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CHAIRPERSON: Good morning. Can we ask the witness to confirm that he is still under oath?

MR NORTJÉ: I do.

CHAIRPERSON: Thank you. Advocate Lebala.

5 ADV LEBALA: Esteemed Commissioners, we are ready to proceed. May I this time on the side of caution, they say requesting a permission never hurts, may I please remove my jacket?

10 MR NORTJÉ: Chair, with your permission if that is any indication of the intent that the evidence leader has with me, maybe I should do the same.

ADV LEBALA: I'm indebted Esteemed Commissioners.

CHAIRPERSON: Mr Nortjé, you can do the same if you want to.

15 MR NORTJÉ: Thank you Chair. I may use the opportunity later.

ADV LEBALA: Mr Nortjé, yesterday when we adjourned we had traversed the issue of the gearbox which had controversies pertaining to the DIP requirement, do you still
20 remember?

MR NORTJÉ: Yes Chair, I do remember.

ADV LEBALA: We also traversed the issue of the Combat Suite in the context of cost reductions as there's been allegations from critics that there was escalation of the Combat
25 Suite price, you remember?

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MR NORTJÉ: I do remember Chair.

ADV LEBALA: Today we'll be proceeding from where we left having parted ways with the subject of the gearbox and the escalation cost of the Combat Suite. Commissioner Musi,
5 Chair, we were on page 11 paragraph 6.2 of the witness's signed statement and we'll proceed from line number 3. Probably for the sake of just completeness let's recapitulate and start from the top line on paragraph 6.2. Already, although we have already traversed these sentences may I just read:

10 *"Much of the Combat Suite ...".*

Page 11, paragraph 6.2"

*"Much of the Combat Suite negotiations concentrated on the Joint Project Team acting as a facilitator between the main contractor and local
15 Combat Suite Industry".*

By this time it has landed and it has become clear that the main contractor was the German Frigate Consortium.

MR NORTJÉ: That is correct Chair.

ADV LEBALA: *"The quoted price of the individual
20 elements of the Combat Suite had escalated significantly since the initial estimates had been made by the Joint Project Report".*

We've traversed that fully yesterday.

*"This was largely due to unexpectedly high prices
25 quoted to the GFC by local industry as well as due*

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to the layout risk provision in the quotations from the GFC as main contractor”.

We fully traversed this yesterday. We even demonstrated the figures to the Commission, do you remember?

5 MR NORTJÉ: Yes Chair, I do remember.

ADV LEBALA: Today actually we start here:

“Firstly there was a risk provision from the main contractor on the Combat Suite contractor (Thomson/Thales/ADS) ...”.

10 Now let’s pause there. What does this mean, is it two entities or it’s three entities here, Thomson, what, is it a hyphen? Please assist me, “Thomson/Thales/ADS” or is it Thomson-Thales-ADS? Assist me.

MR NORTJÉ: Chair, I probably owe an apology in that regard. Thompson changed its name and later became Thales, but at that stage it was still just Thomson. To be very strictly correct the sentence would probably read better if it said “Thomson/ADS or Thomson, later Thales/ADS”. I trust that this clear up the confusion that I caused inadvertently.

20 ADV LEBALA: The record reflect then that it’s two entities, that is Thomson and ADS.

NOTE: Note that the spelling of “Thomson” interchanges between T-H-O-M-S-O-N and T-H-O-M-P-S-O-N.

MR NORTJÉ: That is indeed correct Chair.

25 ADV LEBALA: Do we say *Thales* or Thales, I would like

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the record to reflect it properly.

MR NORTJÉ: They pronounced it “Thales”.

ADV LEBALA: From now on we’ll say Thales.

MR NORTJÉ: Agreed Chair.

5 ADV LEBALA: Now the issue of risk is being highlighted again, we’ve demonstrated to the Commission how the question of risk was very critical from the onset, do you remember?

MR NORTJÉ: Yes, indeed Chair.

ADV LEBALA: “... and secondly the Combat Suite
10 contractor added a further risk provision on all the
Combat Suite elements”.

Remember at this stage we are talking about the local Combat Suite elements.

MR NORTJÉ: Chair, I think they added a risk provision
15 to all of them, also the foreign ones.

ADV LEBALA: Yes, but at this stage we parted ways, we’ve cut that umbilical cord with the foreign ones, we are focusing on the local ones, are you refreshed about that?

MR NORTJÉ: Yes Chair, that is correct but I need to
20 point out that the overall price quoted still included provision for the overseas participation.

ADV LEBALA: Thanks for that clarity Mr Nortjé. Now let’s refresh ourselves also, you remember in Volume 2 page 129, because we are now starting to deal with the local
25 subsystems, local elements, we took the Commission through

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the four of them, we can quickly look at Volume 2 page 129 because I would like us to be in front of us as we would be starting to deal with the local subsystems. Volume 2 Chair, Commissioner Musi, page 129. I just want to see whether the
5 Commissioners have managed to locate their bundle. Bundle 2 page 129, it appears that Commissioner Musi is ready. May I have your direction Chairperson? Chair, I'm sensing that Commissioner Musi is okay, even the Chair is ready.

Now what has become significant the issue of the
10 risk is being addressed in these two points, firstly there was a risk provision from the main contractor on the Combat Suite contractor and secondly the Combat Suite contractor added a further risk provision on all of the Combat Suite elements. Now we know that it's all of them, both foreign and local but at this
15 stage we are only focused on the local ones. Does that mean if you look at page 129 Volume 2 that these are the ones that are being addressed, that the Combat Suite contractor added a further risk provision on all the Combat Suite elements?

MR NORTJÉ: These two were just two of a number of
20 probably 14, 15 of the subsystems that were all in the same boat.

ADV LEBALA: Thank you. That has become clear to the Commission that actually the Combat Suite elements were more than what we are dealing with, we have isolated these ones
25 because of their controversy, am I right?

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MR NORTJÉ: That is correct Chair.

ADV LEBALA: In actual fact on page 129, just to refresh the Commissioners you remember we added the fourth one which is called the Information Management System that deals
5 with the database?

MR NORTJÉ: That is correct Chair.

ADV LEBALA: Is it the Data BUS or the database?

MR NORTJÉ: I picked it up Chair, but I wasn't going to be pedantic, it is a Data BUS like a vehicle, like a passenger
10 bus but it carries not passengers, it carries data.

ADV LEBALA: We'll do our best from now on not to confuse the record to call it Information Management System Data BUS.

MR NORTJÉ: That's in order Chair.

ADV LEBALA: Now I would like us to go to the slide
15 bundle, the slide bundle. Just to refresh the Commissioners the slide bundle is that bundle which is transparent on the front and bluish at the back, that has the supplementary statement of Frits Nortjé as a prelude Esteemed Commissioners. I see the
20 Commissioners have located their page, the slide bundle, so I would like us to go to page 3 of the slide bundle Esteemed Commissioners. Just for the sake of completeness, with your permission Commissioners I would like us to mark the paragraph on page 3 headed "Types of Data BUSs" as 3(i) and
25 the paragraph headed: "The Nature of Main Contractorship"

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3(ii). The other one, the one at the top 3(i), the other one below is 3(ii). I would like us to be doing it that way so that we should not confuse the record Esteemed Commissioners. And it would make things easier for us to guide the witness knowing that the top part is 3, it will be a page and (i), and the bottom one will be the page and the bottom and the (ii). Now the question of a risk factor which has been highlighted brings us to the fore to look at this page but before we do that I would like you to take the Commission by explaining to it why are we talking about the Data BUS, and in simple terms without being technical, mechanical and scientific, if you were to use a layman's language what is this Data BUS and I know that I have drawn the Commission's attention to page 3, maybe we should recapitulate and go to page 1, and I beg your pardon Esteemed Commissioner, let's start at page 1 so that the witness could just take us with to simplify this concept of the Data BUS and the Information Management System.

You will see on page 1 at the top, let's call it 1(i) headed "Information Management System", and what is Data BUS 1(ii). Now let's start by explaining to the Commission what's the relationship between Information Management System at the top and below you can see "IMS" which I suppose stands for the abbreviation of Information Management System, is that correct?

MR NORTJÉ: Thank you Chair, yes, I think it is a

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sensible suggestion to take the thing from the beginning. The concept of a Data BUS is not necessarily in everyday life and it may be in order to inform the Commission as to what it is and I can assure you I will try to keep it to the absolute minimum in the technical side, I will definitely try as the evidence leader indicated to keep it in layman's terms and possibly using every day analogies to explain the thing. I am not a Data BUS expert in any event, so technicalities are certainly not at stake at this point in time.

5
10 ADV LEBALA: What is the ..., for instance let's look at 1(i). What is the relationship between Information System and Data BUS, let's start there.

MR NORTJÉ: Chair yes indeed, some of the confusion comes in because the thing is called by many names, in slide 15 1(ii) I start by indicating that it goes under many names, it goes under the names of a Data BUS because it carries data like a passenger bus carries passengers, it goes under the name of a data highway because data travels down the infrastructure of the Data BUS like motorcars travel down a freeway, it's called a data transfer system, it's called a data 20 distribution system, it's called a local area network which is probably more familiar in the everyday world. And just to confuse the matter we decided on our project team to call it an Information Management System, adding to some confusion.

25 ADV LEBALA: Now you've highlighted just three

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important points that would simplify it, for instance it carries data like a bus carries passengers, it travels, hence the relationship with the highway, and significantly it's transferred, it moves from one place to the other, that's how we could start
5 analysing it, am I right?

MR NORTJÉ: Yes Chair, but for the avoidance of possible confusion the Data BUS itself does not really travel, it is a piece of equipment that gets installed and the data itself, the information, the computer bits and 1's and 0's are
10 travelling down this Data BUS.

ADV LEBALA: So, when you talk of Data BUS we'll be talking about equipment relating to information that travels?

MR NORTJÉ: That is correct Chair.

ADV LEBALA: Now proceed.

15 MR NORTJÉ: Chair, the ... Chair, still on page 1 of the bundle slide 1(ii) what the Data BUS then actually does is it collects, it transports and it distributes data in bulk, this is usually data, digital data but it need not necessarily be but for our purposes we can assume that we talk about digital data,
20 that the Data BUS collects data, transports data and distributes it in bulk between many users of the equipment, making use of a central communication infrastructure and that is a key characteristic of a Data BUS, it takes data in bulk and it transports it using a central communication infrastructure.

25 ADV LEBALA: Now if I were to ask you to simplify digital

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data, and these are concepts that we shouldn't assume that they could be understood by the layman. Honestly speaking I've got to avoid testifying but myself I'm still, my kids say I'm BC Chair, it means I was born before computers, so I get
5 confused by these concepts but in simplifying them further, these concepts further what would you call digital data in simple terms?

MR NORTJÉ: Chair, I must admit that my children also think that I am coming from the dinosaur age, it's a problem
10 that we all face I presume. Analogue data is data that usually in everyday world is something that our voice, as I sit here it's traveling to the audience in an analogue form, there's a certain wave form that can be displayed electronically but I don't think we should go into the detail of that.

15 I could use another example and I can say if you look at the watch, the usual watch that we have on our hand, left hand or clock, you will see the hands moving like that and it shows the time in analogue. You look at the position of the hands and you know what the time is. A digital clock shows it
20 in the exact numbers, like 09:00, 10:02 for instance. Coming to this subject here there is a tremendous lot of data that is transferred on a Combat Suite from the sensors to the Combat Management System as explained yesterday and there is other data that gets transported from the Combat Management
25 System to the weapons side and so on and so forth, all

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explained yesterday. Because of the amount of data and because of the development in technology those data is all transferred in computerised form, it's 1's and 0's, it's machine language that we cannot understand and we cannot read as human beings and it consists of just small pulses, 1 is there is an electrical plus and a zero is there is no pulse but it comes in a coded form and it does, has meaning for the machine and it carries the information.

ADV LEBALA: And only to find that the Commissioners understand these concepts better than me but for the sake of completeness when I ask you what is digital data you striated talking about analogue, do they relate? I did pick up that you are over-emphasising information travelling in analogue form, the emphasis is information which travels.

MR NORTJÉ: That is correct Chair, analogue is a different way in which you can make information travel and that was done extensively in the old day but with the advent of digital, electronic and computer age data is just nowadays usually conveyed in a digital form.

ADV LEBALA: Mr Nortjé, we are done with the definitions and thanks for simplifying it, but just to close this, would I be right that when you look at the subject the "Information Management System and Database" which became one of the most contested areas we are looking at equipment that transports data on the Combat Suite in computer form.

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MR NORTJÉ: That is essentially correct, yes Chair.

ADV LEBALA: Now you may proceed to page 3(i). I beg your pardon, do you want to take the commissioners for the sake of completeness, look at page 2 of this slide, let's name
5 the box headed "Advantages of Data 2(i)" and "Advantages" continued 2(ii), we are dealing with equipment that transport data, information on the Combat Suite in a computer machine form, in think those themes are with us now but the advantages of doing that, remember we are looking at the context of the
10 Combat Suite. Yes, page 2(i), the advantages of this equipment that transports information in a machine form, please proceed.

MR NORTJÉ: Thank you Chair, yes. The big advantage of a Data BUS is not so much that it transports it in digital
15 form, you can transport data on a plain piece of wire as well in digital form. The big advantages for Data BUS is that it transports it in bulk and it reduces the infrastructure required and I will quickly go through this and I will give examples from everyday life which I hope will make the subject a little bit
20 more understandable.

In a thing like a Combat Suite one typically finds that the Data BUS, the use of a concept of a Data BUS is usually contrasted to something which they call point to point connections, so those are two of the ways that one can
25 transport data on a Combat Suite. In the old days it was done

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by point to point. Now what is meant by point to point, it means that many equipments are individually and permanently interconnected via unique dedicated pairs of wires and this quickly becomes physically complex, especially with many users, each with multiple connections and it in particular becomes inflexible and extremely difficult and expensive to accommodate additions at a later stage or topographical changes, so. So let me take an example from everyday life, maybe a little bit simple and absurd but it will illustrate the point.

I may be staying in Cape Town and I may have two, three friends in Cape Town with which I want to communicate and I've heard about this new thing that Graham Alexander Bell has invented, a telephone, and I say okay, I want to have a telephone link to my friends, but I also have friends in Pretoria, so I want to have a link to them, so I approach Telkom and they start to: "Okay, I will give you a link to each one of your friends" and they start digging a ditch and they put a cable down to friend number one, now I have a connection.

They dig another ditch, they put a cable down to friend number two, and they do the same to Pretoria. Now Chair, I don't need to go further than this, I think it is obvious that by the time there are many users it becomes extremely impractical to do a connection like that, especially if you think about people, where there are millions, and a Combat Suite of

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course there are not millions, you are talking about 20, 30, maybe 40 pieces of equipment, it can still be done but it becomes extremely complex, especially as I said if it's not only two connecting to each other, but one connecting to three, four
5 others and another one connecting to three, four others. But the big problem is on a ship if one later ...

CHAIRPERSON: Advocate Lebala, I think you know we really appreciate the information that the witness is giving us but I'm not quite certain whether is it necessary of him to go
10 into such details.

ADV LEBALA: Thank you Chair.

CHAIRPERSON: There is no way in which you are going to muster such highly technical issues in one day or in a week, let's try and see if we can take the witness to issues which are
15 relevant to our mandate.

ADV LEBALA: Thank you Chair. Before we even part ways let me close by saying the following;, the emphasis is the equipment that transports data information in the Combat Suite and their connections, their wires, it's complicated and it's
20 transported in bulk, it can be done through wire, it can be done through computer.

MR NORTJÉ: That is correct Chair, because that is with the Data BUS tender (indistinct) instead of all these mini connections it collects it, put it together and transport it more
25 or less like passengers travel to the airport, then all get into

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the same aircraft and it gets transported in bulk to the other side.

ADV LEBALA: I think let's get going now, putting our foot on the pedal, let's go to page 3(i), let's leave (i) because you
5 have given that background, am I right?

MR NORTJÉ: I fully agree Chair that becomes a little bit at a technical level and I don't think it is really relevant to the aims of the Commission.

ADV LEBALA: Now let's go to the subject of the
10 relevancy, of relevancy and the contentions before the Commission. 3(ii), remember we are laying a foundation on the aspect of risk in as far as this Data BUS is concerned and we are looking at the contested areas of one of the subsystems which the Commission is alive, from page 1 it is the Information
15 Management System, am I right?

MR NORTJÉ: Yes Chair, that is correct.

ADV LEBALA: So the Commission should be alive to the fact that the Information Management System was a contested subsystem in as far as the local element is concerned?

20 MR NORTJÉ: Yes Chair.

ADV LEBALA: It was contested between which entities?

MR NORTJÉ: Chair, it wasn't so much a competition contested, it was a question of the one having been nominated but due to risk and cost reasons a different alternative solution
25 was offered by the main contractor, it was not a direct

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competition like we had in the other cases.

ADV LEBALA: Now let's be specific. Up to so far we know that the main contractor was the German Frigate Consortium. Please tell the Commission which one are you
5 talking about when you say one was nominated.

MR NORTJÉ: That was accompanied by the name of CCII, C-squared, I-squared.

ADV LEBALA: Now who owns that company?

MR NORTJÉ: To my knowledge it's owned by Mr Richard
10 Young.

ADV LEBALA: Now in this analogy was there another interested party? We know that we are talking about the main contractor who is Thompson ADS and the C-squared, I-squared owned by Mr Richard Young, an entity which was nominated.
15 Was there another entity in as far as the information system is concerned?

MR NORTJÉ: I'm not quite sure that I follow the question but I don't think there was any other entity that I can think of, it was C-squared, I-squared and then ADS, well
20 Thompson, ADS as in Combat Suite contractor nominated a Data BUS reduced by another produced by another entity and that is probably what the evidence leader has in mind, it was a French company called DETEXUS.

CHAIRPERSON: Just hold on, just for my own
25 understanding C-squared, I-squared was a company nominated

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by ARMSCOR and/or the Navy to supply a particular equipment. Now did I understand you to be saying that at the end of the day GFC opted for equipment produced by another company?

MR NORTJÉ: That is partially correct Chair. There was
5 a nomination made but as I have taken great trouble to show in some of my depositions and I referred to policy statements in that regard, I also referred to the RFO and the Project Management Plan that the company, the RFO originated by my predecessor Byrall Smith and sent out by him, the nomination
10 was not a pre-selection, it was a nomination as a question of candidates to do this particular job.

CHAIRPERSON: Mr Nortjé can I interrupt you if you don't mind, let I understand, but then my question is the particular company was nominated, what actually happened thereafter,
15 did GFC go with the nominated company, if not, do you know what was the reason for not going with the nominated company?

MR NORTJÉ: Chair, during the course of the negotiations I think it is before the Commission now that cost
20 was the most important factor, we have seen where we started and we were trying to drive down the costing many areas as we can. One of the ways in doing that was to investigate whether there were alternatives and the main contractor was requested to investigate alternative solutions as was always provided for
25 in the RFO that was set out originally, and in this particular

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case an offer was made for an alternative Data BUS which carried considerably less price with it and the risk was not in our hands, it was in the hands of the main contractor. That is explained in this particular slideshow that is in front of you, we will probably be going through the detail of that.

ADV LEBALA: We'll be getting there but up to so far and ...

CHAIRPERSON: Mr Nortjé, can you please answer my question. You can't refer me to other documents when I've asked you a simple question and the simple question is the particular company was nominated and GFC in the end (indistinct) or another (indistinct) nominated company from what you are saying, and my question is GFC, (indistinct) nominated company, which company did they opt for? You say that you know, they looked at an alternative company, for cost reasons they end up not going with the nominated company but then you haven't told me which company it is.

MR NORTJÉ: Yes Chair, I apologise if I did not properly answer your question, it was not intentional. The company that they proposed and offered as an alternative was a French company in the Thompson Group at that stage I believe, although it wasn't originally, I don't know quite, but the name of DETEXUS. Should I provide the spelling for that Chair?

CHAIRPERSON: Thank you.

ADV LEBALA: Chairperson, I also need to apologise and

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I noted that I wanted to lead the witness whilst you were still on the floor, it was not intentional and out of disrespect. Now I would like us to unpack this picture at this stage because if we have it properly in front of us we are going to deal with this
5 semi-sophisticated subject under our control. Let's look at the parties who are at play. C2'd, I2'd which relates to Richard Young, you've already told us about that, am I right?

MR NORTJÉ: That is correct Chair.

ADV LEBALA: What remains like the northern star is in
10 the main contractor, the German Frigate Consortium, another party isn't it?

MR NORTJÉ: Probably more correct to refer to the Combat Suite contractor Thompson, ADS.

ADV LEBALA: I'm going there. Then there's another
15 party called the Thompson ADS, am I right?

MR NORTJÉ: I beg your pardon Chair, I didn't follow the particular logic, that is correct.

ADV LEBALA: So up to so far three names are mentioned, C2'd, I2'd, Richard Young, Thompson ADS, then
20 there is the German Frigate Consortium, then comes another entity with the name of DETEXUS Diserta, isn't it?

MR NORTJÉ: DETEXUS was the name of the company Chair, and the Data BUS product that they were providing to us was given the name, carried the name Diserta.

25 ADV LEBALA: Okay. Four names and I'm trying to marry

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DETEXUS with the Data BUS that they were providing called Diserta. Now let's plead these names for the sake of completeness. The main contractor is in place, what's the relationship between the main contract and Thompson CSF and ADS?

MR NORTJÉ: Chair, when it started off Thompson ADS as the Combat Suite contractor was actually a subcontractor to the GFC but in time they decided to form a joint consortium and thereby eliminating one layer of the risk that was referred to previously, so they were forming themselves into one consortium.

ADV LEBALA: Now what's the relationship between the main contractor German Frigate Consortium, the Combat Suite contractor and C2'd, I2'd of Richard Young?

MR NORTJÉ: Chair, C2'd, I2'd was one of the proposed subcontractors to the Combat Suite as were a number of other local companies.

ADV LEBALA: Now what's the relationship between the German Frigate Consortium, Thompson ADS, the Combat Suite contractor, the chosen nominated C2'd, I2'd of Richard Young and DETEXUS?

MR NORTJÉ: Chair, to my knowledge DETEXUS was a company that had recently been taken over by Thompson at the time.

ADV LEBALA: Now all these players are going to assist

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us to unravel this conundrum but the Chair's concern is very practical, the chairperson wants to know the following at this stage although we are going there. What's the relationship between C2'd, I2'd and the nomination and costs and risk and
5 DETEXUS Diserta Data BUS? C2'd I2'd provides the Data BUS, DETEXUS provides the Data BUS which is called Diserta, C2'd I2'd is called Integrated Management System, am I right?

MR NORTJÉ: That is correct Chair.

ADV LEBALA: Now this relationship is starting to fit like
10 a jigsaw puzzle. Now the Chair's question is what is the relationship within the nomination, the Commission is very clear about the cost and risk and the prices at this stage. The Chair wants to know what's the relationship between the ..., I'm unpacking it, I'm going backward now. The German Frigate
15 Consortium, you can leave it as the main contractor, Thompson ADS is the Combat Suite contractor, the nomination of C2'd, I2'd with its Data BUS IMS and DETEXUS Diserta Data BUS?

MR NORTJÉ: Chair, if I understand correctly the
20 question refers to the relationship between the companies where GFC was originally, as I said, the main contractor, the Thompson ADS was the subcontractor but the merged to make themselves altogether the main contractor and the consortium and the company C2'd I2'd as well as DETEXUS would have been subcontractors to them in that regard.

25 ADV LEBALA: Now that has become clear. Now C2'd

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12'd, DETEXUS are the subcontractors to the main contractor of the Combat Suite who is Thompson ADS, am I right?

MR NORTJÉ: That is essentially correct, yes Chair.

ADV LEBALA: Now the Chairperson wants to know the following, look at the nomination and I'm saying take it beyond and look at the cost and the risk factor. There is a reason why we wanted to take the Commission through the cost, the risk and the price, even this part of your testimony mentions it. The Chair wants to know the relationship between the nomination, please look at it in the context of the cost and the risks and the coming in of DETEXUS Diserta Data BUS, are you able to deal with that at this stage?

MR NORTJÉ: Yes Chair, but with your permission I would be comfortable to deal with it more or less in the order of the slideshow which is in front of me because one can jump to the back and give an answer but I think it is important for the Commission to take note of what is in between the starting point and the answer, if that carries the permission of the Commission.

ADV LEBALA: No, we will do that but briefly I think it's, I think I'm sensing why this is happening and it makes sense. Just give a theme so that when we get there it's simple, it will be on the theme of the Commission that the issues was this aspect. Don't go deeper into it, we'll be taking you to the slide where we deal with this aspect. What was this relationship and

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contention? You could say it was the risk or it was the price, Diserta was proposed irrespective of the nomination of C2'd, I2'd and we can part ways and deal with it fully. Do you get my concern and question? Thank you. Do you want to deal with that and confirm what I'm saying?

MR NORTJÉ: Thank you Chair for that clarification.

Yes, in the end it was a question of who carries the risk for the Data BUS and the resultant risk that might arise from the Data BUS and the costs attached to carrying that risk, that was the essence of the decision making process.

ADV LEBALA: Thanks. Now let's traverse to what's your slide now because you have got to gravitate towards the end where you put the clear picture to the Commission. Look at slide page 3(ii), "The Nature of Main Contractorship". Your statement has already started dealing with this aspect and that's why we were rotating around in order to unpack it in such a manner that we could follow the logic. Please explain what we see on page 3(ii), the box headed "The Nature of the Main Contractorship" in relation to this concern that the chairperson wanted us to address and what you have said in your statement relating to the risk pertaining to the Combat Suite.

MR NORTJÉ: Yes Chair. What I am trying to show to the Commission in slide 3(ii) is nothing new, it is actually common cause that in a contract where one has a main contractor the main contractor usually owns the risk, he carries the full

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liability for all the subsystems and the equipment and ...

ADV LEBALA: Now let's be specific now. Who was the main contractor who owned the risk and the equipment?

5 MR NORTJÉ: The main contractor was the consortium of GFC Thompson/ADS, Chair.

ADV LEBALA: You may proceed.

10 MR NORTJÉ: Part of the nature of a main contractorship is the principle that whoever owns the risk and carries the liability usually has the right to select the subcontractors that he uses for that purpose. The client can prescribe if he so wishes, but the client cannot prescribe without assuming some part of the responsibility. That is a fairly universal phenomenon in the commercial world, if the client starts prescribing to the main contractor as to which subcontractor
15 should be used and not be used or preferred to be used, then the client usually has to face the fact that he may have to share in the risk.

20 ADV LEBALA: Now I would like you to unpack this in the context of what we are dealing with. I know that at the outset you informed the Commission that when you look at the Corvette it has become clear before the Commission, you confirmed it that you look at the platform with its components part that must be integrated, you also look at the Combat Suite with its integrated part, the components that we are talking
25 about that must be integrated, you remember?

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MR NORTJÉ: Yes, I do Chair.

ADV LEBALA: Now in relation with the Combat Suite and this many elements, including this equipment that must transport the database, what is the relationship between these component parts and GFC Thompson ADS and the price and the risk? I am making sense?

MR NORTJÉ: Chair, I'm not sure that I quite follow the question, it may be a little bit of simplification is in order.

ADV LEBALA: Your testimony and the, we are not going back there because we would be wasting time. Your testimony when we were referring you to certain parts of the annexures mentioned risk, price and yes, it mentions risk and price, you remember?

MR NORTJÉ: Very definitely Chair.

ADV LEBALA: Now I want you to get to the point where you explain the relationship because we need to start bringing DETEXUS C2'd, I2'd and the risk and the price which becomes the subject of contention at this stage. Now what's the relationship when you look at this box 3(ii)?

COMMISSIONER MUSI: Can I interrupt you Advocate Lebala. I'm getting confused by all of this. Just for my own understanding let me maybe ask this question, why was it necessary for the German Frigate Consortium and Thompson ADS to form a consortium?

MR NORTJÉ: Chair, I don't think that we should put

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before the Commission that it was necessary that they formed a consortium, it was a commercial arrangement between them and the reason why they did it was because there was elimination of one layer of risk provision in the original price that was quoted. I have already mentioned that when they started right in the beginning Thompson ADS was a subcontractor to the GFC and in that layering there was locked up a certain amount of risk provision, quite a fair amount of money, we're not quite sure how much but we could guess and it was mentioned in my original statement a fair amount of money.

And by merging the two contractual levels from subordinate and superior contractor they merged the two and in that way I presume that ADS was now taking a part of the share of the main contractorship risk and to us, the customer, the Combat Suite risk provision in the Combat Suite price reduced, so that was the rationale behind that decision to reduce the risk provision and thus the cost to us, the customer.

COMMISSIONER MUSI: You see, I understand that the German Consortium gave us a main contractor and Thompson ADS was supposed to be a main contractor only or the Combat Suite, in other words it was sort of a subcontractor to take charge of the Combat Suite, but now they, they now take joint responsibility for the Combat Suite. Is that the case? The main contractor together with the subcontractor which is Thompson ADS now take joint responsibility for the Combat Suite, is that the case?

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MR NORTJÉ: Chair, Commissioner Musi yes, that is indeed correct. When they merged themselves to form a consortium it was, they had joined in several responsibility and liability in this regard, which effectively means that Thompson ADS in a certain way also took responsibility for the platform like GFC had a responsibility towards the Combat Suite there. I think that is in the commercial world typically how a consortium works.

5
10 COMMISSIONER MUSI: So, in fact this consortium was not for the purposes of supplying the Combat Suite only, it was for the whole vessel?

MR NORTJÉ: That is correct Chair, Commissioner Musi, that was (indistinct), but when they merged it became a main contractor for the entire vessel.

15 COMMISSIONER MUSI: And according to this slide of “Main Contractorship” the, whoever carries the risk is entitled to select a subcontractor or subcontractors for the product and that means in that context they were entitled to nominate a subcontractor other than CCII, is that the case?

20 MR NORTJÉ: Chair, as is explained later in the slideshow as we progress through it, it will become clear that in the case where there were nominated subcontractors of which CCII was one, there were others of course as well, in the end we decided to share in some of the risk regarding those
25 subcontractors which directly ties to this point here, the

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customer has certain preferences in the main and the subcontractorship, then he must be prepared to also share in some of the risk.

COMMISSIONER MUSI: And do I understand correctly that, or
5 am I correct in my understanding that it is ARMSCOR or the DoD that originally, initially nominated CCII, but because of certain considerations like your risk and the costs and then it was decided that an alternative be looked for, is that correct?

MR NORTJÉ: The understanding is correct yes Chair,
10 Commissioner Musi.

COMMISSIONER MUSI: And the responsibility for looking for the alternative was then put onto the consortium, is that so?

MR NORTJÉ: Chair, it was not the responsibility put onto them by us, it was a proposal made by them to us.

15 COMMISSIONER MUSI: And that was accepted and they proceeded to nominate this other company, the, what do you call it, DETEXUS?

MR NORTJÉ: DETEXUS.

CHAIRPERSON: But then DETEXUS is associated with
20 Thompson ADS, is that correct?

MR NORTJÉ: That is correct Chair.

COMMISSIONER MUSI: Are we saying that Thompson ADS then nominated their own company to do the job?

MR NORTJÉ: Yes Chair, as an alternative to lower the
25 risk of the cost to us.

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COMMISSIONER MUSI: Thank you. That's all, thank you Mr Lebala.

ADV LEBALA: In actual fact I wish you could go to the conclusion because the question of Commissioner Musi
5 encapsulated and enveloped the theme of your testimony. Now what has become clear is three elements are very important, actually four, price, risk, cost and responsibility, am I right?

MR NORTJÉ: That is absolutely true Chair.

ADV LEBALA: And I think Commissioner Musi simplified
10 it, he says ... You, actually you mentioned that who carries the risks? Actually I beg your pardon, it's mentioned by Commissioner Musi, he says who carries the risk could select the subcontractor, which means he is entitled to nominate the subcontractor.

15 MR NORTJÉ: That is correct Chair.

ADV LEBALA: Now we are dealing with different types of risk, you also mentioned that we shared in the risk in the end, you remember?

MR NORTJÉ: Yes, I do remember Chair.

20 ADV LEBALA: Now let's focus on this risk which has been simplified by Commissioner Musi. Who carries the risk, selects a subcontractor and is entitled to nominate the subcontractor? The risks are divided into two isn't it, Part A and ..., is it Part B and Part C?

25 MR NORTJÉ: That is correct Chair, that is how we

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turned out, we call it Part B and Part C.

ADV LEBALA: Let's quickly look at the slide where you deal with this Part C, it's page 6, and I want to follow on the heel of the simplification by Commissioner Musi and close these part of the risks. Now who carries the risk selects the subcontractor and nominate the subcontractor, what part of the risk is it, is it Part B or Part C?

MR NORTJÉ: Chair, as we called it in the end those companies for which the DoD ARMSCOR was prepared to share in the risk, we called that part C. And those companies and equipment where the DoD and ARMSCOR was not seeing their way open to carry the risk and where we wanted the risk to belong fully with the main contractor we called them Part B.

ADV LEBALA: Now you mentioned that "we shared in the risk", who were "we shared in the risk", you yourself mentioned, I'm not talking about the other instance where the GFC, Thompson ADS are a consortium, I'm taking about the other one, who were "we" when you say "we shared the risk"?

MR NORTJÉ: Chair, it was us the client, ARMSCOR DoD as a representing the State.

ADV LEBALA: Now there are two parts of risks. Now if I were to say simplify them in the context of what you see quickly on page 6 without wasting time of the slide, what would you say?

MR NORTJÉ: I say Chair that the main contractor was

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willing to consider the nominated companies for using the Combat Suite but if they carried the risk they added the risk provision onto it and because we were trying to reduce the cost, we considered the possibility and in the end it was approved that we, the state, the client would carry some of the risk and thus we reduced the price of the Combat Suite in those instances.

ADV LEBALA: Well, that confirms this analogy that who carries the risk can select the subcontractor and nominate the subcontractor, does it make sense?

MR NORTJÉ: It certainly ties to that Chair because in this case there were subcontractors proposed by the client, the client had to share in the risk in order to reduce the price.

ADV LEBALA: Now to simplify it one could say where the client, the South African Navy and ARMSCOR do not want to assume risk, is it where it becomes Part C or Part B?

MR NORTJÉ: Chair, that is where it became Part B.

ADV LEBALA: And where the risk is assumed by the main contractor and its consortium partners it becomes Part C?

MR NORTJÉ: Chair sorry no, I think we are getting ourselves confused here. Part B rests with the main contractor fully. Part C, customer shares in the risk.

ADV LEBALA: So Part C is where ARMSCOR and the South African Navy share in the risk?

MR NORTJÉ: That is correct Chair.

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ADV LEBALA: That has become clear. Let's read on, I think this aspect has been clarified because we have to go to the real contentions now. Paragraph 6.3:

5

"After protracted and intense negotiations the problem was eventually solved by devising different contracting models. The Combat Suite contractor formed a consortium with the ship builder and the resultant main contractor then comprised a German component, a French component and a South African component, thus completely eliminating one layer of risk".

10

I think that has been clarified.

"The cost reduction thus realised amounted to approximately R650 million in 1998".

15

Now was this the real figure or was it an estimate?

MR NORTJÉ: Chair, this is an estimate, we have never been exposed to the full cost breakdown of the contractor but from the little that we gleaned this is an estimated figure.

20

ADV LEBALA: *"Furthermore at the next contracting level the Department of Defence agreed to enter into a limited risk sharing agreement regarding some of the individual Combat Suite elements, eliminating another layer of risk provision, thus effecting a further saving of approximately R385 million in 1998 Rand values. The total cost reduction amounted to*

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5 *approximately R1bn in 1998 Rand values at the
expense of some reductions in functionality as
further explained below, but which did not unduly
compromise the critical functionality of the system
and which were acceptable to the South African
Naval Board”.*

10 What has become clear is the relationship between the price,
the risk and the cost and responsibility played a significant
role in as far as the way you conducted negotiations is
concerned, am I right?

MR NORTJÉ: That is perfectly correct Chair, price, risk
and liability are intricately interlinked to each other.

ADV LEBALA: 6.4:

15 *“In the final configuration the main contractor
consortium consisting of the German Frigate
Consortium GFC comprising Blohm & Voss and HDW
and the commercial hulls, (indistinct) res
responsible for the platform”.*

This is not the subject currently.

20 *“An African Defence System (ADS), later TDS and
now (Indistinct) South Africa Systems, in
conjunction with Thompson Naval Combat Systems
were responsible for the Combat Suite with the
entire consortium jointly and several responsible for
25 the fully integrated vessel system”.*

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I think that has become clear and Commissioner Musi simplified it.

MR NORTJÉ: Yes, indeed Chair.

ADV LEBALA: *“The main contracting consortium
5 collectively known as the “ESACC” ...”.*

By the way just remind me, I’ve seen it somewhere, what does ESACC stands for?

MR NORTJÉ: Apology Chair, I followed the convention to use the abbreviation once with the full explanation and then
10 later on just the abbreviation. It stands for European South African Corvette Consortium.

ADV LEBALA: *“... thus retain the full integration risk and
interfacing risk together with the full risk of the
integrative subsystems, combat management
15 system, Data BUS and main radar where the
Department of Defence was not prepared to share in
the risk”.*

Now that’s where we start to go to the Data BUS dispute which has been simplified by the Commissioners. Now at this stage I
20 would like you to look at page 7 of your slide. What is significant is we know the principles that who carries the risk selects the subcontractor and are entitled to nominate but we also know that the client, the Department of Defence and ARMSCOR assumed certain risks and we know what Part B risk
25 stands for, we know what Part C risk stands for, now we know

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that there was, there were issues in as far as the full risk of the integrative subsystems is concerned. Now we are going to start with the Data BUS. Now please look at page 7, let's mark it 7(i) and the bottom one (ii). I think a foundation has been
5 laid about nominating CCII, ending up with DETEXUS, the Diserta Data BUS. Now is there anything that you want to add based on what you see in the box "IMS" as Part B?

MR NORTJÉ: Yes Chair, that refers to a letter written by Richard young at a certain stage as indicated at the bottom of
10 the slide where CCII agreed that the Navy should be prepared to pay a modest premium for the peace of mind of the IMS being included in the Category B where ADS, the main contractor carried the risk, so it would seem that there was an agreement that the consequences of risk in that regard could
15 be quite substantial and it would be better to put the risk with the main contractor. There was a judgement made by CCII as to how much the premium should be and CCII in that letter also suggested to Thompson certain ways that they thought that the matter could be resolved in a way that CCII could still play a
20 role in this.

ADV LEBALA: Now what we know, and I'm happy that the Commissioners ignited it, I think Commissioner Seriti ignited it. It appears that CCII was nominated but at a later stage it was elbowed and DETEXUS Diserta Data BUS was preferred, am I
25 right?

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MR NORTJÉ: Chair, I wouldn't personally use the word "elbow" because that carries a certain connotation, it is true that the ADS offered an alternative to the Data BUS proposal of CCII and the risk position and price was of such a nature that
5 it was decided to accept that particular alternative offer.

ADV LEBALA: Now let's be precise in what you are saying and I would like to retract "elbowed". Let's say "not preferred", does it make you comfortable?

MR NORTJÉ: Yes, that sounds better Chair.

10 ADV LEBALA: Now did price play a role in that non-preference of CCIM2 [sic] Integrated Management Systems Data BUS?

MR NORTJÉ: Yes, very much Chair.

ADV LEBALA: Did the risk play a role?

15 MR NORTJÉ: Absolutely yes Chair.

ADV LEBALA: Did the costs play a role?

MR NORTJÉ: Cost and price I more or less equate to the same thing, so yes, cost played a role.

ADV LEBALA: Did the responsibility play a role?

20 MR NORTJÉ: Yes Chair, because the responsibility in my mind relates to who carries the risk, so it did play a role.

ADV LEBALA: Now is there a way in which this paragraph that we see on page 7(i) addresses these four issues that I've raised?

25 MR NORTJÉ: Yes, it would appear so Chair because it

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does refer to price and the premium did maybe (indistinct) for carrying the risk at the Part B, so both price and the risk are addressed in these slides and there is even an estimate as what the risk could be, whether that was correct or not is not the subject of this question at the moment but yes, the subject is not addressed there.

ADV LEBALA: Now in this context if I look at page 7(i) I see the emphasis on the price, for instance if you look at point 2 it relates to the price.

10 MR NORTJÉ: Yes Chair, but it also relates to the risk because it says the risk, the price of the risk (indistinct).

ADV LEBALA: Now what does this tell us, it informs us that the main contractor was not prepared to nominate CCII and the main contractor wanted to assume the risk.

15 MR NORTJÉ: The main contractor was more or less required to assume the risk because the client did not see its way open to assume risk for certain of these equipments as explained already on the previous slides and the main contractor therefore gave the implications of what the price would be if they had (indistinct) the full risk.

ADV LEBALA: But was CCII expected to assume the risk?

20 MR NORTJÉ: I'm not sure that I quite follow the question, the question of the risk was between the client and the main contractor to a very large extent, I can't recall that the project team put the risk to the subcontractors, it was

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between us and the main contractor.

ADV LEBALA: But that's why we talk about Part B and Part C, that has become clear. What's that which made the main contractor to come to the conclusion that it rather goes
5 with DETEXUS, it prefers DETEXUS in as far as risk is concerned?

MR NORTJÉ: Chair, I cannot speak on behalf of the main contractor for reselection of whoever is going to fulfil that function. We did discover later on that DETEXUS had
10 experience in the French Navy and that the Data BUS that we were getting was actually a derivative of Data BUS as used by the French Navy, so I presume that certainly played a role with the selection, but I cannot speak for them as to whom they decided to carry the risk.

15 ADV LEBALA: Now in as far as the client is concerned ...

CHAIRPERSON: I'm sorry Advocate Lebala when we say, when you say the main contractor decided, are you referring to the overall main contractor or the main, the contractor of the Combat Suite?

20 MR NORTJÉ: Chair, in our mind they were starting to merge, they probably refer to both of them, but I do not know what the terms of merging between them were.

CHAIRPERSON: Because that merger where you are saying the main contractor, you are referring to the main contractor of
25 both the platform and the Combat Suite?

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MR NORTJÉ: In principle probably yes Chair, because that was the assurance that we were given that they were merging to become one main contractor.

ADV LEBALA: I think we should clarify this aspect, then
5 it's very important. You remember in the beginning I tried, and I struggled to make it a point that we should separate these entities with a view to assist us to appreciate these risks and these parties who ended up, one being preferred, the other one not being preferred. The main contractor literally, when you
10 talk about the main contractor we know that for both the platform and the Combat Suite it was the German Frigate Consortium.

MR NORTJÉ: Originally, yes Chair.

ADV LEBALA: But because of the Combat Suite is an
15 important element one could say even the platform is, taking the entity, the concept Combat Suite and its importance in as far as the Project Sitron is concerned and the way we wanted to acquire it having to go and look for foreign expertise, the subcontractor Thompson ADS in its own right became a main
20 contractor.

MR NORTJÉ: In passage of time yes Chair, that is what happened.

ADV LEBALA: You've confirmed something that the
Commissioners raised that at one time eventually the main
25 contractor German Frigate Consortium, and the main contractor

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to the Combat Suite Thompson ADS merged.

MR NORTJÉ: That is correct Chair.

ADV LEBALA: In as far as the Combat Suite is concerned.

5 MR NORTJÉ: In as far as the entire vessel is concerned
Chair in fact.

ADV LEBALA: Now it has become clear, they matched not
only in as far as the Combat Suite is concerned in as far as the
entire Corvette is concerned but let's confine ourselves to the
10 Combat Suite. Are you saying that in as far as ... We know
that they have merged and let's be specific, they have merged
in as far as the whole Combat Suite is concerned. Now to be
precise can we talk of them as the main contractor in as far as
the Combat Suite is concerned? By way of deductive reasoning
15 I suppose your answer is yes?

MR NORTJÉ: Yes Chair, by deductive reasoning the
answer is yes.

ADV LEBALA: Now from now on with the consent of
Commissioner Seriti, the chairperson, let's be precise, where
20 we have to separate the main contractor to the Combat Suite
qualifying as Thompson ADS we'll say the subcontractor, or the
main contractor to the Combat Suite.

MR NORTJÉ: It should be the main contractor Chair.

ADV LEBALA: Now we are drawing a distinction between
25 the consortium, the German Frigate Consortium, Thompson ADS

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in this instance, you agree?

MR NORTJÉ: Yes Chair, but I repeat what I said previously, I do not know what work share they had agreed between themselves, but in ... I beg your pardon Chair. In our
5 contract as it was finally signed it was a joint and several responsibility which clearly means that the main contractor was responsible for (indistinct).

ADV LEBALA: Chair, I think it's an appropriate time for adjournment, we'll start in a different territory when we resume
10 after the tea adjournment.

CHAIRPERSON: Maybe just for my own understanding you are saying at the time when the contract was signed you had only one main contractor for the entire vessel, is that correct?

MR NORTJÉ: That is correct Chair.

CHAIRPERSON: The distinction between the platform and
15 the Combat Suite was there at any stages when you were still negotiating, but then as time goes on and we started talking only about one main contractor of the entire vessel.

MR NORTJÉ: Yes Chair, this merging was a process
20 rather than an event, they started off as two separate entities, definitely as main contractor and subcontractor to the main contractor. When we were exploring ways to cut down on price and we realised that there was a risk revision upon this provision they came up with a different model and they said
25 that they were pursuing that, but I think it took them quite

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some time to come, although the intent was expressed it took them some time to come to a formal agreement where it was signed. At one point in time that actually happened between them, I'm not sure, so, but we were given the assurance they
5 are going to form a main contractorship, so it is in my mind I think correct to refer to the main contractor referring to the whole lot of them.

CHAIRPERSON: So when the contract was signed there was only one main contractor?

10 MR NORTJÉ: That is correct Chair.

CHAIRPERSON: So when we come back, when we do reopen this topic we'll start from the point where we are talking about only one main contractor, we'll not go back. Thank you, we'll come back after 20 minutes.

15 **(Commission adjourns.)**

(Commission reopens.)

CHAIRPERSON: Can the witness confirm that he is still under oath?

MR NORTJÉ: I do.

20 ADV LEBALA: Thank you Esteemed Commissioners. Mr Nortjé, before we went on tea adjournment the subject of more contention before the Commission that needed clarity related to the risk in the context of what constitute the main contract, you remember?

25 MR NORTJÉ: Yes Chair, I do remember.

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ADV LEBALA: It has now become clear that from now on in as far as the Combat Suite is concerned only in the context of the Combat Suite we know that the main contractor became the main contractor also in as far as the platform is concerned, but just for the sake of clarity from now on when you talk of the main contractor we'll talk of a constituent consisting of the German Frigate Consortium, Thompson CSF and African Defence System.

MR NORTJÉ: I understand Chair.

ADV LEBALA: Now let's start where we clarify the aspect of risk in the context of what we are dealing with and we have to take the Commissioners with us from here. Is it true that when you build a Combat Suite the main contractor has to assume certain risks?

MR NORTJÉ: Yes Chair, that is certainly true.

ADV LEBALA: And the main contractor would ordinarily invite subcontractors or in this instance there were subcontractors.

MR NORTJÉ: Yes Chair, the main contractor usually makes a selection of main contractors and offer that to the client. In this particular case the client indicated that he would like the main contractor to consider use of certain local contractors.

ADV LEBALA: Now going back, looking at this Combat Suite we know that from the onset local industry had to be, local

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industry had to be accommodated, you remember?

MR NORTJÉ: Yes Chair.

ADV LEBALA: Now we want the Commission to appreciate where we are going with regard to this risk element because if
5 we get it right then we will be able to advance to the disputes or controversies relating to Data BUS and the other subsystems. The RFO states the following, and I think it has become common cause, I want to refresh you. It says in paragraph 4.2.8.1, just for the sake of completeness the
10 Commissioners could look at bundle 1 page 187 but I'll read it for completeness sake, bundle 1 page 187:

“The overall Industrial Strategy is to make maximum use of local industry where this does not pose an unacceptable risk to the Programme”.

15 Now by “the Programme” you regard, you relate, you refer to the whole Strategic Defence Procurement Programme isn't it?

MR NORTJÉ: I refer to the Corvette Project.

ADV LEBALA: In the context of the whole Strategic Defence Procurement Programme.

20 MR NORTJÉ: Yes, it was a part of the Strategic Package.

ADV LEBALA: Now let's confine ourselves to the Corvette Programme:

25 *“In addition there is a strategic requirement to have the local capability to support and to be able to*

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upgrade the vessels at the systems level”.

That has become clear.

MR NORTJÉ: That is true Chair.

ADV LEBALA: Now let's look at the parties that
5 constitute the main contractor, the German Frigate company
when it came into the picture as the main contractor had to
assume risk isn't it?

MR NORTJÉ: Yes Chair, that was the entire departure
10 point of the RFO was to make the main contractor, whoever he
was going to be, assuming the full risk for the entire project,
but there was the added request that in a number of cases we
would like the main contractor to make use of local industry
and there was a list of them of which IMS CCII was one, but the
departure point was risk with the main contractor.

ADV LEBALA: Thank you. And we know that there was
15 the African Defence System which was Altech Defence System
in as far as the Combat Suite is concerned, which was a
subcontractor that the client said should be used in as far as
the Combat Suite is concerned.

MR NORTJÉ: That is correct Chair, ADS is one of these
20 companies put forward for possible use by the main contractor.

ADV LEBALA: ADS in its own right also had to assume
risk, am I right?

MR NORTJÉ: Certainly Sir, if they played any sort of
25 main contractor role they would have had to assume risk,

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indeed.

ADV LEBALA: Now the relationship between the main contractor which is part of the consortium and this subcontractor ADS which has become part of the consortium at this level, there's a risk element existing between the two of them.

MR NORTJÉ: Yes Chair, especially when they were still separate entities where the one was the subcontractor to the other, in other words ADS to the GFC. When the programme started there was a risk relationship and a risk provision in that layer.

ADV LEBALA: Now let's unpack this risk. At the high level of the main contractor who has become party ...

CHAIRPERSON: Advocate Lebala, with the greatest of respect I think we've traversed that area. I think we had already passed the point where we had only one main contractor for both the platform and the Combat Suite. Now you are going back to repeat the evidence that he has already given, maybe let's move to other points.

ADV LEBALA: Chair, with humility we assure you that you appreciate what we are driving to this journey is going to be smooth and the nexus is coming now. I don't have to testify Chair, I wish I could just make it by way of a submission but if you are going to, if the esteemed Commissioners are going to appreciate where we are going from now on, at this even

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consortium level then we'll be home and dry.

CHAIRPERSON: Okay.

ADV LEBALA: Thank you Chair. Thank you. The risk of the main contractor is at the integration level, am I right?

5 MR NORTJÉ: Chair, there are two levels of risk for a main contractor, the first level of risk is at the equipment level, just if any subsystem or element level, call it what you wish they refer to it as an equipment risk. If any of those things turn out to be late it has an impact on the overall project and
10 that is what they term the equipment risk and they make provision for it, any main contractor. Then there is a next level of risk which is the so-called integration risk and that is when you take all these individual elements and put them together and make them work, there is always a risk involved in that as
15 well, so there are two definite separate types of risk involved.

ADV LEBALA: Now looking at these two risks then it starts to explain where we are going and I do note the Chair's concern, the ... Let's look at now where we have the consortium. Let's look at the risk that was assumed by ADS in
20 the context of the RFO before they became a consortium. What risk was in place in as far as ... We know that at the main, main, main contract level, assuming that they are already now part of a consortium, that we know it has become common cause, we are not raising this with a view to say they are
25 distinct, we are just trying to make the Commission to

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appreciate these risks to come to a level where the Commission appreciates what happened to the database. Now what was the risk level? We know that the risk level of the main contractor was integration, to integrate this, all parts of the Combat Suite and the equipment itself. What was the risk level of ADS?

MR NORTJÉ: Chair, I will try to be succinct in this. The risk level of ADS or whoever it was that was responsible, in our mind it didn't really matter whether it was ADS or whether it was ... The responsible main contractor at that time was responsible for the two levels of risk, he was responsible for the equipment risk as I have elaborated upon and he was responsible for the integration risk, that was the starting point of our negotiations.

ADV LEBALA: Now the main contractor had the risk level, ADS also had a risk level.

MR NORTJÉ: Before the merging, yes Chair.

ADV LEBALA: Now were there other subcontractors below ADS or you could say they were coming as subcontractors?

MR NORTJÉ: Yes Chair, there were a number of them and they had to supply all the elements of the Combat Suite to be integrated.

ADV LEBALA: Now one sees a relationship at risk level, there's a risk pertaining to the main contractor, the German Frigate Consortium which is part of a consortium, there's a risk level pertaining to ADS which is a subcontractor but which has

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become part of the consortium. Now there's also other players where there is a risk level who are subcontractors, is that correct?

MR NORTJÉ: Yes, that is correct Chair.

5 ADV LEBALA: Now from now on let's look at them now when they are a consortium. What was the challenge that came to the fore in inviting or nominating other parties who were not part of the consortium in as far as the risk is concerned?

MR NORTJÉ: Well Chair, as I briefly mentioned before
10 the main contractor assuming the risk usually nominates his own companies, in certain cases where the client does have a certain wish to accommodate a particular company as a subcontractor for whatever reason the client might have, in our case it was because of the advantages to be able to contract
15 that from local industry, we made our wish available to the main contractor and saying we wish you to take the full responsibility but try to make maximum use of these local companies

The answer that came back was yes, we will
20 consider that and we are prepared to investigate and use the local companies, but it comes at a risk premium which is not abnormal, it comes at a risk premium.

ADV LEBALA: Now these subcontractors, could one
25 qualify their risks as equipment risk because they could be coming with some equipment or subsystems that the main

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contractor ... Now we know that the main contractor is three entities, these three entities that have to look at.

MR NORTJÉ: I don't follow that question Chair.

ADV LEBALA: Now it has become clear that the main contractor has got assumed levels of risk and we've demonstrated that there was a main contractor before they managed to have a risk, then there was an ADS which had a risk, it had a cap no as a main contractor, albeit as a subcontractor which had a risk, then comes these subcontractors at this level who comes with equipment, who also come with risk, that's all that I'm saying.

MR NORTJÉ: Yes Chair, there was risk attached to all of them, there is no doubt about it, to a higher degree or a lesser agree but there was some risk attached, there is always risk attached to the subcontractors.

ADV LEBALA: Now let's start looking at the consortium now having laid a foundation about these risk levels. What created the challenge, actually what made the consortium to be formed given the background of the risk factor that we talked about?

CHAIRPERSON: I'm sorry Advocate Lebala, I'm still repeating, you have traversed that evidence. The witness clearly said that in order to reduce risk certain partnerships were formed, one they call a, they call them partnerships, and at the end of the day they end up with one main contractor who

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end up assuming the responsibility for delivery of a complete vessel, everybody end up taking a responsibility for the delivery of that or of a complete vessel. We have touched, I think we spent quite a lot of time dealing with the question of risk and this witness, I think he has said enough about the question of risk, can we move to the next point now?

ADV LEBALA: Thank you Chair. We are parting ways with this risk factor, we'll address it when we come to where we have to show equipment risk and the risks that is assumed by the consortium as the main contractor. We were on page 12. I would like you to read again, because we have to take you through the Data BUS and the IMS, I would like to read from line number 3 Chair from the top:

"The main contracting consortium collectively known as the ESACC ...".

That we'll be talking about from now:

"... thus retained the full integration risk and interfacing risk together with the full risk of the integrative subsystems, combat management system, Data BUS and the main radar".

Now let's pause there. Let's take the Data BUS. It has become clear that we, two entities Data BUS was, two entities Data BUS was considered and it has become common cause that it was the integrated management system of CCII and the Diserta of DETEXUS, am I right?

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MR NORTJÉ: In the end yes Chair, they were not considered in the beginning, it was only the one in the beginning.

5 ADV LEBALA: Now in as far as the relationship of the main contractor and the risk factor is concerned in relation with the Data BUS of CCII which was, let's say nominated, would you like to comment that relationship?

MR NORTJÉ: Chair, I'm not quite sure what you mean by "the relationship".

10 ADV LEBALA: CCII Data BUS at one time one would say was considered, not accepted, was considered in as far as the Combat Suite is concerned.

MR NORTJÉ: Yes, that is correct and offered as such, but with the risk premium attached.

15 ADV LEBALA: And we know that the taxes came into the picture.

MR NORTJÉ: Yes Chair.

ADV LEBALA: I want ... I want you to first address Data BUS and then address DETEXUS in the context of risk.

20 MR NORTJÉ: Chair, if I understand the question correctly it goes to the nature of the risk that was perceived to exist with the Combat Suite, is that correct?

ADV LEBALA: That's correct.

25 MR NORTJÉ: In this regard Chair, Commissioner, one has to consider that the Defence Force, ARMSCOR made a

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certain concession to share in the risk of some of the elements in those areas where the client considered the consequences of the risk that might arise from those subsystems to be manageable and to be affordable if it came to money, but there were certain elements, and I've mentioned three of them there at the top of page 12 of my first bundle.

Certain was, certain subsystems of which the Data BUS was one, was considered to be of such an integrative nature that if something goes wrong with the Data BUS, if risk does materialise the consequences of such occurrence were simply beyond what the client was prepared to manage and bear and therefore the decision was made to step back from the original position where the main contractor had the responsibility for all the subsystems. The concession was made to step back in terms of certain of those where we could manage the risk but in others where we could not manage the risk the decision was to leave the risk entirely with the main contractor.

The Data BUS was one of them and the reason for that was the Data BUS is so central to the entire operation of the Combat Suite, if anything goes wrong with the Data BUS then the entire project gets delayed and the costs are simply run away, that is why we kept the risk for the Data BUS but also for other subsystems with the main contractor. Does that answer the question?

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ADV LEBALA: Yes. Now in the context in which you explained what you have just analysed in the context of the importance of the Data BUS what made CCII not to be preferred as against DETEXUS?

5 CHAIRPERSON: Just hold on, just maybe before the witness answers that question, just for my own understanding do I understand you to be saying that as far as the Data BUS is concerned ARMSCOR and DoD's position was that it will be too risky or too dangerous for ARMSCOR and/or DoD to take risk or
10 to assume risk as far as the Data BUS is concerned and the position of ARMSCOR and DoD was that as far as the Data BUS is concerned the main contractor must take full responsibility , in other words as far as that is concerned ARMSCOR and/or DoD should bear no risk. So the responsibility of coming up
15 with a company which will supply that equipment was left to the main contractor. Do I understand you to be saying that?

MR NORTJÉ: Thank you for clarifying it so beautifully Chair, it is exactly the position as you explained. I should add perhaps Chair that it was not the individual risk of a particular
20 Data BUS that was at stake, it was the risk attached to any Data BUS and the consequences of the risk that drove us to this point.

CHAIRPERSON: Thank you. Advocate Lebala, maybe you can follow up with your question.

25 ADV LEBALA: Now who invited CCII?

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MR NORTJÉ: I'm not sure what the meaning of "invited" would be Chair, I will answer it as I understand it. When the main contractor was starting to get quotations from the various element suppliers, that is subcontractors, they approached not only CCII, but also other companies to obtain prices so that they could get a total Combat Suite and vessel price to the client.

ADV LEBALA: In as far as risk is concerned what was the view of the main contractor in as far as CCII is concerned?

10 MR NORTJÉ: Chair, the main contractor was quite prepared to accommodate CCII in this regard and to make use of their facilities, but as I said it was, there was a risk premium attached to that as there were to the other parts before we decided to take some risk.

15 ADV LEBALA: Now the level of risk, if one were to look at in as far as the coming of CCII, I'm not going to say "invite" now, the coming of CCII into the picture is concerned, was it at the integration level or was it at an equipment level or was it at any other level?

20 MR NORTJÉ: Chair, CCII was to provide a product, an equipment if you so wish, element of the Combat Suite, but one cannot separate that from the higher system level because it was an integration tool that made the entire system work, so it was a core product of the system integration part of the job.

25 ADV LEBALA: What was the challenge, if any, in as far

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as the main contractor is concerned in assuming the risk of this equipment, the Data BUS of CCII?

MR NORTJÉ: Chair, I'm not quite sure that I can speak for the main contractor as to what they considered the risk to be, they would have had, and they probably did to some extent, did their own investigation but the results for us was the price with the risk premium added of course.

ADV LEBALA: Now in what sense was the price an issue in as far as the client is concerned?

MR NORTJÉ: Well Chair, the overall price of the Combat Suite was still higher than that price that we were aiming for and we were as explained earlier exploring various avenues, some successful, to reduce the price.

ADV LEBALA: Before we even look at the coming into the picture of the DETEXUS Diserta Data BUS, what were the issues in as far as the CCII Data BUS is concerned from the perspective of client other than the price?

MR NORTJÉ: Chair, the considerations at that point in time did not centre around the particular attributes of one Data BUS or another Data BUS, in other words it didn't go about the technicality, the decision was a principle decision, we're not going to take responsibility for a Data BUS, no matter where it comes from because of the possible implications of something going wrong with the Data BUS.

ADV LEBALA: Did the client talk to the main contractor

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about this aspect?

MR NORTJÉ: Yes Chair.

ADV LEBALA: Just explain to the Commission.

MR NORTJÉ: Well Chair, when the concept of the client
5 sharing risk first came on the table it would come in one
instance as the client takes risk for all the subsystems and at
that point the client indicated it to the main contractor that
there were certain of these subsystems and elements for which
the client was not prepared to assume the risk.

10 ADV LEBALA: How did this influence the decision of
making CCII Data BUS to be the preferred Data BUS?

MR NORTJÉ: Chair, I'm not sure that I quite follow that
question. The decision to put CCII ...

CHAIRPERSON: Mr Nortjé don't answer the question if you
15 don't understand it. I also have difficulties Advocate Lebala of
following your question.

ADV LEBALA: A decision, was a decision made from
clients' side as to whether it would favourably or unfavourably
look at CCII Data BUS?

20 MR NORTJÉ: Yes Chair, but that was after we had no
the table an alternative proposal from the main contractor
which offered another Data BUS at certain price to us, but
where the main contractor was carrying the full responsibility.
Now the question of the main contractor carrying the full
25 responsibility for that Data BUS was very attractive to the

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client, the price was attractive as well and the combination of those two issues informed the decision.

ADV LEBALA: Now you are talking about DETEXUS Diserta Data BUS, am I right?

5 MR NORTJÉ: Yes Chair, that was the alternative proposal that was made.

ADV LEBALA: Now what brought DETEXUS Diserta Data BUS in the picture?

10 MR NORTJÉ: Chair, throughout the negotiation process there was, it was made clear to the main contractor that although we have put forward a number of local South African companies which we would like to be used in the main, in the construction of the Corvettes it was nevertheless made clear that where the main contractor considered that there were
15 other cheaper alternatives, that they were welcome to do so, and in this particular case that was the outcome of that position of ours.

ADV LEBALA: DETEXUS, which country is it from?

MR NORTJÉ: From France Chair.

20 ADV LEBALA: Now at this stage we had DETEXUS from France Data BUS which we know is Diserta, and we also had IMS Data BUS, I beg your pardon CCII Data BUS which we know is called the IMS, am I right?

MR NORTJÉ: Yes Chair, that is correct.

25 ADV LEBALA: Now in as far as the client is concerned

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given the fact that we have seen the importance of local industry being brought to the fore throughout the policies and the documents that we took you through, which was more compelling, was it a question of the main contractor's preference or was it the question of looking at the local industries' interest?

MR NORTJÉ: Chair, that was indeed the dilemma that one was facing, it was two conflicting requirements standing against each other, the position was taken to the PCB as minuted and the decision was to go for the most cost effective solution.

ADV LEBALA: I think at this stage we need to take you to the relevant portions of your testimony, how this decision was dealt with at the PCB because we have documentation that deals with these aspects and what actually made the client to be attracted to the preference of the main contractor, but before we go there what became clear is that eventually the DETEXUS Diserta Data BUS became the preferred Data BUS.

MR NORTJÉ: Yes Chair, that is correct. Essentially there were two choices before the PCB, having established already that we would not like to take the risk there were essentially two choices before them, the one choice was main contractor takes the full risk, using the CCII Data BUS and there were surprised to it. The other option before the PCB was that the main contractor takes full responsibility for the

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PCB but uses a different ..., I beg your pardon, take full responsibility for the Data BUS but it was from a different supplier at a significantly lower price, so the risk position then and seeing the two choices was the same, main contractor
5 keeps it, but in the case of CCII there was a higher risk premium attached to it.

ADV LEBALA: In summary please go to the slide bundle page 8, there will be 8(i) and 8(ii). We are looking at it from the position of client, not from the position of the main
10 contractor. Please explain to the Commission what these three layers, I see there's layer for high price, point 1 layer for low price, point 2, layer for low price, point 3. Would you like to explain to the Commission how the client look at these two databases?

15 MR NORTJÉ: Yes Chair, I will do so. As I said there were the three options but the one option, the middle one where the client shares in the risk for the Data BUS, I think we can eliminate that from starters because it is said then that the client will not take the risk for the Data BUS, so the client had
20 the choice between a high price and no risk using the Data BUS from CCII, or the client had a choice to use a low price with no risk to the client.

ADV LEBALA: That's where the question of risk and price play a significant role. If I were to ask you which was more
25 compelling, the price or the risk, or in as far as you consider

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inseparable?

MR NORTJÉ: Chair, as mentioned here in this slide and as I said already the matter was taken to the Project Control Board who decided for the most cost effective option, i.e. the lower price at low risk.

5

ADV LEBALA: Were you part of the Project Control Board that made this decision?

MR NORTJÉ: No Chair, the ARMSCOR Project Manager and the DoD Project Officer were not part of the PCB, we reported to the PCB.

10

ADV LEBALA: Are there minutes that explain the process that led to this decision at the Project Control Board?

MR NORTJÉ: There are minutes, yes indeed Chair.

ADV LEBALA: Would you like us to go to those minutes?

15

It will be in Volume 4 I'm certain.

MR NORTJÉ: Chair, I will take you to Volume 2 page 95.

I beg your pardon Chair, not Volume 2, bundle 2 page 95.

ADV LEBALA: I beg your pardon Mr Nortjé, I don't know why I referred you to bundle 4, it's bundle 2. Now let's go directly to page 95, you will see at the top, I think we have actually traversed these minutes but let's look at who was present, for the sake of completeness it's dated the 30th September 1999, just read the heading: "Minutes of the ...".

20

MR NORTJÉ: Chair, these were the Minutes of the Project Control Board Meeting held in ARMSCOR on

25

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24 August 1999. I beg your pardon, 1999.

ADV LEBALA: Now let's look at who was present, it assists us to appreciate knowing that we have dealt with what the Constitution and the composition of the PCB, we are not going back there, Mr Shaikh was present and who was presenting ARMSCOR?

MR NORTJÉ: ARMSCOR was presented as a board member, Mr Llew Swan as the CEO of ARMSCOR.

ADV LEBALA: And your name is mentioned there, can you see?

MR NORTJÉ: Yes Chair, but not as I said earlier, not as a member of the board, as a project member reporting to the board.

ADV LEBALA: Were you allowed to make deliberations?

MR NORTJÉ: It depends what you mean by deliberations Chair, it formed, the meeting formed the, took the form of the project officer making a presentation and giving the status, bringing the issues, then there were maybe questions which were dealt with and that was our contribution to the matter.

ADV LEBALA: Were you allowed to make contributions in the form of discussions?

MR NORTJÉ: As far as it was pertinent during our presentation, yes.

ADV LEBALA: Let's go to paragraph 9 on page 96 and please read it for the record, the paragraph headed:

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'Contracting Model Categories of Risks'.

MR NORTJÉ: Chair. Chair, paragraph 9 reads:

5 *"Contracting Model Categories of Risk. The acting project officer briefed the board on Combat Suite risk and risk management pertaining to the project-*
contracting model, contained at Appendix A. He emphasised that although the South African Navy accept some risk regarding to Category C products the Prime Contractor retains full responsibility for
10 *the delivery and performance of a fully integrated vessel, which includes the full integration of the Combat Suite ashore and abroad".*

ADV LEBALA: Well, the question of risk comes out clearly there. Go to paragraph 10 headed Combat Suite Data
15 BUS".

MR NORTJÉ: Chair, paragraph 10 reads as follows:

20 *"The project team categorised the C2I2 Bus as a Category B risk, i.e. the Main Contractor [sic] retains full responsibility for the delivery and performance of a fully integrated vessel, which includes sub-systems that have a critical effect on the overall vessel delivery. Further, acting Project Officer Project Sitron informed the board that if the C2I2 Data BUS Option was selected over the ADS*
25 *DETEXUS Data BUS, the project team would have to*

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find the extra funds required to bring both options on a par with regard to risk coverage. This would result in lifting the ceiling price of the Corvettes”.

ADV LEBALA: When one reads this paragraph would one
5 come to the conclusion that the decision of the main contractor was more compelling than that of the client?

MR NORTJÉ: I'm not sure that I would make that deduction necessarily Chair, I think it was simply putting the position to the Board.

10 ADV LEBALA: One appreciates that this was stating a position but I'm eliciting an opinion as to whether when you read this paragraph, of course we do know what the decision ...

CHAIRPERSON: Advocate Lebala, (indistinct) his opinion. We can read the paragraphs ourselves and form an opinion, ask
15 him about what he knows and not his opinion about this paragraph.

ADV LEBALA: Thank you Chair. Let's look at page 97 paragraph 10B. Please read.

MR NORTJÉ: Chair, paragraph 10b reads:
20 *“C Acq informed the board that the CEO of ARMSCOR had presented this matter to the AAC ...”.*

I beg your pardon Chair, I'm not offhandedly exactly sure what it stands for, but it has been explained in previous submissions
25 to the Commission.

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ADV LEBALA: Let ... Let me refresh you so that the record should have it, it's the Armaments Acquisition Council.

MR NORTJÉ: Chair, thank you very much to the Evidence Leader for that. So:

5 *"C Acq informed the board that the CEO of*
ARMSCOR had presented the matter to the AAC and
that the Minister supported the issue of the main
contractor carrying the overall risk and the
responsibility for the subcontractors. If the
10 *principle of the Main Contractor carrying the risk for*
the sub-suppliers is changed, then the added
difference in costs will have to be borne by the
DoD. The principle of the contractor carrying the
risk must be adhered to. The AAC decided that the
15 *ceiling price per equipment should not be raised".*

ADV LEBALA: When one reads and I'm eliciting your views if you read the first sentence, would one have a view that there was political influence?

MR NORTJÉ: Chair, that is asking for an opinion, I
20 would rather not make my way in that direction.

ADV LEBALA: Is it fair to say of course the Minister had to comment or consider this aspect because of its importance?

MR NORTJÉ: Chair it wasn't for me to decide on that, clearly my superiors were of opinion that it had warranted
25 taking the matter to a higher level.

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ADV LEBALA: Now as at that stage were you aware that the Chief of Acquisitions' brother had an interest in African Defence Systems by way of shareholding?

MR NORTJÉ: No Chair, I was not aware of the nature of it, I have understood that there was a family working there, but I did not know what the nature of it was and what it was in fact, I knew that his wife was there working there as a secretary and my impression was that he was referring to his wife but that was my own stupidity I presume. No, I did not know that his brother was working there.

ADV LEBALA: That's not my question. My question wasn't whether the Chief of Acquisitions' brother was working there, my question is were you aware as at that stage that the Chief of Acquisitions' brother Mr Chippy Shaikh, is it Mr Shabir Shaikh had shareholding interests in African Defence Systems, which was a consortium of the main contractor?

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

ADV LEBALA: Let read further:

"If the principle of the Main Contractor carrying the risk for the sub-suppliers is changed, then the added difference in cost will have to be borne by the Department of Defence".

Even before we deal with this aspect let's look at page 95 again. I'm only going to talk about your colleagues in ARMSCOR. I see under the paragraph headed "Present" there

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was Mr L Swan, number 4, there was also yourself Mr Nortjé and there was also Mr Rob Vermeulen. This question is only confined to only these three and I would like to hear your comment on it? Your colleagues from ARMSCOR, we know your position, were they aware as at that stage that the Chief of Acquisitions' brother had interest in African Defence System by way of shareholding?

MR NORTJÉ: I ...

ADV SOLOMON: Sorry Chair, Commissioner Musi, before the witness answers that question I think it's an unfair question to ask him what he knew, what others knew, I mean unless there's some basis to suggest that something was imparted to him but I don't think Mr Nortjé would know what other employees or representatives of ARMSCOR knew about that relationship.

ADV LEBALA: Chair, I have a problem with this objection and I could explain myself. I'm not asking this witness to tell us what his colleagues knows, we are just asking him as to whether is he aware that his colleagues were aware, I mean hence I'm even isolating and speaking exclusively to his colleagues. Colleagues talk, they all come from ARMSCOR, the same entity and that's the basis of this question, I'm not asking about Anderson Simpson comes from the Navy, I'm not asking about Van der Schyf who comes from the DAPD, I'm asking about ARMSCOR colleagues.

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MR NORTJÉ:

CHAIRPERSON: Although I don't think it's a fair question but then at the same time I think Mr Nortjé can answer it and I'm going to allow him to answer it. Mr Nortjé, do you know
5 whether your two colleagues were aware of the fact that Mr Shabir Shaikh had a shareholding maybe else?

MR NORTJÉ: Thank you Chair. No, I was not aware whether they were aware Chair, if they were aware they certainly did not share it with me.

10 ADV LEBALA: Thank you Chair, thank you Mr Nortjé. Let's proceed on the last sentence:

*"The principle of the contractor carrying the risk must be adhered to. The Armaments Acquisition Council ("ACC") decided that the ceiling price per
15 equipment should not be raised".*

Now from this paragraph it appears that the decision was made at the highest political level, am I right?

MR NORTJÉ: That would appear so from this paragraph Chair.

20 ADV LEBALA: Now was the decision at the political level the one that informed the Project Control Board's decision, if any?

CHAIRPERSON: Advocate Lebala, I'm not quite sure what this sentence depicts, I'm not quite sure if at all the AAC is a
25 high political level, I thought it was a high administrative level

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and not a political level unless if I've forgotten how AAC is the composition of the members of the AAC.

MR NORTJÉ: Chair I actually stand corrected, I'm looking at the note that I've highlighted for myself, I stand
5 corrected, it's not the Ministerial Council, it's the Armaments Acquisition Council.

CHAIRPERSON: I think there is a, I see there is one of your colleagues whom represents DoD, maybe she might be in a position to tell us whether the AAC is (indistinct) or it's a high
10 administrative body in the DoD. I thought it's the latter.

ADV LEBALA: Chair, may I interpose before my colleagues addresses you? The only issue that we make a note of is that this Council is chaired by the Minister, hence I say I remind myself that that does not, I concede that does not
15 conclusively entitle us to say that's a political decision but if you read the theme of this paragraph the Minister's contribution comes in and the decision gets taken at that level, I think we should leave it for argument Chair or for closing submissions.

CHAIRPERSON: It's not a question for argument, I mean we do know there is a document which clearly states the members of that body. I don't think it is for argument, I'm sure that people from DoD will recall. I recall seeing it and (indistinct)
recall it, my memory serves me well there's only one political
25 figure in that group and it is only the Minister and I think he's

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there in his administrative capacity. Maybe the people from DoD can help us?

ADM GREEN: Thank you Chair, Admiral Green. The Armaments Acquisition Council is chaired by the Minister and the Deputy Minister also attends. I think it's safe to say that it is an administrative level because the decisions are based on information that is provided by the SANDF and the Secretariat to the Minister, to the Deputy Minister at the time, so that implies that the Secretary for Defence represents the Secretariat, he being the accounting officer and the Chief of the SANDF who would be the capability owner, so that is the information that is provided, so at that level that's an administrative decision. Thank you Chair.

CHAIRPERSON: Thank you. Do you want to (indistinct) a question Advocate Lebala?

ADV LEBALA: Chair, I think we are parting ways with this question and with that clarity we'll leave it for submissions if need be Chair, if need be. It might not even be necessary. Let's read page 97 paragraph 10c, please read it for the record.

MR NORTJÉ: Chair, paragraph 10c on page 97 reads as follows:

"Mr Swan and Rear-Admiral Howell will meet with Mr Richard Young from C2I2 to discuss the matter with him".

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ADV LEBALA: Now let me elicit your comment. The need for Mr Swan and Mr Howell to go and discuss with Mr Young, was it brought to the fore by the decision that the main contractor will carry the risk?

5 MR NORTJÉ: Chair, that was my understanding yes, and my understanding was further that there was still some action to see whether a solution could be found and incorporated, the C2I2 Data BUS with the Main Contractor and they might have been exploring possible avenues.

10 ADV LEBALA: Was this decision influenced, and I know that you know it could be difficult for you to answer it, was it influenced by the fact that there was recognition of the fact that C2I2, it's a local industry company?

15 MR NORTJÉ: Yes Chair, it should be stated that the, we were not at all with C2I2, they were a local company and if we could accommodate them within the risk and the budget price the consideration with them as we clearly indicated by taking the matter to the board and saying these are the options, what do we do.

20 ADV LEBALA: I would like us to go to bundle 3 page 217, bundle 3 page 217. The decision to request Mr Swan and Rear Admiral Howell to meet with Richard Young, was it the decision of the PCB?

25 MR NORTJÉ: It would so appear from the minutes Chair, yes.

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ADV LEBALA: Now let's read the letter of 4 October 2000 in page 217 in bundle 3. At the top one sees that it's to the right, it's Mr Llwewllyn Roy Swan who we now know was the CEO of ARMSCOR, am I right?

5 MR NORTJÉ: Yes Chair, but note as the letter indicates, at that stage he was the ex-CEO.

ADV LEBALA: Yes, we know that he was the CEO but at that stage he was ex-CEO. If one looks at the minutes of the minutes of the ..., on page 95 as at that day he was still the CEO, I think page 95 would refresh you, do you agree?

MR NORTJÉ: That is perfectly correct Chair, yes.

ADV LEBALA: But for what it's worth when he wrote this letter he was the ex-CEO.

MR NORTJÉ: For what it's worth, yes Chair.

15 ADV LEBALA: Was he still employed by ARMSCOR?

MR NORTJÉ: To my knowledge, no Sir.

ADV LEBALA: I mean as at the time when he wrote this letter.

20 MR NORTJÉ: That's it, I understood the question to be put in that regard and my understanding was, and I think that's indicated by the "ex", he was not employed anymore.

ADV LEBALA: Now the letter is dated 4 October 2000 and we know that the PCB meeting that took a decision that Mr Swan and Rear Admiral Howell should meet with Mr Richard Young was during August 1999, does that refresh you?

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MR NORTJÉ: The dates are correct Chair.

ADV LEBALA: And the letter is addressed to the left to Mr Chippy Shaikh, the Chief of Acquisition. Now the subject is “Discussions with Mr Richard Young”. Please read the first
5 paragraph.

MR NORTJÉ: Chair, the first paragraph reads as follows:

*“I would like to inform you that during 1999 I, together with Adm Howell (of the SA Navy) had discussions with Mr Richard Young in Cape Town, concerning the Management Information System for
10 the Corvette Programme”.*

ADV LEBALA: Now we need to refresh ourselves that this letter gets written one year later after the meeting of the Project Control Board of the 24th August 1999.

15 MR NORTJÉ: Yes Chair, that is correct.

ADV LEBALA: Let’s proceed to the next paragraph. Please read the next paragraph.

MR NORTJÉ: Chair, the next paragraph reads as follows:

*“The essence of these discussions revolved around
20 the ability of the ‘contractor’ – C2I2 – to provide the performance guarantees necessary to satisfy ARMSCOR that C2I2 could and would perform the tasks as required by ARMSCOR and the DoD”.*

ADV LEBALA: Now these performance guarantees qualify
25 the risk that C2I2 had to assume.

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MR NORTJÉ: I wasn't present at the meeting Chair, I will not be able to comment as to what it actually meant and pertained to.

ADV LEBALA: But if you read what we read in paragraph
5 10b on page 97, particularly with the fact that the paragraph informs us that the main contractor had to assume the overall risk, doesn't this tell us, and I'm eliciting an opinion, that this paragraph informs us that the performance guarantees relate to the risk that C2I2 had to assume?

10 MR NORTJÉ: I think one can make that deduction yes Chair.

ADV LEBALA: Let's read the next paragraph:

"What prevailed from the discussions was the fact that C2I2 was not in the position to provide the necessary guarantees ..."
15

Now given what we have said earlier on as incremental to that, does it mean that C2I2 was not prepared to assume the risk?

MR NORTJÉ: Chair, again that would appear so from the letter, I was not present, I cannot categorically answer the
20 question.

ADV LEBALA: *"ARMSCOR/DoD required from C2I2 that guarantees to the full value of the Combat Suite be provided because that was the value of the effect that the MIS System would have on the contract"*.

25 Are we talking about the same Integrated Management System?

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MR NORTJÉ: It would appear so Chair, yes.

ADV LEBALA: Now the interest of ARMSCOR and the DoD at this stage was that they were not prepared to assume the risk.

5

MR NORTJÉ: That is clear Chair, we wanted the risk to rest with the main contractor.

ADV LEBALA: And the contractor was also not prepared to assume the risk of a product or a Data BUS that it has got, it has not manufactured?

10

MR NORTJÉ: Correction Chair, they were prepared to do so but at a risk premium.

ADV LEBALA: Yes, but at this stage fair enough, you were prepared to do so at a risk premium but the contractor, the main contractor at this stage was trying to achieve what if I were to ask you? What was being sought to be achieved by placing the main risk in the main contractor, the overall risk in the main contractor?

15

CHAIRPERSON: Advocate Lebala, we have gone through that evidence.

20

ADV LEBALA: Thank you Chair. Let's proceed to the last paragraph:

“While ARMSCOR/SA Navy recognised the contribution of C2I2 to the Combat Suite of the Corvette Programme in the development phase it

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was not in the position to accept the risks attached to the C2I2 solution unconditionally”.

Now what's the effect of this sentence in your view, I'm eliciting your views.

5 MR NORTJÉ: Chair, I think he tried to convey the message that the client was not prepared to accept the risk position of a Data BUS.

ADV LEBALA: Now what's the effect of that?

10 MR NORTJÉ: That was probably that the original decision of the PCB remained to opt for the Data BUS where the main contractor carried the full risk.

ADV LEBALA: And am I right to say that's the basis upon which DETEXUS Diserta Data BUS was the preferred Data BUS?

15 MR NORTJÉ: This letter had no influence on that Chair, if that is what the question goes to because by the time this letter was written the contract was in force already for 10 months and the contract was running, so the decision had been made long before that, before this letter was written.

20 ADV LEBALA: But the question remains the same, fair enough it was long after the contract has started taking effect but does the contents of this paragraph and this letter tell us that these are the basis upon which the Diserta Data BUS was preferred above that of C2I2? I'm eliciting your opinion.

25 MR NORTJÉ: Yes Chair, I'm quite careful to give an opinion, I do not know what the particular author had in mind

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when he wrote the letter.

CHAIRPERSON: Mr Nortjé, maybe don't give an opinion if you don't know.

MR NORTJÉ: Thank you Chair.

5 CHAIRPERSON: Don't give an opinion.

ADV LEBALA: Thank you Chair, thank you. Let's go back to page 12. At this stage I would like to refer you to page 12 bundle 1. Before you even go there eventually, and this has become common cause, the Diserta Data BUS became the preferred Data BUS.

MR NORTJÉ: It became the Data BUS that we included in the order Chair.

ADV LEBALA: And what has become clear from what we tried to demonstrate by taking you through the slide bundle, please go back to the slide bundle, I would like you to look at page 7, you could start at (i.3) and complete with 7(ii).

MR NORTJÉ: Give me a clue as to exactly you wish to start me Evidence Leader?

ADV LEBALA: In actual fact let's go directly to (ii) page 7:

"IMS Data Bus from C2I2 not deselected by client, never selected in first instance, only nominated as candidate".

We've reached a stage where we know that eventually the DETEXUS Diserta Data Bus has been the preferred Data BUS.

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Now in completing the picture do you want to explain the relevance of this slide given what we took you through?

MR NORTJÉ: Chair, it probably doesn't have much relevance to the activities of the Commission but it was from a pedantic point of view these were the words that were often used by the critics as you mentioned them, selection and de-selection and I only wanted to make the point that we nominated a number of companies and we requested the main contractor to try and accommodate them if the business risk was acceptable and the price acceptable, it was never a pre-selection and therefore the use of de-selection was wrong. I also made the point that the main contractor offered an alternative not as a, they did not replace it unilaterally by themselves, they offered an alternative with a price and risk position attached to it presented to us and the client had the choice to decide between the two options.

ADV LEBALA: Now I would like us to look at the other subsystems, we are done with the Data BUS, the other subsystems that ...

COMMISSIONER MUSI: Can I just get clarity before we leave this aspect at page 217, the letter from Mr Swan, that last paragraph says that:

"Whilst ARMSCOR/SA Navy recognised the contribution of C2I2 to the Combat Suite of the Corvette Programme in the development phases ...".

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Et cetera, I'm interested to know what contribution did this company make, in what way was it involved in the development phase.

MR NORTJÉ: Chair, Commissioner Musi, again I was not
5 privy to what Mr Swan thought at the time but I wish to point
out to the Commission that C2I2 was still awarded another
contract, subcontract on our project and therefore there were
other contributions that they made to the project.

ADV LEBALA: I don't know whether there is an
10 incremental question coming from Commissioner Musi following
up on this one?

COMMISSIONER MUSI: Does ... This does say to me that it
played some role in the Corvette Programme and I'm interested
to hear what role is it that it played, was there a contract with
15 it and what are they?

MR NORTJÉ: Affirmative Chair, and that will probably
become a little bit clearer in the next chapter that the evidence
leader is going to tackle. He did indeed receive a contract
from the main contractor to participate in the overall project on
20 a different subsystem. To the best of my knowledge he also
was a subcontractor to one of the subcontractors, I know it
sounds a little bit complicated but one of the elements of the
Combat Suite namely the tracking radar I believe he was also
subcontracted to that element contractor.

25 COMMISSIONER MUSI: Thanks.

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ADV LEBALA: Thank you. Commissioner Musi pre-empted where we were going with you and we are not going to go deeper into this aspect, we'll deal with it in the context of expediting your testimony. Now I would like you to look at
5 Volume 4 page 133, Volume 4 page 133 before we go to the slide bundle to deal with where C2I2 played a role in the development of the Combat Suite. Volume 4 page 133.

MR NORTJÉ: Yes Chair?

ADV LEBALA: Page 133 Commissioner Musi. Page 133
10 Commissioners, Volume 4. The paragraph headed: "Sitron Combat Suite Data BUS". I'm waiting for a nod Commissioners, so that I should proceed. Thank you. Paragraph 5, before we even start let's recapitulate and go to page 132, you will see that this document is dated the 21st August 1999, it refers to
15 the Minutes of a project Control Board Meeting Held in the Zipper Conference Room at on 06 October 1999 to Discuss Project Sitron and Wills. 21st October refer to the date on document 132 but the minute is 6 October 1999.

ADV SOLOMON: Yes, you said August.

ADV LEBALA: Oh, I beg your pardon. May the record
20 reflect that the minute was held at the conference room at on the 06 October, not August 1999 to discuss Project Sitron and Wills. Thank you, I learnt that I mentioned 6 August, I beg your pardon. Let's look at the "Present List" Mr Chippy Shaikh,
25 the Chief of Acquisition was present, we know that you were

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also present, we note your presence.

MR NORTJÉ: Mr Chair, I was present.

ADV LEBALA: And there's quite a team from ARMSCOR which was present. Of significance was Admiral Kamerman present?

5

MR NORTJÉ: No Chair he was not present, he was listed under the "Apology".

ADV LEBALA: Was he represented as the Project Officer, was someone representing him?

MR NORTJÉ: Yes Chair, you will see the name of Captain K Watson as the Assistant Project Officer Sitron. I beg your pardon Chair, yes indeed it was acting because Kamerman was on course at the time.

10

ADV LEBALA: Let's go to page 133, we are following up on the earlier minute and the letter on page 217 Volume 3. Let's go to paragraph 5 headed "Sitron Combat Suite Data BUS". Please read it for the record.

15

MR NORTJÉ: Chair, the record, the paragraph reads as follows:

20

"At the previous meeting the project teams reported the C1I2 Combat Suite data bus as a Category B risk due to legal action by C2I2".

ADV LEBALA: Now let's pause there. One sees that there is handwritten symbols symbolising ... I've got to be careful, what does this handwritten note symbolises after

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“C212”?

MR NORTJÉ: Chair, the handwritten annotation you see there was my own, it meant that I disagreed that that was the reason why the Category B risk decision was made, it was made for risk position and the consequences of the risk, not due to legal action. After all consider this Chair, when we made the decision there was no reference to legal action whatsoever, so it could not have been due to legal action.

ADV LEBALA: Well, that’s not my question but I’m happy that you have asked the question that I wanted to ask. The handwritten note, what is it, is it a 2, is it a 1, is it a question mark?

MR NORTJÉ: It’s a question mark.

ADV LEBALA: Well Chair, tense as it is there’s humour, my colleague Solomon SC. says it’s question mark squared. Now there are two issues which arise here, was there a legal action by C212 during that time?

MR NORTJÉ: I think by the time 6 October 1999 I think there may have been a threat of legal action yes.

ADV LEBALA: Of course you are not the author of these minutes, am I right?

MR NORTJÉ: That is correct Chair.

ADV LEBALA: Has it been a correction to this sentence?

MR NORTJÉ: Chair, I certainly mentioned at the meeting that that was an incorrect interpretation of the previous

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meeting minutes and as borne out by the fact that we've just seen the previous minutes and there was no mention of that.

ADV LEBALA: Now is there anywhere where for instance there's a correction to this sentence written?

5 MR NORTJÉ: Chair I don't know, I have not investigated whether there was a formal correction or not.

ADV LEBALA: If I were to say that we looked for it, we couldn't find it, would you agree with us?

MR NORTJÉ: I will not argue with that Chair.

10 ADV LEBALA: Well, what seems to be suggested by this sentence is that there was a report made that the C2I2 Combat Suite Data BUS as a category B risk was not considered due to legal action by C2I2, do you agree?

MR NORTJÉ: That is what this sentence says, yes Chair.

15 ADV LEBALA: Was this issue discussed in the context of the legal action brought by C2I2 at the PCB meeting of the 6th October 1999?

MR NORTJÉ: No. Yes Chair, the legal action from the rest of the paragraph, it is clear that legal action was on the mind of the PCB but legal action was certainly not discussed at the time when the decision was made.

ADV LEBALA: I can see that the element of risk is mentioned in this sentence, one does not have to delve on it beyond because we still have to come and make submissions to this Commission if need be on this aspect, there are two issues

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that arise, one is legal action, one is risk, can you see?

MR NORTJÉ: Yes Chair.

ADV LEBALA: Now let's move on. "CDMW", what does that stand for?

5 MR NORTJÉ: Chair, it stands for Chief Director Military ... I beg your pardon, Chief Director Maritime Warfare.

ADV LEBALA: And who was it designated to?

MR NORTJÉ: Chair, if I consult the front page of the minutes it was Admiral Howell who was fulfilling that position
10 at the time.

ADV LEBALA: *"Admiral Howell reported that a meeting was held in Simonstown between Mr L Swan, Rear Admiral Howell and Mr Young of C2I2 and that Mr Young agreed to withdraw all legal action".*

15 Of course that confirms obviously there was a legal action.

MR NORTJÉ: At this stage Chair.

ADV LEBALA: *"A/POP Sitron reported that since C2I2 had withdrawn the legal action the matter is now resolved".*

20 Now was the matter resolved?

MR NORTJÉ: Chair, I think that was the opinion of the acting project officer of the time, but the legal action was either not withdrawn or it was raised again, so in retrospect it was not resolved.

25 ADV LEBALA: Just complete the picture on this as to the

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legal action that ensued ...

CHAIRPERSON: Advocate Lebala, I'm not quite sure how (indistinct) there to help us, whether there was a legal action or not the witness says that you know they took a decision based on other factors and not on legal action. Now you
5 continue to ask him questions about legal action, I'm not quite sure how that is going to help us. He says he knows nothing about that legal action, that was not the reason why that decision was taken.

10 ADV LEBALA: In actual fact ...

CHAIRPERSON: So trying to ask him further about legal action, with the greatest of respect to you, I don't think is going to help us.

ADV LEBALA: Chair the question was, was it a legal
15 action regarding to the data BUS and that's all, that was the last question Chair, but thanks, one need not pursue it except for only this question Chair. Now the legal action, was it a legal action pertaining to the data BUS?

MR NORTJÉ: Yes Chair, it was amongst others.

20 ADV LEBALA: Thank you. I would like us to deal with the last controversy pertaining to the Combat Suite and we will be looking at it from the context of the Navigation Distribution System and the Systems Management Subsystems. I see that it's already 13h00 Chair and we would like to start after the
25 lunch adjournment.

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CHAIRPERSON: Can we adjourn for lunch and come back at 13h45?

ADV LEBALA: Certainly Chair.

CHAIRPERSON: Thank you, we'll adjourn.

5 **(Commission adjourns.)**

(Commission reopens.)

CHAIRPERSON: Can the witness confirms that he is still under oath?

MR NORTJÉ: I do.

10 ADV LEBALA: Mr Nortjé, we have covered before the lunch adjournment the Integrated Management System Data BUS and the Diserta, DETEXUS Data BUS in the context of risk and price, you remember?

MR NORTJÉ: Yes Chair, I do remember.

15 ADV LEBALA: We've established that in as far as the Data BUS is concerned the client takes the risks, the main contractor takes the risk and the subcontractor take the risk.

MR NORTJÉ: I recall that we decided that the main contractor takes the risk Chair.

20 ADV LEBALA: But we've also demonstrated the levels of risk that calls for the client taking the risk and/or considering the risk, the main contractor taking the risk and/or considering the risk and the subcontractor taking the risk and considering the risk.

25 MR NORTJÉ: We considered various risk options, yes

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Chair.

ADV LEBALA: We've also seen how in as far as the data BUS is concerned how C2I2 came into the picture and how DETEXUS came into the picture.

5 MR NORTJÉ: Yes Chair.

ADV LEBALA: What has become clear is that DETEXUS came into the picture through the main contractor whereas C2I2 came into the picture because they developed the IMS whilst they still had the relationship with AES, that's why they were nominated.

10

MR NORTJÉ: They were nominated because they partook in the technology programmes earlier on yes.

15

ADV LEBALA: And we noted that the issue of risk eventuated into guarantees that, and that I've seen the main contractor opting for DETEXUS.

MR NORTJÉ: That is correct Chair.

20

ADV LEBALA: Now before we go to the last portion dealing with the last controversial subsystem I would like you to look at the slide bundle. We are at the tail end of the IMS and we know that DETEXUS Diserta Data BUS was the one that was finally opted for but I would like you to look at page 8(i) in as far as the pricing is concerned because we know risk equated to pricing it has become clear, and I want you to explain the amounts that we see, it's something that we omitted

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to deal with whilst we were still struggling to bring to the full

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picture of the Commission about the risk factor. Let's look at what's relevant especially (i) starting with:

"The low price, full risk with client C2I2 Part C Risk with client".

5 We see the amount of R43 million there, can you see?

MR NORTJÉ: I'm not sure, I would think if you talk about the first one I don't see the R43 million, I see a different price.

ADV LEBALA: I'm talking about the paragraph headed "IMS Selection", can you see:

10 *"Client had three options".*

I'm looking at the second one that talks to the R43 million. That's the only one that talks to the R43 million, can you see?

MR NORTJÉ: It's correct, yes Chair.

ADV LEBALA: Now it tells us that C2I2 price was R43 million, isn't it?

MR NORTJÉ: Yes Chair, that was the figure on the quotations received.

ADV LEBALA: And below that there's a:

20 *"Low price, low risk to client, DETEXUS Part B risk with main contractor".*

And the price is R49 million.

MR NORTJÉ: That is correct Chair.

ADV LEBALA: Now at face value one sees that as at that stage the price of DETEXUS Data BUS is more than at face value, the price of DETEXUS is more than that of C2I2.

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MR NORTJÉ: Yes Chair. I also notice an error in my slide namely that the R43 million, the middle one should have had the R12 million added to it.

ADV LEBALA: Yes. Let's not pre-empt evidence but I
5 appreciate that your instincts are alert and that's where we are going. Instinctively hence we are talking about what one sees at face value, that het 49 that covers the price of DETEXUS, the entity whose Data BUS was eventually prepared is more than that of C2I2, do you want to explain what influenced these
10 prices and why at face value one has to be careful when he deals with them?

MR NORTJÉ: Chair, all the prices that you see there were given to us by the main contractor, so I cannot do much more than saying those were the prices that were quoted to us
15 and that's it.

ADV LEBALA: Now I want you to look at ..., let's look at the middle one, I want you to look at bundle 3 page 110, bundle 3 page 110. You don't have to waste time and take the Commission through the whole document but this talks about
20 the price breakdown. Now does it inform us where we get these R43 million from?

MR NORTJÉ: Chair yes, it does partly but there's another letter that goes with these spreadsheets which I will have to highlight. Shall I go ahead?

ADV LEBALA: This is very important because the
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Commission has to appreciate that the question of risk and price played a significant role in as far as the data BUS is concerned but there was also responsibility on the part of the client and the main contractor. Please do, just run through it quickly.

MR NORTJÉ: Thank you Chair. Thank you Chair, I'll do so. Chair, if one goes to page 110 of Volume 3 one will see it is a spreadsheet and unfortunately it is full of information, so the readability is not so clear, I do trust that the Chairman and Commissioner can read it. If one goes down the second column on the left, the column that is at the left headed "Element" and one goes down to the eighth entry in that column it says "Information Management System and Network Interface".

ADV LEBALA: But does ..., is that where the pricing comes to the fore so that one should appreciate where the R43 million, plus or minus R43 million comes from?

MR NORTJÉ: Chair no, not yet, I was just giving the Commissioner and the Chair chance to find the page. Assuming that you have found the page Chair and Commissioner, if one goes to the right hand side of that row one will get to the fifth last column in that row where there is a price indication of R47 101. Is that clear to the Commissioner and the Chairman? Good. So, ... May I continue Chair? Thank you Chair. So, that was at that particular date and the date is reflected at the left of the top corner, not very well

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readable but it was the 8th of April 1998. That was the price quoted by the main contractor for the data BUS supplied by C2I2 with the customer carrying the risk. There's a figure of 47 and I now need to explain why that came to 43 and for that purpose I ask you to keep your finger on this page 110 but please go to the same volume page 167. Now 167 ...

ADV LEBALA: I think ... I think we should start on page 165 so that we should make the Commission to appreciate the relationship between 167 and 165. Please identify what we see on page 165, particularly with the date and the subject and where is it from.

MR NORTJÉ: My apology Chair, and thank you for leading me Advocate Lebala. Page 165 is a letter written to the German Frigate Consortium and ADS together, it was written by the Project Officer Captain Kamerman, co-signed by myself and it was a letter in a series of exchanges between us, the client team and the contractor. The ...

ADV LEBALA: Now for the sake of completeness look at page 169 to assist the Commissioners who the writers of this letter are. For instance you see Admiral Kamerman and yourself on that page, can you see?

MR NORTJÉ: Yes Chair, that is indeed correct.

ADV LEBALA: You may proceed.

MR NORTJÉ: Thank you Chair. Having established the context of this letter it was, as I said, a series, one in a series

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of exchanges between ourselves and the contractor and it dealt with the previous offer which is where you've got your finger on page 110, but I want to take you then directly to page 167 paragraph 13 close to the top of the page which deals with the Information Management System and the paragraph reads:

"The offer of the 7th April 1999 had the IMS cost at R47 101 million and included a fifth system, a mistake acknowledged by yourselves, thus the offer actually was for a total of R42.86 million".

I rounded that off to the nearest million and called it R43 million.

ADV LEBALA: Now one appreciates the price that is signified at this middle sentence at page 8(i). Now I would like you to qualify the third sentence:

"Low price, low risk to client DETEXUS Part B risk with main contractor at +/- R49 million".

You may go to Volume 3 page 195. Volume 3 page 195 or you could start by just explaining to the Commission the foundation and you may go to that page.

MR NORTJÉ: Chair page 195, if you are ready? Page 195 is the same format, it's the price breakdown of the various Combat Suite elements in the spreadsheet form. This was the final version that was submitted to us in this form and it indicates the final prices as we had agreed upon. I wish to take you again down the third column to the left, the narrow

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column and I want to take you to, I think it's the 10th entrance in that column, in other words row 10, which again deals with the Information Management System, which just to the right of that you will see the name DASSAULT, now DASSAULT was in my understanding the holding company of DETEXUS which in turn overall belonged to, had been taken over by Thompson, and you will see the price in that column, in that row fifth from right, the price indicated there is R49.255 million and that is for the data BUS supplied by DETEXUS and the main contractor taking the full risk. That is what informed this slide.

ADV LEBALA: It has become clear that as at that stage, and I think it's an aspect that Commissioner Musi raised that DETEXUS had a relationship with ADS which was part of the consortium.

MR NORTJÉ: As from a certain point in time, yes Chair.

ADV LEBALA: And that's why you qualify it clearly that DASSAULT is a holding company of DETEXUS which has been taken over by Thompson.

MR NORTJÉ: That's correct Chair.

ADV LEBALA: In precision Thompson ADS DETEXUS had a relationship.

MR NORTJÉ: Yes, indeed Chair.

ADV LEBALA: Now let's conclude by informing the Commission as to whether the figures that we see on page 8(I, we are talking about the second point which is the middle point

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and the last point, are a true reflection of the amounts that had to be looked at in as far as risk is concerned.

MR NORTJÉ: Chair, thank you very much for the Evidence Leader to draw my attention to it. I noticed that
5 there was an error and omission in the second line and I wish to take the Commission back to page 110.

ADV LEBALA: Volume?

MR NORTJÉ: Bundle 1 page 110 where we were with the R47 million.

10 ADV LEBALA: That's supposed to be bundle 3.

MR NORTJÉ: I beg your pardon. I beg your pardon Chair, it's an unforgivable favour to get confused. Bundle 3 then, page 110. We had the Information Management System there at a price of R47 101 million which as I showed was to be
15 amended to approximately R43 million. Directly below that entry, the next row, there is an additional amount appearing of R12 million and that R12 million was meant for, and I go to the fourth column from the left where it says it is for expertise, for risk integration on the IMS, for interface software between the
20 serial line drivers and APIS and additional dedicated CPU for running APIS. I presume I need to explain some of those?

ADV LEBALA: Let's be certain as to whether the Commissioners are on that line, please allow them to nod, I wouldn't like us to lose them at this stage.

25 MR NORTJÉ: Thank you Chair.

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ADV LEBALA: We are waiting for the direction Esteemed Commissioners as to whether are you with the witness, where the witness is drawing your attention to? I see they are nodding, you may proceed.

5 MR NORTJÉ: Thank you Chair. So, as I said I assume I would have to say a few words about those things, what it amounts to is that if the contractor was going to use these C2I2 Data BUS they wanted to do a proper investigation as to what the risk was and that would have been to our benefit who was
10 carrying the risk but it was also necessary to add additional software which they call interface software between the line drivers and the APIS, that means the Combat Management System that we had discussed yesterday which we named as the TAVITEC Combat Management System, that had to interface
15 to the Data BUS from C2I2, and APIS was the name of the software module that is driving the Data BUS from C2I2, so, there was additional software required to properly interface to the C2I2 Data BUS and there was also additional dedicated computer processing units required, in other words computer
20 hardware required to interface and to run the APIS software on and that was where the additional R12 million came from.

I made an unforgivable error in somehow missing that when I compiled this slide, but if you go to on the slide the first item on page 8 of the slide, slide 8(i) you will see under
25 “High Price – No Risk to Client”, the R12 million does appear

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there, R77 million plus R12 million and the R12 million plays the same role in that case.

ADV LEBALA: So, when we look at the middle, the second point the total has to include R12 million, am I right?

5 MR NORTJÉ: That is correct Chair.

ADV LEBALA: And it equates to more than R49 million.

MR NORTJÉ: It equates to approximately R55 million.

ADV LEBALA: Now we are done with the question of the risk factor and the price factor, how they interrelate and what
10 happened in as far as the Data BUS is concerned. Now we are dealing with the Navigation Distribution System which is another subsystem element of Combat Suite. I would like you to look at Volume 2 page 182. Esteemed Commissioners, I beg your pardon, my bundle has just untangled itself and I have to
15 get my act together and I beg your pardon. I may have to take you to 182 with my papers splintered for the sake of saving time. Volume 2 page 182 but let's recapitulate and start at page 181. Please identify this document.

MR NORTJÉ: Chair, it is a quotation from C2I2 to, it
20 seems Mr Hector of the German Frigate Consortium.

ADV LEBALA: You can see at the bottom the, at the bottom there's a sentence saying:

"Quotation prepared by C2I2 Systems".

And the directors are mentioned there, can you see?

25 MR NORTJÉ: That is correct Chair.

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ADV LEBALA: Now this quotation related to which ...
Actually let me start by saying to what? This quotation related
to what?

MR NORTJÉ: I beg your pardon to, relating to?

5 ADV LEBALA: It was certainly not about water, it was not
about the air, it related to what?

MR NORTJÉ: Sorry Chair, I misheard what ... It related
to certain Corvette Combat Suite elements.

ADV LEBALA: To be specific?

10 MR NORTJÉ: To be specific it referred to the Navigation
Distribution System and to the, called the NDS, and to the
System, Management System called SMS, two of the lower level
integrative systems in the Combat System.

ADV LEBALA: Please go to page 183

15 MR NORTJÉ: I have ...

ADV LEBALA: Same volume page 183. Does it refresh
your memory and completes the picture of what you've just said
now?

MR NORTJÉ: Yes, indeed Chair.

20 ADV LEBALA: And to be specific explain the total figure
in relation to the two subsystems.

MR NORTJÉ: Chair, the total figure as it stands there
amounts to R4 485 320.

ADV LEBALA: Now to be precise permit me to use this
25 expression because I've got to be cautious on how I put my

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questions to you, particularly so that you should understand what I'm saying. Were there controversies in as far as the two subsystems are concerned without suggesting an answer to you?

5 MR NORTJÉ: Yes Chair, there was some controversy regarding the SMS, I don't recall that there was controversy about the NDS.

ADV LEBALA: What was the controversy about the SMS?

10 MR NORTJÉ: Chair, the controversy about it was that C2I2 was unhappy that the particular subsystem remained with ADS and was not taken away from ADS, he was of opinion that he deserved to obtain this subsystem.

ADV LEBALA: What was the relationship between ADS and these subsystems? We are talking about the subsystem
15 called SMS isn't it?

MR NORTJÉ: That is correct Chair.

ADV LEBALA: Which stands for the Systems Management Subsystems.

MR NORTJÉ: That is close enough, yes Chair.

20 ADV LEBALA: Now what was the relationship between the system and ADS?

MR NORTJÉ: Chair, as I mentioned that was one of the lower level and the strategically less important items of the Combat Suite in the integration part and as such ADS had been
25 working on that and was part of the Technology Retention

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Programme that we were funding and ADS were working on, they were working on the SMS and they were therefore originally nominated as possible supplier for this (indistinct).

ADV LEBALA: What was the relationship between C2I2
5 and the self-same subsystem, if any?

MR NORTJÉ: Chair, that goes a long time back. I think during the Technology Retention Project C2I2 subcontracted to ADS on this project to some extent. I don't have any documentation to prove that but that was the thing that I can
10 recall from there.

ADV LEBALA: At this stage are you saying that both ADS and C2I2 had a relationship? Permit me to use this expression, relate one to the other two, these Systems Management Subsystem, subsystem.

MR NORTJÉ: Chair, with the proviso that I have added I cannot prove anything to that line of memory. Yes they did, what the extent of it was I won't be able to change.

ADV LEBALA: Now let's look at Volume 2 page 194.

MR NORTJÉ: Yes Chair.

ADV LEBALA: Before we even start that just refresh me, was C2I2 nominated for this system?
20

MR NORTJÉ: Negative Chair, they were not nominated for the system.

ADV LEBALA: Was ADS nominated for this system?

MR NORTJÉ: Affirmative Chair, ADS was nominated for
25

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this system.

ADV LEBALA: Now we know that C2I2 was not nominated but they come into the picture as far as the subsystem is concerned because they were earlier subtracted, subcontracted
5 to ADS in as far as this system is concerned.

MR NORTJÉ: Yes Chair, but also because we were bumping heads with ADS regarding the price for these particular systems and because it was at a lower level where we thought someone else could contribute to it we decided to
10 investigate the possibility of a competition to ADS in this regard.

ADV LEBALA: Now is that how, and I've got to be careful again, I don't want to use words like "invited", is that how C2I2 came into the picture in as far as the system is concerned on
15 competition level?

MR NORTJÉ: That is correct Chair, competition initiated by us and executed via the GFC and the Commission has got to bear with me. In this case we particularly made sure that it was via GFC and not via ADS for very obvious reasons.

20 ADV LEBALA: Explain those reasons.

MR NORTJÉ: Well Chair, if ADS was going to be one of the contenders in the competition I surely shouldn't be the party that invite the tender from the other competitor, so we impressed on GFC that we want this to be done strictly via
25 them as separate entity from ADS so that we know that there is

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not undue insight into the price (indistinct).

ADV LEBALA: Now even as at that stage the main contractor consisted of three entities, German Frigate Consortium, Thompson, CSF and ADS.

5 MR NORTJÉ: Yes Chair.

ADV LEBALA: Now let's look at page 194 item 8.4. I would like you to explain the terms but before we do that we now know that it appears that the client brought C2I2 into the picture, I don't have to say invite because I've got to be careful, we know that ADS from the onset has been responsible for the subsystems, C2I2 came into the picture because they were earlier subcontracted to ADS which was responsible for this system, this system was at a lower price, the interest of local industry had to be looked at. Now we are clear. Explain what's happening in paragraph 8.4.

MR NORTJÉ: Chair, paragraph 8.4 is one of the conditions of contract that C2I2 included in their offer and that referred particularly to what is called CFE or CFI and that stands for Customer Furnished Equipment or Customer Furnished Information items, and the connotation of CFE or CFI is that it gets supplied to the contractor or to the executor free of charge.

ADV LEBALA: Now what does that mean to say it gets supplied to the contractor free of charge?

25 MR NORTJÉ: Well Chair, as the full term implies

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Customer Furnished Equipment or Customer Furnished Information, it means that the customer, us, the client had to supply this to C2I2.

ADV LEBALA: Now that's what C2I2 wanted in as far as
5 this now become contested SMS subsystem is concerned.

MR NORTJÉ: That is correct Chair, that was one of the conditions required before we could continue with the work and which validated his price.

ADV LEBALA: Now let's read:
10 *"The following items shall be ..."*.

It means provided by the client to the contractor for free:

- a. *The IMS development infrastructure acquired during the SUVECS technology projects shall be retained as CFE equipment ..."*.

15 That is one which is given to C2I2 for free for this contract. Is that what it means?

MR NORTJÉ: Yes Chair, that is correct.

ADV LEBALA: Now what's the relationship, we have heard what the relationship between Project SUVECS, it's
20 technology.

- b. 4 Industrial PCs identical to those identified for use in the ...

CHAIRPERSON: I'm sorry to interrupt Advocate Lebala, with the greatest of respect I'm not quite sure how these
25 details are going to help us. I'm not quite certain how these

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many details that you go through with this witness, how they are going to help us?

ADV LEBALA: Chair, ...

CHAIRPERSON: I'm not sure if you can, you know, explain
5 that to me, maybe there's something that I'm missing.

ADV LEBALA: Chair, I think I would like this witness to explain because we're getting there, short of saying the IMS got contested, a nominated party didn't get it, a preferred party got it. Then C2I2, that brought us here and you have heard
10 the, short of words, I'm running out of words, the complaints of the owner of C2I2 that has been deselected and treated unfairly in as far as the subsystems are concerned brings these issues to the fore. Now this testimony seeks to suggest the following Chair, not only was only was C2I2 given an
15 opportunity, they wanted more. Now these are issues which are going to come in the ultimate end Chair when you make closing submissions because the reason why we've been struggling in postponing the testimony of this witness relate to some of these issues Chair.

CHAIRPERSON: Advocate Lebala, quite a lot of subsystems
20 were awarded to various companies, it was not only C2I2 which was involved. There were various companies involved and various companies were awarded various elements of the Combat Suite, are we going to deal with each one and if that is
25 the position we are not likely to finish with this witness.

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ADV LEBALA: Certainly Chair.

CHAIRPERSON: What I've seen up to now that virtually all the nominated companies were awarded something but then they were awarded something, each one got some subsystems awarded to them at different levels and at different (indistinct),
5 so are we going to deal with all those 28 or 29 subsystems that have been allocated to the local industry? If not, why should we choose this one and give it special treatment?

ADV LEBALA: Fair enough Chair. The ... Remember
10 when we started we kept on mentioning the controversial and highly contested, the critics are dealing with the subsystems as they have dealt with the IMS and amongst the critics is Mr Richard Young himself and not only are we laying a basis for him to come and cross-examine if need be, we are dealing with
15 this evidence to bring it to rest Chair. I wish we could make submissions from the Bar, but remember Chair we speak through a witness. Unfortunately for us or fortunately for the Commission some of those companies and entities are not igniting controversies around these systems and this is the
20 only system that we are dealing with and to refresh you Chair this is what is mentioned in the witness's statement. Now what does that mean Chair, let me close by saying when the initial statement of this witness was prepared it has covered even the issues that are bewailing and biting Mr young in the absence of
25 a better expression. What does that mean? Those who

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prepared these witness's statement were realistic, far-sighted, they knew what they were doing, hence we kept on saying to the Commissioners we are ready to lead this witness with or without Mr Young, we got some of the additional documents
5 that he wanted to draw our attention to, some of these documents are those that we are taking you through Commissioners, but we want to close this portion by just leading one or two, three, four questions and we are done and we are going to another area and we are closing.

10 This witness is not even going to be longer than we anticipated. Once we are done with this aspect of the SMS subsystems we are done with those controversial aspects and we deal with the remaining portions and we are done Chair, and here we request you Chair to permit us to complete this picture
15 so that we should come and make closing submissions if need be given what we went through and what unfortunately Mr Young might not be able to come and cross-examine on, but we want to come back with our head held high that we traversed all these issues Chair.

20 CHAIRPERSON: Advocate Lebala, I fully agree with you but then unfortunately the lifespan of this Commission is left with only about eight months. I'm just being realistic that we are left with about eight months only, we don't have another year to sit and listen to evidence, so we should always take that
25 into account. We are left only with eight months and that is

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why you know one is so anxious that we should try and move as fast as possible so that we can be in a position to cover all the witnesses we need to cover. We have already fallen behind by a week already now, I'm not saying it because of you, it's because of the surrounding circumstances, that is why I'm anxious that we should try and move as fast as we can so that we can be in a position to deal with all the witnesses that we intend dealing with. If you can just bear that in mind? Thank you.

5
10 ADV LEBALA: Thank you Chair. Probably I would like to invite Solomon SC. through your permission Esteemed Commissioners, to come in here, and you could assist whether there's relevancy in as far as the interest of his client ARMSCOR and this witness who is the witness of the Commission but who is his client is concerned Chair, through your permission.

15
20 CHAIRPERSON: I haven't asked for any comment from him and I don't think there is a need for him to comment. I'm just trying to say to you that you know, try and expedite issues, details which are not necessary, let's not go into them.

ADV LEBALA: Thank you.

CHAIRPERSON: That's all that I'm saying, so I don't think there's any need for Advocate Solomon to respond.

25 MR NORTJÉ: Chair, would you allow me to say a few words of explanation? Thank you Chair. The background of

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this thing is that it was a competition purely on price, we saw a price quoted in the beginning by C2I2, C2I2 maintained, averred that their price should have been, they should have won because their price is lower. What is being sought at the moment is to show that there were a few instances where there were factors in his quotation which had an essential impact on the price, so that the price was not necessarily what one saw a different page, and that is where the Evidence Leader is going to.

5
10 ADV LEBALA: Chair, our team has noted the fact, the Commission's fair concerns, and I've got no doubt esteemed Commissioners knowing both of you that this Commission would discharge its mandate but it must do it speedily, we'll do our best. Let's complete these two points in page 194, especially
15 b. Just read b and explain it quickly.

MR NORTJÉ: Paragraph b reads:

"4 Industrial PC's identical to those identified for use in the Corvette Combat Suite".

ADV LEBALA: Now this is another entity or item that Mr
20 Young wanted for free.

MR NORTJÉ: That's correct.

ADV LEBALA: Are there any other items that you wanted for free?

MR NORTJÉ: Yes Chair, listed there, there are
25 documents which was not an issue, there was, in paragraph c

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there were documents, in paragraph e there were documents and those were not at issue but paragraph d proved to be a very difficult one, paragraph d reads:

5 *“All SMS developed software source code in magnetic format to be supplied at contract placement”.*

ADV LEBALA: Thank you. Please go to the self-same bundle page 201, we are just asking three questions and we'll be done with this aspect and we'll be going to the remaining
10 portions of your statement that we could complete this afternoon. Page 201, I would like to draw your attention particularly to two items, item 10 and item 15. Would you like to comment about them?

MR NORTJÉ: Yes Chair, I would like to comment on it.
15 Item 10 says:

“This cost estimate includes the material and manufacturing cost for four VCM's (Versatile Modular Consoles), but excludes console spares”.

Now console spares or whatever spares were explicitly asked to
20 be quoted for, the formal quotation figure that we've seen at the beginning did not include a price for spares and therefore we either had to guess what the spares were or well, I don't know how to handle it, if he doesn't quote it we can only guess or leave the quotation out of contention. The last one, number
25 15 was actually a minor point. It says that:

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“An extended warranty of 12 months post sea acceptance trials is not included in the cost estimate”.

That was asked to be included in the tender invitation, it was
5 not included but there it was fairly easy to guess a figure of, I
think we used something like 1.8% or so, it's a typical figure to
be used for that, but for the spares it was impossible to make a
guestimate as to how much it would be, and similarly for the
previous item to be supplied as CFE the SMS developed
10 software source code to be developed, it was impossible to put
a price on that but it would have been higher than ...
Altogether the price would have been considerably higher than
that of ADS.

ADV LEBALA: At this stage let's just simplify this part of
15 your testimony by drawing the Commission's ... We'll leave it
for the Commission, I think these aspects are highlighted in the
slide bundle Commissioners, page 16(i) summarises this part of
the testimony of this witness together with slide 15(ii), slide
16(i) explains the question of these three items that Mr Young
20 wanted the client to provide and slide 15(ii) deals with this last
aspect of the standard versatile modular. I would like you to
look at, lastly on this point I would like you to look at Volume 2
page 234, and the Commission would find a summary of what
you say there on page 17 of your slide, the Commission would
25 see that we even go to the conclusion regarding the end result.

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You, not we, you even mentioned the end result of what is still stated in page 234. In relation to what you have said summarise what page 234 says quickly. We know that you have already laid a foundation but there seems to be something new
5 that is coming, unless I'm not mistaken, on page 234 paragraph 9.2.

MR NORTJÉ: Yes Chair, to some extent it was new but to some extent it was actually more of the same. The document of which page 234 is part of is a later unsolicited proposal that
10 C2I2 submitted to the GFC and you will find that on page 217 of that volume, and that was an offer where he again offered by the NDS and the SMS but together as one package. We looked at it but unfortunately the problem areas that I have just identified in the previous offer were not clarified. On the
15 contrary if you look at paragraph 234 [sic] where Advocate Lebala has taken us to, in paragraph c you will see that there's now a request that "All Navigation and NDS developed software code in magnetic form to be provided", it's again the same problem as we had with the SMS.

20 ADV LEBALA: Now these aspects also relate to risk and price, responsibility and costs that you have talked to, am I right?

MR NORTJÉ: It goes to cost Chair.

ADV LEBALA: Well, I don't have to show you that it goes
25 to risk, cost and price. Let's look at 6.5, we are done with the

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controversial aspects, we are completely ... Just the relevant portions of your testimony, we'll quickly run through it as stated in your statement. Read signed statement, 6.5:

5

“The decision to accept risk sharing had the approval of both the South African Naval Board and the PCB”.

Why was that very important for both of them to approve that?

10

MR NORTJÉ: Sorry Chair, I need a moment to get to the correct page in the different bundle, bundle 1 I take it Advocate Lebala?

ADV LEBALA: Bundle 1 page 12, paragraph 6.5.

MR NORTJÉ: I have it Chair.

15

ADV LEBALA: We are going to quickly run through the remaining portions of your written statement, we will only go through those which are relevant, some I think have been traversed by your other colleagues, they have become common cause:

20

“The decision to accept risk sharing had the approval of both the South African Naval Board and the PCB”.

I think from the onset there's a reason why we had to ask you the difference between the two but for the sake of completeness why was the decision of both of them important?

25

MR NORTJÉ: Chair, for the PCB I think it was fairly obvious because they were guiding the acquisition process, the

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Navy Board was also an interested party in this because they are the ultimate user and any delays resulting from the acquisition activity would affect them adversely.

ADV LEBALA: Let's read on:

5 *"It effectively amounted to indemnifying the main*
contractor against delays and inadequate technical
performance by these Part C contractors without
negating the interfacing and integration liability of
the main contractor. It was a major decision based
10 *in part on intimate knowledge of the relevant*
subsystems by virtue of Project SUVECS but in
larger part based on the qualitative assessment of
the ultimate effect of eventual risk materialisation
on the project overall and on an assessment of the
15 *corrective and mitigating measures available in the*
event of risk materialising. It was indeed this
business risk consideration that led to the South
African Navy not to accept risk sharing in the
central co-integrative elements or subsystems,
20 *namely the main surveillance radar, the Combat*
Management System and its closely associated Data
BUS because the eventual collateral damage that
could have resulted was simply considered a bridge
too far".

25 That has become clear.

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MR NORTJÉ: I hope it is clear Chair.

ADV LEBALA: Now 6.6, 6.6.1 to 6.6.11 page 12, 13 talks of the “Modus Reduction in the scope of supply without materially affecting the essential functionality of the Combat Suite”. It just shows that you did your best to bring a best product, you didn’t take any chance.

5

MR NORTJÉ: That is correct Chair, the Navy realised that they would have to make a certain sacrifice as well to get it to the price.

10 ADV LEBALA: 6.7 still relates to “Saving cost and Modus Reduction”, is that correct?

MR NORTJÉ: I beg your pardon Chair, which paragraph, 6?

15 ADV LEBALA: 6, paragraph 6.7 relates to saving costs and the reductions that you did were very modest.

MR NORTJÉ: Yes, indeed Chair. What I mentioned there is that we may have made a number of reductions in the scope of supply to reduce cost, well-chosen reductions I should add, but then later in the programme as we were nearing the end of the programme the financial model made available additional monies and we were granted approval to use that additional monies to actually bring back some of the elements and some of the functionalities that we had left out in the beginning in the interest of cost saving, so we were clawing back some of it.

25 ADV LEBALA: 6.8, let’s read it for the record:

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5 *“Regarding the Combat Suite negotiations it is worth mentioning that every nominated local contractor did everything to participate in the project, albeit in a reduced extent as explained above”.*

The chairperson just demonstrated that the Commissioners appreciate that. “Management”, we are not going to go through it, the Commissioners have heard how management was done in as far as the submarines are concerned, it was very responsible with a view to return with a good capability, what considerations were made it’s covered there from paragraph 7.1 to 7.4. “ Execution” the same thing, the tests that had to be done, the harbour acceptance test, the sea acceptance tests and the responsibility that’s demonstrated by the Joint Project Team and the Integrated Project Team, the Project Officer, the Programme Manager when they were seconded to Germany is very clear. The approved specifications in terms of the Supply Terms were met and what comes out clearly is 8.3 in line with what is the evidence before the Commission, read it for the record, paragraph 8.3.

MR NORTJÉ: Chair, paragraph 8.3 reads:

25 *“Exactly the same procedures were followed for the Combat Suite which was mainly built in Cape Town, Gauteng and partly in France. Installation set into work and extensive sea trials were executed in*

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Simonstown".

ADV LEBALA: Now if I were to ask in terms of the percentages, the main part of the Combat Suite given that its' an integrated machinery or equipment with different portions, where was the main part built, was it built in South Africa or
5 abroad?

MR NORTJÉ: Chair, the main part is built here, if you look at the number of elements on the Combat Suite that we have identified, approximately $\frac{3}{4}$ of them were built in South
10 Africa and that represented in monetary terms approximately 60% of the Combat Suite price.

ADV LEBALA: That has become clear, we are not going to repeat that, I would like us to look at 8.6 page 16:

*"The Joint Project Teams, Project Executive consisting of the Project Officer and Programme Manager were also required to report on a quarterly basis to an established Maritime Project Steering Committee. Apart from reporting on detailed milestone progress the Project Executive was also
15 required to report on aspects such as the Project Risks and the abatement thereof, confirming that the risk factor always played a significant role".*

MR NORTJÉ: Absolutely, yes Chair.

ADV LEBALA: We are not going to repeat what the
25 Commissioners have heard on ship building in the details 8.7 to

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8.9, it's very clear we have dealt with that document on paragraph 8.9 Annexure "FN12", if we could just read that paragraph for the sake of completeness. At the same time the other parts the Commission has heard about it, don't agonise, they have heard about it.

MR NORTJÉ: Do you wish me to read paragraph 8.9?

ADV LEBALA: Page 17 paragraph 8.9.

MR NORTJÉ: Chair, paragraph 8.9 on page 70 of this bundle reads:

"At the same time it was necessary to manage a project team with up to 70 people dispersed over four cities and two countries as well as monitoring contractor activity in mainly three countries, with several subcontractor activities in several other countries. A copy of the chart setting out the principle suppliers of equipment and country of supplier for the Valour Class FSG Meko A-200 South African Frigates is attached hereto as marked Annexure 'FN12'".

ADV LEBALA: I actually add, I was confusing Annexure "FN12" to Annexure "FN9", we don't even have to look at Annexure "FN12". We can go to your conclusion and I'll advise the Commission that after you have read your conclusion we are going to pause because we want to deal with two aspects that would be outstanding, your Section 28 testimony and

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probably to draw the Commission's attention to the relationship like the PCB Minutes on bundle 4 and Naval Board meetings on bundle 5 which are more or less duplication, am I right?

MR NORTJÉ: Mmm, ...

5 ADV LEBALA: Some, some, some. I'm talking now about the PCB Minutes in bundle 4 and the Naval Board Minutes in bundle 5, they one way or the other relate to an extent, not all the time duplication.

MR NORTJÉ: Yes Chair, I cannot really comment
10 because I have certainly not seen except for this bundle the Naval Board minutes, I never received any of those because I was not a member of the board, I was on very odd occasion invited to attend as an observer but it would not surprise me to find a large overlap because the report that the Project Officer
15 gave to the Naval Board amounted to the same progress report essentially that we were giving to the PCB I would assume.

ADV LEBALA: Would it be fair to say there might not be need albeit the Commission would tell us if we are unfair to you, we may not even have to traverse bundle 5 of the Naval
20 Board Minutes meetings with you, is that fair?

MR NORTJÉ: I'm not qualified to really pass judgement on that Chair, not being familiar with the Naval Board Minutes.

ADV LEBALA: Alright we'll decide on it but our instincts advise us that there's no need to go there. Let's read page 18
25 "Conclusion", paragraph 9.1:

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“In conclusion allow me to quote Rear Admiral (ret) Bernie Teuteberg, as reported in the press almost two years ago:

5 ‘South Africa had got the ‘best value ever’
when it bought the frigates from Germany.
They are brilliant. At sea they are capable,
they’ve got long legs, they’ve got speed when
you require them, the sensors work beautifully
... I tell you, perfect ships for our type of
10 coast’”.

Now I don’t hear you mentioning anything about risk, money, price, unless you say it’s included by generalisation in this quote, in as far as your conclusion is concerned, not in as far as the quote itself is concerned.

15 MR NORTJÉ: I’m not sure that I follow the question
Chair.

ADV LEBALA: This conclusion concludes based on what
you have earlier said, do you want to add and be specific about
the price, the risk, the cost, responsibility or you think there’s
20 no need, it’s covered by this quotation?

MR NORTJÉ: Chair, all I wanted to show by this
quotation is the testimony from the user himself clearly
indicated that we bought them value for money.

ADV LEBALA: Chair, Commissioner Musi, at this stage we
25 would ask for an adjournment, there’s only one aspect we want

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to traverse, it relates to bundle 6, it's the Section 28 minutes. Now my instincts inform me that there is no doubt that the Esteemed Commissioners read and they are alert, we are not going to take them where they don't want to go, where it's a waste of time, but we will try to make you appreciate its relevancy, we wanted to resist it because it's been drawn to our attention by Mr Young and where necessary, where necessary there are certain portions of it which in our view might be relevant to assist the Commission at some of its Terms of Reference, partially including this term and we would like to traverse it tomorrow.

CHAIRPERSON: Advocate Lebala, if we adjourn until tomorrow, what time do you suggest we should start in the morning?

ADV LEBALA: Chair, 10h00. We are envisaging to be done tomorrow with this witness unless there will be cross-examination and/or Mr Solomon would like to re-examine, albeit there are one or two aspects that we thought we could consider, but they have just landed on the testimony that shows that DETEXUS Data BUS had been tested, it's applicable and the IMS Data BUS was an experiment in motion, something that still has to be tried and tested. That's one aspect that we thought we'd deal with, we are not going to waste time on, and you will appreciate Esteemed Commissioners that these are aspects that we may have to come back and make in closing

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submissions where we will be debating with you and we sense that you would be reminding us most of the time that we didn't traverse this evidence and we will be saying with our head high, and humility of course that we did traverse this testimony. Where relevant we'll take you to those portions of the record Commissioners but this testimony we needed it, difficult as it was Chair, given the subjects that we are not expert at, we gave it our best and we'll indicate ourselves when we make those in submissions, we are confident about that.

5
10 CHAIRPERSON: I believe you, and two; in any event you have given us the documents, so when you do address, if you can address us on any issue which is contained in the documents that you have given us, but then I was just trying to find out what is convenient for the Evidence Leaders tomorrow (indistinct) should we start at 09h30 or should we make it at 15 10h00?

ADV LEBALA: Chair, we are confident that by lunchtime tomorrow we will be done with the testimony of this witness, even if we start at 10h00.

20 CHAIRPERSON: 10h00 tomorrow morning, no objection? Sir, unfortunately you will have to come back tomorrow morning again at 10h00.

MR NORTJÉ: I will gladly assist the Commission Chair.

CHAIRPERSON: Thank you, we will adjourn until tomorrow.

25 **(COMMISSION ADJOURNS)**