it very difficult to try and meet your clients halfway.

10                    Maybe even before I finalise with you this is the suggestion that I had in mind, let me try and find out from the other legal teams what their views are of whether those arrangements will suit them. Advocate Lebala, let me start with you.

15    ADV LEBALA:            Chair, the representative of Mr Holden and Feinstein, we assume that is accessible to both witnesses, they are important witnesses to the Commission and it would be important for them to team up with the Commission, but her responsibility is inclusive of her communicating with them  
20 speedily to advise them about the position of the Commission as addressed by yourself which means we could even adjourn and she could do that in the next coming hour or two to come back and confirm her instructions. I know that it could be in the morning in London, I'm not certain of the time zones but my  
25 information advises me that I'm certain that Mr Holden and Mr

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Feinstein could be accessed.

Now this is based on the realities that we've addressed. Now the only way in which we could accommodate her and her client is for her to also accommodate the Commission. We would like to go on. Now the first step is for her in the next coming hour to take those instructions, I suppose that she's here because she has been given instructions and when she's here she's also got the duty to advise her clients accordingly which means one could correctly assume that her clients are also anticipating her to come back to them speedily. Now that informs us that those instructions could be conveyed to all and sundry in the next coming hour and that's our position.

CHAIRPERSON: Advocate Solomon.

15 ADV SOLOMON: Thank you Chair and Commissioner Musi. Our position is, I think the preliminary ruling that the Commission made in regard to affording Mr Holden and Mr Feinstein and their legal representatives an opportunity until Monday was eminently fair and reasonable having regard to the fact that this will inevitably result in a delay in the continuation of the proceedings. It would be unacceptable to attempt to try and interpose other witnesses whilst Mr Vermeulen is potentially still in the witness box as it were and going to be subjected to cross-examination.

25 Mr Vermeulen as you may or may not know Chair is

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from Simonstown, he's been for some considerable period of time away from his home, his other word in Simonstown, he's been of extreme assistance to this Commission, he spent many, many hours with my learned and good friend Mr Lebala in  
5 preparing for this matter. It sounds to me that really the request to indefinitely reserve one's right to recall Mr Vermeulen is simply to meet the convenience of Mr Holden and Mr Feinstein who we are now told reside outside of South Africa, and with respect that this Commission has an enormous  
10 amount of work to do, it's proceeding manfully under quite trying circumstances with mountains of documentation, many, many witnesses to get through and we can't allow this process to be halted when we are just starting to get a bit of traction and momentum and it's particularly unfair to leave Mr  
15 Vermeulen in limbo, so I think if, I don't object to a stand down for an hour or so, but if the legal representative comes back and simply informs the Commission that they're unable to continue on Monday well, it's, I think that's just unacceptable, that they must, they have legal representation here, they  
20 presumably have instructed their legal representatives as to areas that are of concern to them, she's already placed on record that *prima facie* there are aspects of Mr Vermeulen's evidence that they want to cross-examine on, so they know what it is, they know what the issues are and I believe any  
25 delay beyond Monday would be just unreasonable and it won't

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really enhance the work that the Commission is tasked to do.

Thank you.

CHAIRPERSON: I'm sorry, I've just forgotten your name, you are advocate?

5 ADV CANE: Chair, my name is Ms Cane and I represent the Department of Defence. Thank you very much for your invitation to me to make my submissions. We support Mr Solomon's stance and particularly if (indistinct) any indefinite reservation of rights to cross-examine would be unfair to the  
10 particular witness and the Commission unless there were exceptional circumstances to justify the recalling of a witness, so we would submit that only in very exceptional circumstances should the Commission entertain a position where witnesses who have given their evidence are recalled at a later stage and  
15 so we would very much support the chair's recommendation or preliminary ruling that Mr Feinstein and Mr Holden be given an opportunity until Monday and that their cross-examination be conducted on that day.

CHAIRPERSON: Okay. Maybe let me find out from the legal  
20 representative of Mr Holden, are they in the country, or I think if I recall from your letters you are representing three people.

ADV SNYMAN: Yes Chair, that's correct.

CHAIRPERSON: Are your three clients in the country at the moment?

25 ADV SNYMAN: Mr Holden is in the country until I believe

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Tuesday morning, Mr Van Vuuren is in the country, Mr Feinstein is in the United Kingdom.

CHAIRPERSON: So at least two of your clients are in the country at the moment?

5 ADV SNYMAN: Yes, that's correct.

CHAIRPERSON: And I suppose it will not be difficult for you to take instructions from them because they are in the country and did they attend of the hearings at the time when Mr Vermeulen was testifying?

10 ADV SNYMAN: Yes Chairperson and Chairman I've been present this week and it would not be a problem at all to get instructions from them within the next hour.

CHAIRPERSON: And your clients were also present?

15 ADV SNYMAN: Yes Chair, two of them were present part of this week.

CHAIRPERSON: Good. So, it will not be difficult for you to get instructions?

ADV SNYMAN: No, I will certainly be able to get instructions within the next hour.

20 CHAIRPERSON: As far as cross-examination is concerned it would not be difficult for you to get instructions because they are in the country.

ADV SNYMAN: Chairperson that does depend on how quickly we receive the documents that we have requested as we  
25 all need to consider them and it should be possible but I need

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to speak to them and to clarify this as well as to my senior in this matter.

CHAIRPERSON: If at all the documents are made available to you within an hour from now can I confidently say that you  
5 will start with your cross-examination on Monday?

ADV SNYMAN: Chairperson I'm afraid I cannot confirm that to you in this instant, I have to receive an instruction on that very point, but I can undertake that if it would be (indistinct) to do so.

10 CHAIRPERSON: Let me understand you, on which point do you want to take instructions?

ADV SNYMAN: On the availability of my clients and of my leader for us to proceed with cross-examination on Monday morning.

15 CHAIRPERSON: Ma'am I can tell you upfront that is not going to be acceptable to me. I'm not going to let Mr Vermeulen in limbo, waiting to be cross-examined on a day unknown to him, nor to the Commission, it's either your clients are going to cross-examine as from Monday or I'm going to  
20 release Mr Vermeulen and the day that your clients have decided that they are now available, they want to cross-examine, they will have to make a substantial application. What I'm going to do now, I think we are going to adjourn for about 30 minutes and I hope that you will come back to me with  
25 a firm answer. At the same time I need to be fair to everybody

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including Mr Vermeulen who you have heard that has spent several days in order to be in a position to come and testify before the Commission. It's not only the interests of your clients that need to be taken into account, there are other  
5 interests that we as a Commission need to take into account. We'll adjourn for 30 minutes and I hope that after 30 minutes when we come back you will be in a position, you will have received firm instructions. Thank you, we'll adjourn for 30 minutes.

10 (Commission adjourns)

(Commission resumes)

CHAIRPERSON: Thank you.

ADV SNYMAN: Thank you Chairperson. I have taken instructions from my client and at the outset I just wish to  
15 make two submissions, one being that on the issue of the exception for our clients to receive these documents and statements we appreciate the exception and I gather that the point of distinction is made on statement *versus* submissions. Our clients are of the view that because they had already made  
20 submissions to this Commission that they were entitled to receive witness documents and statements but I take the point that the distinction is on the statement.

As far as the statements are concerned I just wish to record that our clients had already in fact made  
25 arrangements to be at the Commission this week in order to

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meet with the Evidence Leaders to make statements but subsequent to making these arrangements directives were given that they can only meet with the Evidence Leaders after the conclusion of phase 1 which has effectively precluded them from making formal statements to the Commission at this stage, and so, with this in mind we do appreciate your exception that as they have made submissions they will be entitled to certain documents and witness statements on request.

As to the other point that has been raised by my learned friend Advocate Solomon SC and by Ms Cane that reserving the rights to cross-examine would lead to inordinate delays of the Commission we respectfully submit that (indistinct) our clients to be entitled to documents in advance of witnesses giving their testimony we would be better placed in advance to know which witnesses it will be necessary to cross-examine and we prepare and be able to proceed to do that at the close of their testimony.

As regards to our clients cross-examining from Monday morning my instructions are that we have, now that we have just received Mr Vermeulen's statement and documents we will make these immediately available to our clients and we will consider them and once our clients have had an opportunity to consider them they will make a final decision on whether or not they deem it necessary to cross-examine this witness and that in due course then, and if necessary they will make a formal

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application to do so, but that we are not in a position to proceed on Monday morning.

CHAIRPERSON: Ma'am I'm sorry, I don't quite follow you. You say what about Monday morning?

5 ADV SNYMAN: Chairperson, we will not be in a position to proceed with cross-examination on Monday morning, the first step will be to consider whether or not it is necessary to cross-examine this witness and once we are in a position to do so having considered these documents as quickly as we are able  
10 to do we will then make a formal application if necessary to cross-examine.

CHAIRPERSON: Thank you. I think on that first point as I said earlier on we are going to adjourn today and we will resume on Monday morning, your clients are going to be given  
15 an opportunity of going through those documents and make a decision whether they are going to cross-examine or not. If they are going to cross-examine I will expect them to start with the cross-examination on Monday morning. I think it would be unfair to everybody, to both legal teams, Evidence Leaders and  
20 Mr Vermeulen if we do not finalise the cross-examination and re-examination of Mr Vermeulen next week. Your clients are being given an opportunity now seeing that they have the documents relating to the evidence of Mr Vermeulen in their possession. The final decision is to be made by your clients on  
25 Monday morning whether they cross-examine or they do not

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cross-examine. Maybe let me just find out from the Evidence Leaders who is going to be the next witness after Mr Vermeulen?

ADV LEBALA: Thank you Chair, Commissioner Musi. The  
5 next witness is Mr Byrall Smith who will be testifying to the acquisition process of the product, the Corvette's. You heard about the acquisition process of the product, the submarine. The summary has been posted on the website Chairperson, Commissioner Musi.

10 CHAIRPERSON: Then after him?

ADV LEBALA: It would be the last witness Mr Fritz Nortjé, also testifying on the acquisition process of the Corvette's/frigates.

15 CHAIRPERSON: Do we have their statements and documents that those witnesses are going to use when they testify?

ADV LEBALA: Certainly Chair, certainly they are. We have posted all the summaries of the witnesses, they are on the website.

20 CHAIRPERSON: Yes, besides the summons I mean the actual statements and the documentation that they are going to use when they lead their evidence.

ADV LEBALA: Yes Chair, adequately prepared statements  
25 by the legal representatives of ARMSCOR, we have them. Our response was yes, and we added in parenthesis that even the

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summaries have been posted on the website.

CHAIRPERSON: Thank you. Maybe let me go to the legal representative of Mr Feinstein and Mr Holden. I suppose the two witnesses Mr Smith and Mr Nortjé, because they are going  
5 to deal with processes too, will one be correct to suspect that, or to assume that your clients may have any interest in the evidence of those two witnesses?

ADV SNYMAN: Yes Chairperson, our clients are interested in these two witnesses. We have made a formal request  
10 yesterday at the Commission for access in advance to their statements and documents so that we are prepared for when they start testimony and if I could just formally repeat that request here, I gather from their summaries that they will be making, they will be giving evidence on the same issues that  
15 our clients will be testifying on later on and they have an interest in these statements.

CHAIRPERSON: Okay. Can I perhaps request that the statements and documents that those two witnesses are going to be using when they testify, that they should be made  
20 available to the legal representative of Mr Paul Holden?

ADV LEBALA: Chair, from our side ...

CHAIRPERSON: Are annexures also on the website or is it only the statements which are on the website?

ADV LEBALA: Only the summaries are on the website, I'm  
25 not certain whether these statements have been posted on the

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website yet.

CHAIRPERSON: Then just to make sure that you know we avoid possible delays can the statement together with the annexures be made available to the legal representative of Mr Paul Holden and company?

ADV LEBALA: Certainly Chair. Permit us to say the following against what Ms Snyman says. Chair, the right to cross-examine is a procedural right that is being exercised by the legal representative. Now Ms Snyman's role is only to seek instructions to confirm that right but she drives the process. For her to say she will only cross-examine subject to consulting with her client makes one to raise eyebrows. I see she's tiptoeing around the real challenge we are facing. Now the delays concern us given the challenge that this Commission is facing.

Of significance is she could today decide whether she's going to cross-examine or not, that's her decision. Whether her clients are going to give her instructions is another thing, she could say: "I will be ready" because she is the one who cross-examines, not her clients. Now the second phase is for her to then consult with her clients.

Preparations for three days is a question of relativism, three days might be long, a day might be long, half a day might be long, in our vocab three days is adequate starting today. Now she's got to be ready, she's got to decide

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whether she's going to cross-examine or not, she could come back on Monday and say: "I had challenges, I'm ready, my clients are of the view that there are constraints", but she's got to say it as a legal representative in exercising that procedural  
5 right that: "I am going to cross-examine, I'll be ready on Monday". Now it will assist us also with our preparations, we have clients, we have witnesses who are restless and on this one I think Mr Solomon SC would better address you.

We are sensing that this witness has got  
10 challenges, he's restless, he can't be here forever and when you consult with them they educate us, I mean look at the positions they occupy, the responsibilities they get engaged in. I can imagine Mr Vermeulen has got other projects he's got to go and fulfill. As he is standing here there are delays which  
15 are compelling and those delays are delays of national interest.

Now we are inclined to say I think Ms Snyman should be put on the spot to positively address whether she's going to consult or not, what remains thereafter, it is after she has consulted with her clients. Thank you Chair.

20 CHAIRPERSON: Advocate Lebala I understand what you are saying, but then I think I've already made a ruling. I'm going to give them an opportunity until Monday morning to prepare and if they do want to cross-examine and start their cross-examination on Monday. You are right, we cannot expect Mr  
25 Vermeulen to be here indefinitely, I think that issue has been

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sorted out.

Now the second issue is a question of documentation relating to the two witnesses that you have referred to. I'll ask the office to make available the statements  
5 of those witnesses to the legal representative Mr Paul Holden, together with the annexures that those witnesses might use, but before I can give that instructions to the staff of the office can I get an undertaking from the legal representative of Mr Paul Holden that those documents that they are going to make  
10 available to you, particularly of the two witnesses who have not testified as yet, that they will be used for no other purpose except to prepare for the possible cross-examination? Can I get that undertaking from you?

ADV SNYMAN: Chairperson, I don't wish to nitpick but can  
15 I just seek clarity on whether that would exclude those documents also being used by our witnesses in giving their own evidence?

CHAIRPERSON: Can you repeat the question, I missed the question?

ADV SNYMAN: Chairperson I'm being requested to make  
20 an undertaking that my clients won't use these documents for any other purpose than for cross-examination of the witnesses and my point of clarity, I appreciate is a considerably narrow one, is whether this would bar them from relying on those same  
25 witness statements and documents in their own evidence as

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opposed to just to cross-examination of these witnesses.

CHAIRPERSON: Maybe let me correct myself. They will be allowed to use those documents only for the purpose of preparing for cross-examination and preparing their evidence  
5 which they might want to put before the Commission. Is that clearer now?

ADV SNYMAN: Yes Chairperson thank you, that is clear. I can make that undertaking at this stage once I receive the documents and I will convey this to my clients. Should they not  
10 agree to that undertaking I undertake to keep the documents in my own presence and not hand them over until we've clarified this point.

CHAIRPERSON: Thank you. Any other issue that Advocate Lebala, Advocate Solomon or Advocate Cane want to raise  
15 before we adjourn?

ADV SOLOMON: No Chair.

ADV CANE: No, thank you Mr Chairman.

CHAIRPERSON: Thank you. I think we are going to adjourn this formally and I apologise that we are unable to finalise your  
20 cross-examination today, I'm sure you have been following the discussions, you appreciate the difficulties in which the Commission finds itself at this point in time.

MR VERMEULEN: Yes, I understand Chair.

CHAIRPERSON: Sorry, unfortunately I'll have to ask you to  
25 come back again on Monday and hopefully if at all there is any

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cross-examination that we would be in a position to proceed with that as from Monday morning.

MR VERMEULEN: Very well Chair.

CHAIRPERSON: Thank you, we'll adjourn until Monday.

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**(COMMISSION ADJOURNS)**