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CHAIRPERSON: Good morning everybody. Advocate Sibeko.

ADV SIBEKO: Thank you Chair and Commissioner Musi. Today Ms Sello and I beg leave to lead the evidence of Mr Henderich De Waal Esterhuyse.

5 CHAIRPERSON: Can the witness take an oath?

(Witness is sworn in.)

**WITNESS (ARMSCOR) : MR HENDERICH DE WAAL
ESTERHUYSE (Hereinafter referred to as "MR
10 ESTERHUYSE"), GIVES EVIDENCE UNDER OATH**

EXAMINATION IN CHIEF:

ADV SIBEKO: Thank you Mr Esterhuyse, just housekeeping rules, when I speak and I finish asking the question I will press the button of the mic just so my mic gets
15 switched off and yours can be turned on and we shall take turns in that way, you understand? Now Mr Esterhuyse is it correct that you were employed by ARMSCOR which is known as the Armaments Corporation of South Africa (SOC) Ltd. from around June 1971 to November 1998?

20 MR ESTERHUYSE: That's correct Chairman.

ADV SIBEKO: Now in what capacities were you so employed during the period of employment at ARMSCOR?

MR ESTERHUYSE: I started off in 1997 as an engineer and then progressed to assistant engineer, eventually to programme
25 manager and then around the 1980's I became the head of the

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Aeronautics Department and beginning of the 1990's the general manager of Aeronautics and Maritime.

ADV SIBEKO: Now is it correct that when you resigned from ARMSCOR you were, you held the position of general manager Aeronautics and Maritime?
5

MR ESTERHUYSE: That's correct Commissioners.

ADV SIBEKO: Now as general manager Aeronautics and Maritime what would that portfolio entail?

MR ESTERHUYSE: That would include all the projects related to aeronautical projects, maritime projects and electronic projects, telecommunication systems *et cetera*.
10

ADV SIBEKO: When you make reference to these projects you, this is in relation to the acquisition of projects that you have described?

MR ESTERHUYSE: Yes, but also to development and industrialisation of those projects, not only acquisition.
15

ADV SIBEKO: Is it correct that during the preparation, the course of preparing for this hearing you prepared a statement?

MR ESTERHUYSE: Excuse me, can you just rephrase the question?
20

ADV SIBEKO: Will you confirm that during the course of preparing for giving evidence before this Commission you prepared a written statement and that statement is contained in the bundle of documents, contained in a file that you have in
25

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front of you?

MR ESTERHUYSE: That's correct Commissioners.

ADV SIBEKO: May I ask you to have a look at page 2 of
the bundle of documents and then turn your attention to page
5 43 and confirm the signature set out at, in the middle of page
43?

MR ESTERHUYSE: Commissioner that's correct, it's my
signature.

ADV SIBEKO: So the document we have referred to is
10 your statement and do you stand by the contents of that
statement?

MR ESTERHUYSE: Commissioner that's correct.

ADV SIBEKO: At page 4 of that statement you set out the
structure of your statement which indicates the manner in
15 which your evidence will be given during these hearings,
correct?

MR ESTERHUYSE: That is correct, yes.

ADV SIBEKO: If I ask you to turn to page 4 paragraph
1.3 the structure is set out and at, in the subparagraphs there
20 you make reference to Chapter 2 "Prevailing Conditions in
1997". Could you just briefly set out what that entails? I know
we will get back to that in fuller detail.

MR ESTERHUYSE: Commissioners yes, in the period 1997 we
were running according to a set of instructions, procedures in
25 the Department of Defence and I will highlight the main

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elements that affects the Strategic Defence Package related to these requirements and rules.

ADV SIBEKO: You make reference to Chapter 2, Chapter 3 where it states: "UK SDP Engagement" first. Could you also
5 just briefly inform the Commissioners what this entails?

MR ESTERHUYSE: Commissioners yes, this is the period in which we were negotiating on the single source basis with BEDISO , which is a United States ..., United Kingdom industrial association.

10 ADV SIBEKO: Chapter 4 you deal with the Management Committee and could you just briefly inform us what this is?

MR ESTERHUYSE: Commissioners yes, in the early stages of negotiating with the British consortium or BEDISO , we structured a management committee in order to coordinate the
15 activities of ARMSCOR and the Defence Force in the discussions with the British companies.

ADV SIBEKO: And it is this Management Committee that started at that time that evolved into, or metamorphosed into various forms which culminated in SOFCOM. Could you just
20 briefly take us through that?

MR ESTERHUYSE: Yes. The Committee started off as it was not a formal structured committee, there's no mandate or any kind of statements associated with this Management Committee, it was a coordinating committee to coordinate the
25 efforts of seven project teams in order to negotiate with the

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British companies. Eventually this Committee evolved through the process over a period of a year and concluded under the name SOFCOM which I will highlight.

ADV SIBEKO: You will also deal with the SDPP Supplier Selection, could you just briefly discuss on that?

MR ESTERHUYSE: Commissioners, from July 1998 we went through a final phase in the selection of the preferred bidders for the Strategic Defence Package, I will highlight the points in that.

ADV SIBEKO: And Chapter 6 deals with conclusions and observations you make with regard to the process that was followed from the time that negotiations were started with BEDISO up to the time that the successful bidders were recommended to Cabinet.

MR ESTERHUYSE: Commissioners, that's correct. In the first paragraph I refrain from personal observations, I tried to align with documentation and evidence that we've got on file and then in the final chapter I will indicate my own conclusions and assessments of the Strategic Defence Package.

ADV SIBEKO: Right. You would have noticed that I deliberately skipped the introduction which we're now dealing with. At paragraph 1.1.1 of your statement you set out at the end thereof that your personal profile is annexed to your statement and that is Annexure "EE1" to the bundle. Can I ask you to turn to page 45 of the bundle? Have you got that page?

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MR ESTERHUYSE: Yes, I do.

ADV SIBEKO: You have gone through that document, could you confirm that the contents thereof are correct?

MR ESTERHUYSE: Yes, I confirm it's correct.

5 ADV SIBEKO: At paragraph 1.2 you make reference to: "Abbreviation and Terminology Used" in the opening remarks, could you just briefly deal with that.

MR ESTERHUYSE: Commissioners, in my file I have used a quite a few abbreviations and descriptions, I use mainly
10 descriptions and abbreviations previously used by Defence Force and ARMSCOR witnesses and I've included a list of definitions but where I do use definitions that's new then I will define what the meaning and content is.

ADV SIBEKO: Now at paragraph 1.2.2 you make
15 reference to witness statements and evidence that have been tendered before this Commission and you mentioned at in the middle of paragraph 1.2.2 where you say:

"Throughout the witness statements references were made to hierarchical systems".

20 And you refer to levels, orders, tiers, layers, delegations and authorisations. What does that mean?

MR ESTERHUYSE: In a hierarchical system there is basically one principle, is that lower tiers is subservient to higher tiers, so if you look at any system, whether it's technical, such as
25 the ARMSCOR people explained in terms of a ship for instance

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from the complete ship down to subsystems, then that's a hierarchical system and the lower tiers can only come into existence really if the higher tiers are in position, so the principle here that I would like to emphasise is that throughout the document there are references to these orders and values in terms of hierarchical systems, especially when we come to SOFCOM, that the basic principle is that lower tier levels cannot come into existence if the higher tier levels are not defined and in place. That's the principle.

5
10 ADV SIBEKO: Now you then go on to say that these, what you've just described are all basically the same concept except that the numbering systems are sometimes reversed. Can you just explain what you mean by that?

15 MR ESTERHUYSE: Commissioner, you will find in the documentation that in some instances we call the higher level Level 1 or Order 1 and then the lower tiers Level 2 and 3. In other cases we refer to higher tiers as 5 at the top and 1 at the bottom, so the order can change, the principle remains the same.

20 ADV SIBEKO: At paragraph 1.2.3 you make reference to a distinction between financial considerations and financing considerations. Could you briefly explain what these, the difference is between the two concepts?

25 MR ESTERHUYSE: Commissioner, in the classical procurement in ARMSCOR we were only concerned about the

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value for money in terms of the cost of a product which we can call the financial consideration when we were searching for best value for money. In the case of the Strategic Defence Packages we brought in the concept of financing which was not
5 in the standard procurement process, which is the cost of borrowing money to purchase equipment. That is the difference in the concept.

ADV SIBEKO: And you say that during the acquisition of the packages it is the financing consideration that was of
10 prominence?

MR ESTERHUYSE: That's correct. In the packages we have a specific section that deals with financing that, that deals with loans and overseas banking support for the projects.

ADV SIBEKO: Now in the next paragraph at 1.2.4 you
15 make reference to the DTI evidence in which you say a distinction was made between the concept of IP offset and countertrade where IP is the higher order concept, but you choose to use these concepts interchangeably. Is there any particular reason why you prefer not to distinguish these
20 concepts?

MR ESTERHUYSE: Chair, from an ARMSCOR perspective our prime focus being the procurement of the equipment at best value the concept of countertrade started in the early 1980's, mainly as a hedge for the Rand, but as the time developed we
25 kept on changing the reference or the names of this activity, so

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as far as ARMSCOR is concerned the way you process and manage the Industrial Participation remain very much the same throughout the period.

ADV SIBEKO: Now later at paragraph 1.2.7 you make
5 reference to minutes of the various boards and councils and committees within the DoD and ARMSCOR family and you state that the minutes of these committees were only issued to standing members and not the *ad hoc* persons attending these meetings. Could you explain who the *ad hoc* members
10 attending these meetings would be as opposed to permanent members who were part of those meetings?

MR ESTERHUYSE: Commissioners all these committees do have standing members that according to the mandates and constitution of the committees. The committees then would
15 invite other people from the organisation for specific subjects and they are marked in the minutes as "Invitees". Decisions are taken at these committees then and the minutes are then only issued to the permanent members of the Committee, the other people that attended would not receive minutes. It is
20 then the responsibility of the permanent members representing their individual organisations to distribute information out of the minutes back into their own organisations, so the other invitees would not know what is the content of minutes.

ADV SIBEKO: Does this mean that if you were a member
25 of the particular council or committee and did not attend a

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particular meeting those, the minutes of that meeting, despite your absence would be sent to you?

MR ESTERHUYSE: That is correct, permanent members will always receive minutes of meetings, whether they attend or not.

ADV SIBEKO: Right. Now this would bring us to the next section of your opening remarks which is the structure that you have already dealt with and explained briefly what the various chapters you will be dealing with in your statement deal with.

Now just before we conclude that part, perhaps if we could take one step back in your introductory remarks. Is it correct that previously you have given evidence before the JIT with regard to the investigations conducted by it regarding the acquisition of the packages?

MR ESTERHUYSE: Chairman that's correct, I did give evidence under Chapter 28 to the JIT team. At that point in time the documentation were relatively limited because there probably were only about 19 or 20 documents to my, available to me, but I did give evidence.

ADV SIBEKO: And at the time of giving evidence before the JIT the events that you were testifying about was still fresh in your memory as they had happened very close to the time that you gave evidence?

MR ESTERHUYSE: That's correct Commissioners, that was around 2000, 2001 which has then been two years after the

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selection of the preferred bidders.

ADV SIBEKO: Will you accept that the preparation of your evidence before this Commission has happened some, at least 15 years after you had given evidence to the JIT. Did you
5 have access to documents that related to these packages in the course of your preparation?

MR ESTERHUYSE: Commissioners yes, I now had access to the database that is available to ARMSCOR in terms of being able to scan for documents that I believe is relevant to the
10 Commission.

ADV SIBEKO: And the documents that you have had access to have assisted in refreshing your memory with regard to the events that you have been testifying about today?

MR ESTERHUYSE: That's correct Commissioners, and I have
15 even discovered documents that were certainly not known to me at the time that I was involved in the process.

ADV SIBEKO: Right. Now getting back to the structure of your statement you mentioned at paragraph 1.3.4 that:

"In order to fully appreciate the timeline ..."

20 I assume this would be in relation to the process of the acquisition:

"... that it is important to note two domains with different criteria decision-making processes and mandates".

25 Could you just elaborate on that please?

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MR ESTERHUYSE: Yes Commissioners. At the time of the Strategic Defence Packages there was clearly a stronger involvement of the Minister of Defence in the acquisition process than prior to these packages when we were running
5 projects under the normal MODAC and ARMSCOR rules and regulations, so you can identify then the group of entities and committees where the Minister has been directly involved and other than where there are only executives and functionaries of the Department, so I have separated the two entities and I'll
10 brief on detail on that at a later stage.

ADV SIBEKO: You make reference to a ministerial domain as opposed to an executive domain. Could you just elaborate on that please?

MR ESTERHUYSE: Yes, this is an arbitrary distinction and I
15 have identified the committees where the Minister chair and where there are Cabinet ministers involved as the group of ministerial, the ministerial domain and then the other domain I have identified the domain where you have the people of the department, the Secretary for Defence, the Chief of the
20 Defence Force, ARMSCOR CEO as the executive domain, the people responsible for executing the projects.

ADV SIBEKO: Were you part of any of the boards or committees that are referred to in paragraph 1.3.4.1 of your statement?

25 MR ESTERHUYSE: Commissioner yes, I was a permanent

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member of the AASB, which is the Armaments Acquisition Control Board, that's one level below the most senior body in the procurement which is the Armaments Acquisition Council.

ADV SIBEKO: I am aware that the various roles played by the different boards are set out in the MODAC-1 Report. Are you able to recall from your memory what the functions of the AASB could have been and the AAS...

CHAIRPERSON: I'm sorry Advocate Sibeko, just for my own understanding I missed what the witness said. Did you say that you were a member of the Arms Acquisition Council or Arms Acquisition Control Board?

MR ESTERHUYSE: Chair, I've been a permanent member of the Armaments Acquisition Steering Board, not of the AAC which is the Armaments Acquisition Council, although I've attended most of the AAC meetings I was not a permanent member.

ADV SIBEKO: Thank you Chair. For purposes of completeness perhaps Mr Esterhuyse we will come back to this aspect with full detail as soon as we, the document, the MODAC Report comes to hand, but as a member of the AASB who chaired the AASB?

MR ESTERHUYSE: The AASB is chaired by the Secretary for Defence and at that time that was Mr Steyn, Pierre Steyn.

ADV SIBEKO: And what role did the AASB play in the acquisition process.

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MR ESTERHUYSE: Chair, in terms of MODAC you have the three, only three levels of approvals which is the AACB. For the purpose of large projects, cardinal projects the AACB acts as a screening committee that ensures that all the documentation is in place and complies to the rules and regulations and templates of the MODAC structure. From there it's then submitted to the AASB. In terms of non-cardinal projects the AASB can confirm the requirement of the project. If it's larger projects the AASB then makes a submission to the AAC, therefore there's a hierarchy in submissions from the AACB up to the AAC.

ADV SIBEKO: And this hierarchy and roles played by the various board, this would be provided for in the MODAC Report, is that correct?

MR ESTERHUYSE: Correct. MODAC will have the full constitution, mandates and rules for those three levels of committees.

ADV SIBEKO: And just as a matter of interest would I be correct to assume that the MODAC Report set out principles that governed acquisition within the ARMSCOR and DoD sector?

MR ESTERHUYSE: That is correct Chairman.

ADV SIBEKO: Now having dealt with the various, or the different domains, the Executive and the Ministerial you then deal with at paragraph 1.3.6 of your statement with the Best

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Value Equation. Could you explain to the Chair and Commissioner Musi what the Best Value Equation is, how it operated and how it ought to have been used?

MR ESTERHUYSE: Commissioners, the process in ARMSCOR
5 for selecting the preferred bidder runs through a process of
best value evaluation. At that point in time the ARMSCOR
Board could define the rules for selection in terms of tender
adjudication, that would mean that they could set out in terms
of procedures and rules how you assess a tender and how do
10 you measure it against the tender price, you come to a
conclusion of a preferred bidder and that equation that defines
this, the set of parameters to measure this best value for
money, that's called the evaluation equation, best value.

ADV SIBEKO: You mentioned also in that paragraph that
15 there was an evaluation of the Best Value Equation between
the period March 1998 to 2 July 1998. Could you just briefly
explain the significance of what is contained in this statement?

MR ESTERHUYSE: Yes. We started off in the initial
discussions with the BEDISO , the British group, on the basis
20 that there is a consensus that we should take into account
other parameters or factors, apart from the traditional
assessment of tenders, therefore we went through two steps,
the first step which we'll refer to as "50/50" which then defines
a set of rules for assessing tenders in terms of the Best Value
25 Equation. That then evolved in the middle of 1998 into a

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second set of criteria for Best Value Assessment and I'll highlight these points throughout my statement.

ADV SIBEKO: Right. You have as, when you turn to page 6 of your statement a timeline that's entitled "SDPP Execution",
5 could you just briefly explain to the Commissioners what this timeline seeks to convey?

MR ESTERHUYSE: Commissioners I'm referring to Figure 1.1 which defines the timeline for the Strategic Defence Package from where it's initiated to the point where the select
10 committee for Cabinet decided on the preferred bidders. That is the point where my involvement in the process stopped. If we look at the diagram we'll see that there has been a mainstream of activities that at any time we were running around 200, 250 projects in ARMSCOR in terms of standard
15 procedures which is then mainly MODAC, BB-1000 and A-PROC-97 which Mr, Captain Jordan and Dawie Griesel explained the content and detail and the processes.

Then in January 1997 we selected seven projects which we then took out of the mainstream and this then
20 followed another course up to the point where the preferred bidders is selected by the Cabinet Committee and this timeline is then, I've then subdivided into three elements which is the, first the phase where we negotiate on an exclusive basis with BEDISO . That ended when we decided to go out on multi-
25 tender. That runs for a period until we receive the tenders

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back which is in May 1998 and then we have a final phase where those tenders are then adjudicated and finally with the recommendation to the Cabinet Committee, so those are the three phases and at the bottom I've got a line that indicates the period that we have assessed the Value System and where we have gone through two changes in the process of the Value System.

ADV SIBEKO: Now in the concluding paragraph of that chapter you make reference to the fact that:

10 *"The events and management actions of ARMSCOR must be viewed against the prevailing steady state conditions at the commencement of the SDP Programme in January 1997".*

As you will describe later on. Could you just explain to the Commissioners what you mean by the "prevailing steady state conditions"?

MR ESTERHUYSE: Commissioners yes, my statement there says that we were running projects according to the rules of ARMSCOR, MODAC and that I call the steady state. So if we want to measure any deviation from this steady state then that would be a yardstick to identify to what extent we've deviated and what was the end result of the deviation from the mainstream activities, and that I will highlight.

ADV SIBEKO: Now you mentioned that there were various programmes that were running at ARMSCOR at the same time

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as the SDPP were being, were in the process of being acquired. You mentioned that these are the projects that followed the steady state conditions. Now what was the position with the packages?

5 MR ESTERHUYSE: The packages was initiated by BEDISO and in this process we then identified seven projects that followed a particular course through the acquisition process. Other projects, and the relatively large projects such as the Rooivalk and the Rooikat Development Programmes continued
10 at the same time according to the standard rules and procedures in ARMSCOR and the Defence Force.

CHAIRPERSON: I'm sorry Advocate Sibeko, just for my own understanding I hear the witness keeps on saying "we identified seven projects", "we identified the seven projects", what does
15 that mean, that "we"?

MR ESTERHUYSE: Commissioner, we enter into the next chapter but what transpired is in the beginning of 1997, January 1997 BEDISO visit South Africa and in a meeting with the Minister and the chairman of ARMSCOR they presented a
20 set of projects, an unsolicited proposal for a set of projects which we will have a look at, as a strategic partnership agreement, that's their definition. They said these are the projects they would like to supply to South Africa under a certain set of conditions.

25 At that point when they structured this first

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Management Committee I chaired the Committee and we started to review the proposal. It was clear at an early stage that there is not a match between what the BEDISO presented to us and what has been the long term requirements of the South African Defence Force. At that point in time the long term requirements were not yet fully authorised by Parliament through the Defence Review, but we already knew what are the core capabilities required, therefore the Defence Force then selected out of the core capability requirements projects that they would prefer to run under a special dispensation such as the Strategic Defence Package. It was evident that there was not sufficient funding in the budget of the South African Defence Force to enter into these large scale procurements, so the projects that then got selected to a large extent by the South African Defence Force became the elements that, of the projects that we then eventually went out on tender and was still called the Strategic Defence Package.

ADV SIBEKO: Now perhaps to give some level of context to that, and as we will go into Chapter 2 and later in your statement we will deal with the events that took place in which you were involved, but you have mentioned in your statement in or in your response to the Chairman that when the issue of BEDISO came about it was during the time of the Defence Review which still had not been approved by Parliament. Now is it correct that during that time there are certain capabilities

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arising from the Force Design that had been identified as the core arms that would be required in order for the Force Design to be (indistinct)?

MR ESTERHUYSE: Chairman that is correct. We will come to a page where in fact there are 15 core capabilities that eventually got approved by Parliament as these capabilities, not projects, capabilities that the South African Defence Force should be capable to execute their task. Out of these core capabilities there're then six or seven identified as products where the quantities are far too low that we can produce those quantities in South Africa, so those items has then been identified as potential foreign procurement projects, but at that stage there was no technical baselines or military staff requirements, it was mainly a list of potential future requirements in the Defence Force.

ADV SIBEKO: Now when the BEDISO representatives came to negotiate was there a body of persons representing the Department of Defence and ARMSCOR that was dedicated to negotiate with these people?

MR ESTERHUYSE: Chair, in the initial discussions on the 27th of January 1978 [sic] BEDISO made a presentation which is included in the annexures. The response to that was that there is an interest from the South African perspective. The agreement was that BEDISO and the South Africans Department which then included the Secretary for Defence, the

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Defence Force and ARMSCOR would formulate a small team for negotiations with BEDISO . Shortly after the meeting I went to see the chairman of ARMSCOR and since most of the projects were in my domain, Aeronautics and Maritime, I then said I will structure a small team for discussions with BEDISO up to the point where we can fully understand what BEDISO is presenting to us. My understanding was that that process would be a few months until we have clarity on what we are looking at and then we will execute the programmes from that point.

ADV SIBEKO: While we are on that issue can I ask if you turn to page ...

CHAIRPERSON: Just hold on Advocate Sibeko, it's just that I'm getting a bit confused. Maybe let me try and find out from the witness, you say in that Committee you will decide what you require later on. I thought, my understanding up to now was that the required capabilities (indistinct) by other bodies (indistinct) or the South African Air Force or the Navy, they'll be playing a major role in that process. I never understood that ARMSCOR was the one playing a major role in determining the required capabilities of our various arms of services. Can you just explain that to me?

MR ESTERHUYSE: Chairman that's correct. In fact if you look at the next page Figure 2.1 explains the structure and the roles of the different ... It's on page 9 sorry. May I proceed? The

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structure in MODAC is shown on Figure 2.1, it defines the role and functions, and if you look at the centre we have the South African National Defence Force and below it, it says that this body in fact defines requirements, not ARMSCOR or anybody else. Next on the left hand side is the Secretary for Defence. The Secretary for Defence is the accountable officer in the Department of Defence, he is the DG in fact. And on the right hand side you have ARMSCOR. ARMSCOR is responsible for tendering and execution, ARMSCOR do not decide on what we procure, ARMSCOR decides eventually on when the Defence Force and the Secretary for Defence decides on what they require, ARMSCOR issue tenders and ARMSCOR do tender adjudication and this is the structure that's been in place from the 1960's, 1970's that basically says that the people that decide what we procure in South Africa in terms of defence equipment is not the same as the people that decide from what we source the equipment. It was in a sense an anti-pollution structure that was structured specifically to keep the two functions separate from each other, so ARMSCOR never decided on what we procure, we decide on the process and tenders and execution.

CHAIRPERSON: Thanks a lot. That seems to have been my understanding but I may have missed (indistinct) from what you are saying that you know, you as a member of ARMSCOR determined (indistinct).

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MR ESTERHUYSE: Chairman, certainly not. Sorry if that reflected in my statement but that was not the intent.

ADV SIBEKO: Thank you Chair. Can I ask you to turn to page 86 of the bundle please? This will be under tab 6.

5 MR ESTERHUYSE: This?

ADV SIBEKO: Could you identify that document for the record please.

MR ESTERHUYSE: Chair, this was the document that is a summary of the core capability requirements coming from the
10 Defence Review at that stage in draft, it was not an approved Defence Review, that stated the 16 core capabilities that we were looking for in South Africa and then the ones that are marked for potential foreign procurement are the ones marked by asterisk and we will not as we process through the
15 documentation, that these were then the main contracts or the main elements of the Strategic Defence Package procurement.

There were, from the 15 there were a further six that at the same time as the Defence Packages were executed, were also executed basically in the South African industry and
20 currently today until the new Defence Review is published, then we are still basically three elements short of the total capability.

ADV SIBEKO: I know we will come to this aspect later in your evidence but can I ask you to turn to page 53 which you
25 will find at tab 4 of the bundle, page 53 at tab 4.

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MR ESTERHUYSE: Thank you, I've got it.

ADV SIBEKO: Can I ask you to identify what that document is for the record and ask you just briefly to state the contents thereof in comparison with what you have referred to at page 86.

MR ESTERHUYSE: Chair, this is the initial briefing by DESO, the British Defence Export Service Organisation. Now this organisation is basically an industrial alliance in Britain between the major defence companies, they do get support from the British Government via the Department of Defence, it's basically funded approximately 80% by the British industry and 20% by the Government. Their purpose is basically to support the British industries, defence industries in their efforts to export equipment to the international market.

Now I will then maybe highlight a few points out of the document. If we can turn to page 59 this page reflects the overview of a RSA UK Strategic Partnership. The concept that they projected to us is in fact an industrial partnership, strategic partnership and that was the initial abbreviation for the, that became the Strategic Defence Package and it says it's a long-term strategic partnership and the vision at that stage that this will run over a period of approximately 25 years. It addresses the cardinal procurement needs of the South African Defence Force, which is the list we've just looked at, it covers affordability, it covers targets for socioeconomic development

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and it includes the concept of Industrial Participation, and there is a reference to GEAR which was at that stage part of the Government's development policy. That's the core of the presentation. Then on the next page which is 60 they've
5 highlighted a timescale for us that covered the initial projects that they believe that we should procure. This is not what we procured in the end, there was, this was modified to be more in line with the South African requirements.

On page 63 you will find the concept which DESO
10 presented to us in terms of industrial participation which then lists activities and companies that they believe that we should target for participation. Or activities rather than companies.

Chair, then from page 64 they have a list of the individual projects which they presented to us, the Corvettes,
15 they follow submarines and air defence systems, but at that point in time January 1997 were the projects that they believed we should procure from the British industries. And there are a few pages, 65, 66 that covers this specific detail by project. 67, the Hawk Aircraft and 68 the Gripen, and 69 an air defence
20 system. That is on the supply side.

Then on the financing side DESO presented us with what is called a gold, the second bullet on page 70, a gold denominated export credit. The, what they projected to us is that they will establish a credit line that is based on the South
25 African gold reserves. At this point this was a new concept to

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us, it was certainly not known to us. Then the next page gives a little bit more detail on the gold denominated credit, export credit, 71. And that's in principle what they presented to us.

ADV SIBEKO: Now Mr Esterhuyse you indicated in your
5 evidence earlier that most of the projects that were proposed fell in your department. Could you just explain how that came about?

MR ESTERHUYSE: As general manager of the Aero- and
Maritime Division my divisions under me were the kind of
10 people that would have been involved in these projects at detailed level, they were mainly aircraft and maritime products. In the discussions with DESO, and it's not shown in the first set of slides, a Tank project were included, but that requirement then arose mainly from the South African side,
15 which is one of the items on the core capability list which then DESO included in their further presentations to us as a product.

ADV SIBEKO: Now as the general manager of the
Maritime Aeronautics it was quite natural for you to be
20 regarded as the person to head the Committee that was to interact with the DESO representatives for purposes of the discussions that were to be held, is that correct?

MR ESTERHUYSE: That's correct Chairman.

ADV SIBEKO: And this Committee you were assisted with
25 various people in the interactions, is that correct?

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MR ESTERHUYSE: That's correct Chairman. In the first minutes of the DESO meeting we will identify the South African team consisting of six people.

ADV SIBEKO: Now having dealt with that we will then ...

5 So just to conclude all of that, when you make reference to "we received offers from DESO" and "we did this", "we did that", it is in that capacity that you referred to the committee that interacted with DESO?

MR ESTERHUYSE: That's correct Chairman, when I refer to
10 "we" it's that little group that we formulated for the discussions with DESO that consisted of ARMSCOR, Defence Force, the South African National Defence Force and the Secretary. There were members from all three entities included in that Management Committee.

15 ADV SIBEKO: Chair, my attention has just been drawn to the fact that it might be a convenient time to take the tea adjournment. I'm in your hands.

CHAIRPERSON: Thank you, we'll take a tea adjournment for about 20 minutes or so. Thank you.

20 **(Commission adjourns.)**

(Commission reopens.)

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

MR ESTERHUYSE: Yes, I do.

25 ADV SIBEKO: Mr Griesel, when we adjourned ... Mr

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Esterhuyse, I beg your pardon. When we adjourned you had just completed a section that set out that the roles you played are in a historical perspective during the acquisition process. Now we get to the part in your statement we find at page 7, this is Chapter 2 dealing with the prevailing conditions in 1997 and the elements relating thereto. Could you just briefly take us through that part of your statement?

MR ESTERHUYSE: Chairman yes, referring to paragraph 2.2 what I've done is I've only highlighted a few salient points from the structures MODAC prevailing at the time in 1997/98 to highlight a few elements that impact on the Strategic Defence Package, therefore in paragraph 2.1.2 the process that we follow in the Defence Force and ARMSCOR is to a certain extent a hybrid system that whereby the Defence Force in the approval process of programmes for acquisition follows the UK standards of staff requirements, staff targets, staff requirements and acquisition plans. At that point in time we developed in ARMSCOR a more of an engineering approach that's based on the United States NASA approach, that is in terms of baseline management. Mr Griesel has elaborated on this and that follows an ARMSCOR standard called A-Standard62, so by the mid-1970's we then integrated these two approaches and that became the VB1000 document that they have referred to.

25 The, as we've mentioned in August 1997 the

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Minister of Defence Mr Modise then requested a work team under the leadership of a steering board to structure all the activities in the Department, both Defence Force, ARMSCOR, Secretariat into one standard approach which was then named the Minister of Defence Acquisition, which is named MODAC. I served on the workgroup that structured that document.

ADV SIBEKO: Now the work group that structured the MODAC document prepared, and they prepared three reports. Could you just briefly tell the Commission what these reports dealt with?

MR ESTERHUYSE: Commissioners, the report MODAC consists of three elements, the first element is the process of acquisition, that as we've described earlier through the different phases and through the different activities. The second MODAC deals with the South African Defence Industry. In the 1970's, 1980's and 1990's in terms of a Strategic Defence Strategy the concept that we developed in South Africa is that we must identify niche elements where we can create certain centres of excellence and for an example one of them is unmanned vehicles, airborne unmanned vehicles.

South Africa became a world leader in these unmanned air vehicles which eventually became a major export product, so we identified in terms of the content of the Defence Review and strategic objectives an industry based on strategic, a strategic analysis and a strategic approach aiming at the

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products that we can manage, that we can develop and that we can export with the understanding that where we purchased large products in very small quantities, that those would mainly be aimed at international procurement. That was the plan in
5 MODAC-2. Then MODAC-3 was an analysis of best procurement in world practice in terms of how did you structure an acquisition ...

CHAIRPERSON: Advocate Sibeko if you don't mind, we've heard more than enough about MODAC-1, 2 and 3. Some of the
10 people in (indistinct) involved with that document, so I'm not quite sure what purpose this witness has to repeat what other witnesses have said.

ADV SIBEKO: As it pleases the Chair.

CHAIRPERSON: Thank you.

15 ADV SIBEKO: Alright. Now Mr Esterhuyse having been part of the MODAC investigations and the preparation of the reports and setting up the principles that governed procurement within the DoD family you have testified that these documents or these reports also regulated the interaction between
20 ARMSCOR on the one hand and the DoD on the other hand and this you deal with in Figure 2.1 of your evidence which you'll find at paragraph 9. Could you just take us through that please.

MR ESTERHUYSE: Chairman that's correct. We already
25 briefly mentioned that the Defence Force is responsible for

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requirement definition, secondly for Defence for financing and approvals, and ARMSCOR for acquisition, sourcing and acquisition and execution. And on the ARMSCOR side as ex-official members, the Chief of the Defence Force and Secretary
5 for Defence to ensure that they're well informed and *vice versa* ARMSCOR members served on the committees, the AACB, AASB and AAC. And that structure there that's shown on 2.1 got a footnote that says:

10 *"Note that in this MODAC structure the Council of Defence is not mentioned as an entity, although the members of the Council of Defence and the members of the AAC".*

Has basically been the same people and therefore in many cases the two meetings got in a sense interrelated and in my
15 evidence I considered the minutes and the rulings of the Council of Defence as applicable by the AAC. I've made that assumption.

ADV SIBEKO: Now if we can just deal with that figure and the note that you have mentioned, that you have referred
20 to, could you just explain why it was important for in setting out the lines of communication as provided for in MODAC that you specifically mentioned that the Council of Defence is not contemplated or provided for in the MODAC principles.

MR ESTERHUYSE: Chairman, later in our document I will
25 highlight the deviations from these lines of communication

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where eventually in a sense the approval process for the Defence Packages followed another course, it did not follow, strictly follow this set of rules and lines of communication and this, so I used this as a framework, a template against which I
5 can measure the other reality that occurred.

ADV SIBEKO: Now you refer to the principle that the MODAC structure provided for checks and balances and you deal at 2.3.2.1 with the various representatives or persons forming part of the different structures of MODAC. Could you
10 explain that?

MR ESTERHUYSE: Chair in 2.3.2.1 list the people from the ARMSCOR domain involved in the different committees, the chairman of ARMSCOR and the CoD, the CEO of ARMSCOR and the AAC, and in the AASB myself and a colleague and in the
15 AACB three senior managers from ARMSCOR, those were the people from ARMSCOR participating in the MODAC structure as permanent members.

ADV SIBEKO: Now further on at paragraphs 2.3.3 going up to 2.3.5 you repeat what you have stated earlier in your
20 evidence, is that correct?

MR ESTERHUYSE: That's correct Chair.

ADV SIBEKO: Now at 2.3.5 you state:

*"It is important to note that MODAC does not provide for any other entity to interact directly with
25 the MODAC Structure, for example MC to IOMC, to*

SOFCOM Steering Committee and PCB's".

Can you explain that a little more?

MR ESTERHUYSE: Chairman in the time we structured MODAC the objective was to reduce the number of layers of decision making between the project team that execute the work and the decision making body, so what we said is that project teams themselves would make submissions to the MODAC Structure and you might have some other *ad hoc* committees and advisors but the essence is that the project team in terms of certain prescribed formats and templates will make submissions directly to these committees. This accelerates the process, it cuts out filtering or delay of projects, it was a principle of accelerating procurement.

ADV SIBEKO: If one has regard also to Figure 2.1 that you have explained you would see that there is no provision made in there for the Ministerial Committee that you testified about or the International Offers Management Committee or SOFCOM, is that right?

MR ESTERHUYSE: Chairman, that's correct.

ADV SIBEKO: Now looking at that figure or table, is there anywhere that either of these bodies could be fitted into a MODAC structure?

MR ESTERHUYSE: Chairman, of course it's theoretically possible that the AAC which is the highest entity in this structure can mandate some other entity or body to be a role-

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player in the process, that's not totally ruled out that as an answer to that particular question.

ADV SIBEKO: You were, as you stated earlier in your evidence the chairman of the Ministerial Committee and the IOMC and later referred to as the co-chair of SOFCOM. Are you aware during your involvement in the procurement or the acquisition of your packages if the AAC had mandated the, either of these bodies to report to its (indistinct)?

MR ESTERHUYSE: Chairman, I was not aware of any delegations or mandates given to any other entities or bodies that's not related directly into the structure of MODAC at that point in time.

ADV SIBEKO: Now you have referred in paragraph 2.3.6 of your statement that MODAC required for submissions to be made in respect of programmes, programme approvals for both cardinal and non-cardinal projects and these submissions had to comply with a particular format, is that correct?

MR ESTERHUYSE: Chairman, that's correct.

ADV SIBEKO: Can I ask you to turn to tab 3 of your bundle of documents, you will find that at page, as from page 49. Can I ask you to identify that document for the record?

MR ESTERHUYSE: Commissioners this is correct, this is the template for submissions to the AAC, AASB and AAC, and as we will note the document is basically for approval to continue with the project, it does not identify preferred suppliers, it only

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identifies the need and the confirmation of requirements and the funding.

ADV SIBEKO: Now can I ask you to turn to page 51 of that document and there you will find under paragraph 18 that
5 deals with other authorities invoked, it says:

*“If appropriate give the details of other departments, arms of service, staff divisions, supporting services, unions or individuals involved, indicate the extent of their involvement and whether
10 they have already been consulted”.*

What did this mean?

MR ESTERHUYSE: Chairman, in most cases when submissions are made to these bodies they would question whether the project teams involved (indistinct) possible that could influence
15 the decision making, such as logistics, personnel departments, whatever is required to bring a project to what's known as Level 6, that it can be fully implemented. Mainly the concern has been whether project teams been made sufficient allowance for downstream logistic support and lifecycle support.

ADV SIBEKO: Now at number 19 it says
20 “Recommendations” block, and it says:

*“The originator must formulate his recommendations in terms of the aim. The recommending authority will then add his comments, sign and date the
25 document”.*

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Now if I ask you to turn to page 52 you will find under number 13 “Recommendations”, is this how the submission had to be made for purposes of approval at a later stage?

MR ESTERHUYSE: Commissioners, that’s correct.

5 ADV SIBEKO: And who would be responsible for making this recommendation as in terms of the MODAC structure?

MR ESTERHUYSE: If we refer back to the little diagram and Figure 2.1 on page 9 then the project officer of the programme is responsible for the submission to MODAC with the support of his other team members but he in principle carries responsibility for the recommendation.

ADV SIBEKO: Now at 20 provision is made for the “Approval” block, it says:

15 *“The approving authority will write down his decision or decisions, comments and give the date of the decision”.*

Now if you turn the page there’s also provision made for the decision. Do you see that?

MR ESTERHUYSE: Commissioners, that’s correct.

20 ADV SIBEKO: And provision is also made for comments and the persons to whom it has to be distributed.

MR ESTERHUYSE: That’s correct Commissioner.

ADV SIBEKO: Now what would be the significance of the distribution list, that is the persons to whom the decision has to be distributed?

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MR ESTERHUYSE: The distribution list from these committees are determined by the permanent members and where a project team would submit a recommendation they would also receive the resolutions and the outcome from their submissions.

5 ADV SIBEKO: Now when you conclude that paragraph 2.3.4.6 you have, you state that:

you have, you state that:

10 *“The MODAC-1 Report contained the constitutions of the various committees or bodies that are contained in the MODAC Structure and the constitution provides for each of the respective structures authorities and functions and roles (indistinct) in the application process”.*

Is that correct?

15 MR ESTERHUYSE: That’s correct Chairman.

ADV SIBEKO: And in conclusion of that paragraph you state that:

20 *“The constitution of the AAC states that the Minister of Defence has the final authority on all the acquisition methods and has the right to refer decisions on acquisition programmes to Cabinet level”.*

Does this correctly reflect the provisions of the MODAC structures?

25 MR ESTERHUYSE: Chairman, I have rechecked that statement

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and I see in MODAC in fact it says that:

“The Minister of Defence must refer cardinal projects to Cabinet”.

ADV SIBEKO: Chair, during the course of the tea break
5 after I had noticed that the MODAC Report to which this
witness is referring to was not contained in the bundle of
documents. I have since requested copies of the document to
be made and we have been furnished with copies, but they are
not contained in any file, so they are not manageable at this
10 point, it's just loose documents. I am advised that they have
been stapled together and would be put in a file in due course.
My attention has been drawn to those documents being placed
in some files that I will beg leave to hand up as bundle B. I'm
aware that evidence relating, regarding this, the contents of
15 this document has been tendered before the Commission but
there are just one or two aspects that I would like to refer to
for purposes of completing this witness's evidence on the
subject. You will see that the document is numbered from page
1, typed page 1 and so forth, do you see that document before
20 you Mr Esterhuyse?

MR ESTERHUYSE: I see it, yes.

ADV SIBEKO: May I ask you to identify that document for
the record?

MR ESTERHUYSE: This document is the document that's
25 referred to “The MODAC Investigation of Technology and

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Armaments Acquisition in the Department of Defence". Excuse me, this document refers to "The MODAC Investigation of Technology and Armaments Acquisition in the Department of Defence". I recognise it and it's the correct document.

5 ADV SIBEKO: You will notice that that document is made up of MODAC-1, 2 and 3 reports, have you seen that?

MR ESTERHUYSE: That's correct, yes.

ADV SIBEKO: Now if I ask you to, just to turn to page 24, typed page 24 of that document, perhaps start at page 23, it
10 talks about "Armament Acquisition Management in South Africa".

MR ESTERHUYSE: That's correct, yes.

ADV SIBEKO: And having gone through that document one is able to see that it makes provision for the processes to
15 be followed in the acquisition of arms within the DoD family, is that correct?

MR ESTERHUYSE: Commissioners, that's correct yes.

ADV SIBEKO: At 7.3 provision is made for the control function in the acquisition management, do you see that?

20 MR ESTERHUYSE: Commissioners yes, I see it.

ADV SIBEKO: And there it sets out the various roles played by the Minister, the National Defence Force, the Defence Secretariat and ARMSCOR and the communication between all of those entities is explained in a figure set out in
25 the next page 25.

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MR ESTERHUYSE: Commissioners that's correct, that is the figure applicable.

ADV SIBEKO: Now we see the various bodies, the Armaments Acquisition Council, the Armaments Acquisition Control Board. Later in this document provision is made for the constitution of the various bodies, this you will find in Appendix "C" of this document which I will direct you to, you will find this of that document. 38, sorry. Have you found page 38?

10 MR ESTERHUYSE: Yes I found it, I understand.

ADV SIBEKO: And as from page 38 going further in MODAC-1 we have the various constitutions, functions and the people who serve on these boards, is that correct?

MR ESTERHUYSE: Commissioners, that's correct.

15 ADV SIBEKO: You mentioned earlier on that you were not a permanent member of the Armament Acquisition Council but you attended some of the meetings. Could you tell us or tell the Commission in what capacity you attended these meetings?

20 MR ESTERHUYSE: Commissioners, when major projects are submitted to these bodies it was the practice to invite attendees for further clarification of submissions or to answer questions should there be. In the case of cardinal projects which then would be recommendations from the Arms Acquisition Steering Board to the AAC, I attended many of
25 those meetings in the past.

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ADV SIBEKO: At page 40 you find the Constitution of the Armament Acquisition Steering Board or the AASB. Were you part of that body?

5 MR ESTERHUYSE: Yes, I've been a permanent member of the AASB.

ADV SIBEKO: The functions of that body are set out as from page, on page 41, is that correct?

MR ESTERHUYSE: Commissioners, that's correct.

10 ADV SIBEKO: And at page 42 you find the constitution of the Armament Acquisition Control Board.

MR ESTERHUYSE: Commissioners, that's correct.

15 ADV SIBEKO: Now if I ask you to turn to, I think it's the MODAC-2 Report at page 51, page 51 deals with "Accountability" now at paragraph 2.6, have you found that? It deals with "Transparency and Accountability" and 2.6.1 deals with "Major Procurement Products".

MR ESTERHUYSE: Commissioners yes, I've got the paragraph in front of me.

20 ADV SIBEKO: Now that paragraph states the following:
"The Defence Policy and any major system procurement, cardinal programmes that arises from that policy shall be approved by Cabinet. The Joint Committee on Defence shall have an oversight function".

25 Now is this what is reflected at the end of paragraph 2.3.6 of

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your statement which ends at page 11 thereof?

MR ESTERHUYSE: Would you kindly repeat the paragraph reference?

5 ADV SIBEKO: Paragraph 2.3.6 of your statement which starts at page 10. Do we have that?

MR ESTERHUYSE: In fact I can't find it at the moment. I need some assistance.

ADV SIBEKO: Can you switch off your mic? Have you got page 11 of your statement?

10 MR ESTERHUYSE: Correct.

ADV SIBEKO: Have you seen a reference Annexure "EE3" in that paragraph?

MR ESTERHUYSE: Yes Chairman, yes.

15 ADV SIBEKO: Now next to that reference you state in your statement:

"The MODAC-1 Report contained constitutions of these bodies. Of interest is the constitution of the AAC which states that the Minister of Defence has the final authority on all acquisition matters and has the right to refer decisions on acquisition programmes to Cabinet level".

20 Do you see that?

MR ESTERHUYSE: Yes, I do.

25 ADV SIBEKO: Now the question I had put to you after having gone through the MODAC Reports, if you read MODAC-1

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and MODAC-2 providing for the roles and functions of the different role players the question I put to you was whether what is stated in this paragraph or the end of that paragraph is what we have gone through in the MODAC reports.

5 MR ESTERHUYSE: Chairman, my understanding is that as far as cardinal projects are concerned in MODAC it now states that the Minister must submit those projects to Cabinet. This particular paragraph I will have to research, I'm not sure what, where I found the origin of this statement.

10 ADV SIBEKO: But as you have read the MODAC Report that we have read into the record it says what it says, is that correct?

MR ESTERHUYSE: That's correct, yes.

15 ADV SIBEKO: And that is what was arrived at by the Steering Committee that was appointed in formulating the principles set out therein.

MR ESTERHUYSE: Commissioners yes, it's correct.

20 ADV SIBEKO: Alright. Now this brings us to the discussion on Figure 2.2 of your statement which appears at paragraph [sic] 12 and this deals with ARMSCOR internal, that is the interaction between the Board of ARMSCOR and its top management. Can you take us through that? You will find that at paragraph 2.4.1 going forward.

25 MR ESTERHUYSE: Commissioners, I will do that. Chairman the Figure 2.2 reflects the structures and the interaction in the

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internal operations of ARMSCOR and if one look at the figure you will see on the right hand side where it says "Structure", the structure consists of a board of directors, the CEO reports to the Board of Directors. The CEO has under him a group of
5 general managers, I've not listed all of them but the ones that are involved in acquisition would be then the four general managers, Land Systems, Aero Marine, Foreign Trade and Finance. Then we have 14, at that stage 14 procurement divisions that would report to either Land Systems or Aero
10 Maritime general managers.

In this, in the execution of the Strategic Defence Packages there were then six, eventually six, initially seven programme managers reporting to divisional managers, to divisional managers within this structure and they are
15 supported by a division that's called the DIP Offset or Countertrade, or DIP Division and also in the structure and procedures is a department that's called the Procurement Division, the Procurement Secretariat, that is a standalone entity that is basically responsible for compliance in terms of
20 procurement and tender rules.

Then on the left hand side at the bottom you have two audit functions, one is a Technical audit function that audits the technical processes in the procurement process, and you have a group that's referred to as the Internal Audit Group
25 which Gerhard Grobbelaar heads at that stage, that is also

involved in these processes.

In the second column from the left hand side there is a hierarchy of documentation in ARMSCOR that runs from the ARMSCOR Act through a set of delegations, policies and practices and standards and specifications. That is in a sense what Mr Griesel gave evidence on and this is the structure that's related to ARMSCOR. In terms of compliance the process for submission runs from the project manager through the division, programme division to a general manager and then a submission when it's a cardinal project is, to the board, is then authorised by the CEO of ARMSCOR that does a submission to the Board of ARMSCOR in terms of a tender selection and adjudication. That was basically the process.

At a stage we contracted these major contracts we were using a specific formula that's in practice 079 that states how you go about in adjudication of tenders. Again this has been the subject of previous witnesses at this Commission. In most cases the equation involved in selecting the best tender is based on multi-criteria selection, there's not just one criteria, there's a couple of criteria that's assessed and weighted against each other that eventually gives you a single answer in terms of capability or military value as a selection criteria. You then divide that criteria by the cost of the project and that gives you the best value for money.

ADV SIBEKO: Now Mr Esterhuysen if I just take you one

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step back again to page 11 of your statement, paragraph 2.4.1 where you talk about the interaction between the Board of ARMSCOR and its top management, and you also deal with submissions that were screened and made to the board for approval, could you just explain or take us through the process that was followed at the time and what circumstances existed then before leading to the SDP's.

MR ESTERHUYSE: Commissioner, submissions to ARMSCOR is done in a memorandum format. Prior to submissions to the Board the CEO will, with his executive committee, screen these submissions mainly to see that it's fully compliant to ARMSCOR rules and procurement regulations and that it's fully, it's clear what the division is asking for, for approval at the Board of Directors.

ADV SIBEKO: Now leading to the acquisition process that focused on the SDPP's could you tell the Commission, Commissioners what was the magnitude of projects that were dealt with by ARMSCOR in terms of the MODAC principles?

MR ESTERHUYSE: Commissioner, I can recall the quantities of projects but not the financial size and magnitude, but at any moment we were looking around in the total department, departments, at around 200, 220 projects. Projects run mostly multiyear and they are sometimes very small, a couple of a R100 000 to a couple of million or in very large projects hundreds of millions, so the magnitude and size of the projects

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vary considerably, but in terms of volume that's passed through the procurement system we were looking at on an ongoing basis, a running basis in terms of projects around 200 at a time, at any time.

5 ADV SIBEKO: You refer to six SDP Projects which formed the subject matter of the inquiry and you say these were spread over two portfolios or two divisions. Now could you explain that and compare those projects in terms of their magnitude to what was running concurrently in the acquisition process by
10 ARMSCOR with those projects?

MR ESTERHUYSE: Commissioner, these projects in principle were what we call "military-off-the-shelf", MOTS, and previous witnesses identified this kind of project, so these projects in terms of complexity and risk is relatively small because when
15 you procure MOTS the risk really transfer to the seller. You buy against a contract baseline and he is responsible for whatever development work must still be done, you have a firm baseline and you pay him a firm amount, so the risk is relatively small.

20 Usually when it's large projects the financial magnitude is large, but the complexity in running the project is not that large. In parallel we were running projects such as the Rooivalk or the Rooikat and other projects that were relatively large but also technically very complicated and very
25 risk, with high risk. So, in the terms of management focus,

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divisional managers they would by the nature of the projects be more involved in those projects with high risk, with high decisions got to be taken on short time basis than the larger projects that are "military-off-the-shelf", therefore one cannot
5 do a very much direct comparison in terms of level of efforts and complexity, but it's a mix of then both MOTS and development projects.

The two divisions that were involved were then the Aeronautics Department Division that deals with aircraft,
10 helicopters and guided missiles, and the Maritime Division that deals with the ships and submarines.

ADV SIBEKO: So you had six projects spread over two divisions which were in turn responsible for various other projects that had been running at the time?

15 MR ESTERHUYSE: That's correct Commissioners.

ADV SIBEKO: And as you pointed out that these were off she shelf kind of products with low risk and very low complexity you say that in terms of what ARMSCOR was dealing with at the time, the acquisitions that ARMSCOR was dealing with, the six
20 projects seemed to be insignificant.

MR ESTERHUYSE: Chairman, I wouldn't say insignificant because the financial element is quite large, and there is an element of complexity but the complexity is managed by the supplier, it's not an ARMSCOR risk to deal with the complexity
25 in these projects, the supplier takes the full responsibility.

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ADV SIBEKO: So how would you comment or how would your comment be with regard to the technical complexity of the six projects compared to the others that ARMSCOR was dealing with at the time?

5 MR ESTERHUYSE: The complexity is slightly of a different nature. In the case of MOTS we as South Africans are not responsible for the design, we're not the design authority for the system, that complexity is with the supplier. Our problem with MOTS then mainly centres around lifecycle support
10 because now we purchase equipment from an overseas supplier of which we do not have the complete design, so much of the focus in terms of MOTS centres around how will we maintain this equipment over 30 or 40 years, so the nature of the complexity is slightly different between the two approaches.

15 ADV SIBEKO: Now also in relation to the internal ARMSCOR dealings you make reference to Mr Haywood's appointment as executive chairman of the Board of ARMSCOR and CEO thereof. Was this usual in the way ARMSCOR operated at the time?

20 MR ESTERHUYSE: It was not usual. In the previous era we had a chairman, a non-executive chairman and an executive CEO. There's been far back in the history of ARMSCOR events where we had an executive chairman, but in the period 1990's and later the functions were separated.

25 ADV SIBEKO: So, when Mr Haywood was appointed as

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executive Chairman of the Board and CEO of ARMSCOR this happened only during that time, is that correct?

MR ESTERHUYSE: Chairman if I remember correctly it's stated here. He gets appointed, he was the chairman and in
5 August 1996 he also gets appointed as CEO of ARMSCOR.

ADV SIBEKO: Now you've stated that in the previous era the chairman and the CEO were two different persons, is that right?

MR ESTERHUYSE: That's correct Chairman.

10 ADV SIBEKO: Are you aware what the position is presently?

MR ESTERHUYSE: At the moment the chairman and the CEO are separate persons.

15 ADV SIBEKO: Now you had indicated earlier that when a submission was to be made to the Board it first had to be made to the CEO of ARMSCOR and he would be responsible for submit..., or making that submission to the Board.

MR ESTERHUYSE: That's correct Chairman.

20 ADV SIBEKO: Now in terms of the position they had obtained from August 1996 with the appointment of Mr Haywood as executive chairman of the Board and CEO of ARMSCOR one say that a submission was made to the CEO who then made a submission to himself?

25 MR ESTERHUYSE: Chairman that's a vague area because in that period we submitted, we screened the submissions to the

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Board at the Executive Committee, it then goes under the signature of the CEO to the Board of Directors, but then in all cases the general manager that supports that submission will also attend the board meeting where the authorisation for procurement is given.

ADV SIBEKO: And you say at 2.4.5 of your statement that the Board was responsible for approving formal delegations *et cetera*.

MR ESTERHUYSE: That's correct Chairman.

10 ADV SIBEKO: And in terms of the MODAC principles what was the role of ARMSCOR in respect of the procurement of both non-cardinal and cardinal projects?

MR ESTERHUYSE: ARMSCOR function there is basically as a tender committee, they determine the value system against which ARMSCOR procures, they go for a very formal process in defining the technical baseline against which tenders are solicited. Tenders follow a specific course for in the tender process with the specific closing date, it's published on a bulletin board that's available internationally and any company that can, that's qualified to tender can in fact submit a tender. The tenders are then adjudicated through a process of tender adjudication in ARMSCOR, recommendation shortlist is drawn up and the recommendations made to the Board of ARMSCOR.

20 ADV SIBEKO: And the Board then approves?

25 MR ESTERHUYSE: That's correct.

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ADV SIBEKO: Now if I may refer you to page 14 of your statement you have a figure there that talks to ARMSCOR's Management Involvement in the SDP". Could you just explain to the Commission what the figure seeks to convey?

5 MR ESTERHUYSE: Chairman, the figure shows on the timescale the involvement of individuals during the period of the SDP adjudication and stops at the end of 1998 and it shows where I've been involved and my colleagues in different phases. I informed the chairman in April 1998 that I will be
10 leaving ARMSCOR. We then agreed that I will stay on a couple of months because ARMSCOR at that stage were in the process of recruiting a new CEO and, but not yet appointed, and my agreement is fine, I will stay for a period up to November 1998 in support of the new person to be newly appointed as CEO.

15 And furthermore on this, yes, I went on leave around June for a couple of weeks. At that point in time the Board also appointed a Mr Thomo that took over as general manager Aeronautics and Maritime from myself, so I then give him some support and at a later stage when the CEO was
20 (indistinct) nearby the same time, the CEO was appointed, a Mr Swann. I then gave support to these two people. In my, in that particular period from time to time Mr Haywood would invite me to meetings on an invitee basis of the AAC and CoD meetings where the Strategic Packages were still involved.

25 ADV SIBEKO: Now you state that when you came back

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from leave and after you had vacated your position you did not resume formal involvement in the SDPP's but was still invited by Mr Haywood to some of the AAC and CoD meetings which you attended. Were you expected to participate in any meaningful way in any of those meetings you attended?

MR ESTERHUYSE: I did attend but not in a very active role, more in support of Mr Haywood, and in the reference of the, in the meetings you will see references where I made statements supporting the ARMSCOR in these meetings.

ADV SIBEKO: Right. Now that brings us to the end of Chapter 2 of your statement and leads us to the phase where you deal with the UK or the United Kingdom engagement and where you attended meetings with DESO. You have briefly alluded to these meetings and the structures involved. Can I just ask you to recap in more detail what transpired there?

MR ESTERHUYSE: Chairman, in January 1997 the chairman of ARMSCOR on behalf of the Minister invited us to a meeting with DESO. This was our first engagement with DESO where they presented the document that I earlier highlighted. The concept here was that DESO will become an exclusive supplier to South Africa and in turn we would then, they would then enter with us in terms of an industrial strategic alliance as indicated in the document. The main element in their proposal has been the support by a gold denominated credit financing package. A

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At that point in time this was a new concept to us. In this first meeting there was then agreement reached between DESO and basically the Minister of Defence that the two parties will establish workgroups to engage with each other in order to establish a baseline for contracting on a relatively short timescale. This is then after this meeting that I approached Mr Haywood and I said since most of the projects are in my domain that I will structure a small team to negotiate with the DESO group. They were around 12 or 13 people at that stage.

ADV SIBEKO: On 14 February 1997 you attended a meeting with the DESO representatives, is that correct?

MR ESTERHUYSE: Chairman that's correct, I chaired the meeting.

ADV SIBEKO: If I ask you to turn to page 76 of your bundle could you identify that document?

MR ESTERHUYSE: Correct, I have it in front of me. Thank you.

ADV SIBEKO: What is that document?

MR ESTERHUYSE: The document is the Minutes of the First Formal Meeting with DESO regarding the Strategic Defence Package.

ADV SIBEKO: And this is where you say the issue relating to the Government, Government arrangements was discussed?

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MR ESTERHUYSE: That's correct Chairman.

ADV SIBEKO: And this is pursuant to the presentation that was made that you referred to earlier in your evidence which is found in Annexure "EE4" that you referred to earlier
5 which starts at page 53 of the bundle.

MR ESTERHUYSE: Commissioners that's correct, although they did not repeat the presentation, we knew already the content of the presentation in, at this meeting in February.

ADV SIBEKO: Now you state that at 3.1.2 of that
10 meeting:

"The ARMSCOR prevailing acquisition best value equation were also explained to DESO".

Now how was this received in view of what appeared to be a perception on their part that they were going to be the sole
15 providers of the capabilities that were required by the SANDF?

MR ESTERHUYSE: Commissioners, at that stage I think they took this as a presentation of the standard acquisition processes in ARMSCOR, not yet applicable to their package proposal to South Africa.

ADV SIBEKO: Now if I ask you to turn to page 78 of the
20 minutes of that meeting under Item 3 there is a recordal of the "Content of the Proposed Package" which is presented according to what is recorded at 10 by General Du Preez and it says there that he described the SANDF requirements in the
25 context of the Defence Review. Now we know that by that time,

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14 February 1997, the Defence Review had not been approved by Parliament. On what basis would you say this was presented by General Du Preez?

5 MR ESTERHUYSE: Commissioner, he was certainly working from a draft document. The, if one look at the capabilities, the core capabilities, most of them except one has in fact been capabilities that existed in the Defence Force at that point in time, therefore his statement was that the possibility of procurement in terms of the core capabilities would cover the
10 elements marked in that table which marked with asterisk for overseas procurement.

ADV SIBEKO: Now and we have identified these core capabilities earlier in your evidence as those that are referred to at page 86 of your bundle, is that correct?

15 MR ESTERHUYSE: That's correct. That's correct Chairman.

ADV SIBEKO: Right. Now at 3.1.3 you make the following statement, 3.1.3 at page 16 of your statement, you state that:

20 *"A status review by the South African DoD, regarding cooperation between South Africa and the UK, dated January 1997, confirms that a Memorandum of Understanding had already been signed, which made provision for the supply of defence equipment and the services between the*
25 *two countries 'in line with the normal acquisition*

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processes', ...".

Now did you see the Memorandum of Understanding that you are referring to in that paragraph?

MR ESTERHUYSE: Commissioner no, I have been looking for
5 this document in the database, but the original MoU is not available at this point in time. This is a summary that was done in January 1997 by the Department of Defence of that particular document, but the document itself I have not seen.

ADV SIBEKO: Now where reference is made to the supply
10 of defence equipment in line with normal acquisition processes, what did you understand was meant by that?

MR ESTERHUYSE: Commissioners, in that period or prior to that we have signed this type of MoU with a couple of countries, France, some other country, and other countries,
15 that basically states that the two countries will work together on the basis of mutual understanding that if we procure from them we will follow South African procurement rules and if they buy from us they follow their rules, so this was not an exclusivity agreement, it's just a statement of potential joint
20 effort, joint work. It also covers potential co-development of certain sub-elements in defence, but the nature of the MoU, and I have not seen the origin of this, would probably be very much like some of the others that is an intent of working together but not on an exclusive basis.

25 ADV SIBEKO: Now at paragraph 3.2 of your statement at

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page 17 you deal with the structure and objectives of the SDP Ministerial or Management Committee. Just take us through that in some detail.

MR ESTERHUYSE: Commissioners, in 3.2.1 I identify the Management Committee with representatives from DEFSEC, Defence Force, ARMSCOR, consisting of the six people referred to in the minutes where we presented this team to DESO, and with the function of monitoring and coordinating the South African involvement in the discussions with DESO.

5
10 ADV SIBEKO: And you complete that section of your statement by stating the metamorphosis of the MC to IOMC and ultimately to SOFCOM.

MR ESTERHUYSE: Commissioners, my statement 3.2.4 indicates that this Management Committee evolved eventually into the SOFCOM in a process that we will highlight in the statement. It remains basically the same group of core people that was involved from January 1997 until June, July 1998. The last SOFCOM meeting is on the 2nd of July 1998.

15
20 ADV SIBEKO: Now if you turn to page 18 of your statement you find a Figure 3.1 there which deals with the timeline SDPP Execution Detail. Could you just give an explanation of the timeline set out there?

MR ESTERHUYSE: The timeline in Figure 3.1 indicates the main events running from ... Excuse me. The timeline in Figure 3.1 indicates the main events in the process regarding

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the Strategic Defence Package running from January 1997 up to the point of the preferred bidder in August 1998 and in the centre where it's stated MC and IOMC and SOFCOM, the dots represent the meetings where I could find minutes of meetings, there would probably be a few more but apparently not available, but it links the process from where we start to the point where we finalise the selection process. And then it indicates the final committee meetings, AASB, AAC and the Council of Defence prior to selection.

10 So, on this one page I tried to formulate all the major events in terms of the timeline and points where we have changed the value equation in October 1997 and again in July 1998. This is what the figure reflects.

ADV SIBEKO: Now at 3.3 you make reference to ARMSCOR Internal Review of the SDP. What do you intend to convey by that?

MR ESTERHUYSE: My intent here is that I arranged a meeting with Mr Haywood where we said let's review the engagement with DESO and where do we stand in terms of a government-to-government agreement. My concern at the time was that the document that is referred to as the government-to-government agreement which rules and regulates the process and which would identify that we procure on an exclusive basis I could not get in hand a copy of this particular document. I've asked the Secretary for Defence and I've asked Mr Haywood but I could

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not get any firm response in terms of a document or an agreement, or any kind of indication that we in fact do have an exclusive arrangement with the UK.

CHAIRPERSON: I'm sorry Advocate Sibeko, I understand
5 (indistinct) copy of this document, you are referring to this document in your statement, (indistinct) document before?

MR ESTERHUYSE: Commissioners no, I've not seen such a document.

CHAIRPERSON: So, in other words you have no personal
10 knowledge on the contents of that document that you are referring to because you have never seen it?

MR ESTERHUYSE: Commissioners no, I only had verbal statements regarding a government-to-government agreement but I have not seen any firm evidence or documents regarding
15 such an agreement.

CHAIRPERSON: Whatever evidence that you are going to give to us relating to the contents of that document, it will be hearsay evidence?

MR ESTERHUYSE: That would be correct.

20 CHAIRPERSON: Thank you.

ADV SIBEKO: Thank you Chair. Now you set out at 3.3.1 that when you had this conversation with Mr Haywood, that there were some key issues that which faced ARMSCOR at the time and you deal with, you said 3.3.1.1:

25 *"Apart from the Corvettes in respect of which the*

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procurement process had been nearly completed, ARMSCOR had no firm contractual technical baseline from the SANDF in respect of the other projects”.

5 Could you elaborate on that?

MR ESTERHUYSE: Commissioners that’s correct. For ARMSCOR to execute an acquisition programme or to go out on tenders we require certain baseline documents. The previous witnesses explained in great depth what these documents are,
10 but it’s a fact that in the time that DESO presented these options to us we were not in possession, we as ARMSCOR, of documentation from the Defence Force that defines the technical baselines or the operational baselines against which procurement must be done, therefore it makes it extremely
15 difficult to negotiate anybody in negotiations if you do not know exactly what you intend to procure. That was my understanding at that point in time that we do not have these documents and they were not presented to us in a format that we can actually contract.

20 ADV SIBEKO: Now considering that the capabilities that were about to be procured in terms of the SDP Acquisition Programme were off-the-shelf capabilities, what was the significance of these baseline documents for these acquisitions?

25 MR ESTERHUYSE: Baseline documents states the operational

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requirements and what the client expect to get. When you go out, even when you procure off-the-shelf, when you procure from multi-sourcing there is a high probability that you will get a response or quotation of a product that fits your requirement
5 fairly closely and that was the purpose of a technical baseline for MOTS procurement.

ADV SIBEKO: In other words without these baseline requirements the procurement could not go ahead in terms of the MODAC principles?

10 MR ESTERHUYSE: That is correct Chairman.

ADV SIBEKO: Could they go ahead in terms of any acquisition policies that you are aware of?

MR ESTERHUYSE: Chairman at that stage I was not aware of any other policy that would permit us to procure on a single
15 source basis from one country multiple products.

ADV SIBEKO: Now at 3.3.1.3 at page 19 of your statement you say:

20 *“No provision was made in the standard evaluation process to consider offsets as a discriminating criteria”.*

What is meant by that?

MR ESTERHUYSE: Commissioners, in the standard procurement process we only consider Military Value divided by cost, lifecycle cost. The denominator can be different
25 considerations, but any other considerations involving offset or

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Industrial Participation was only a critical criteria, a threshold criteria that suppliers must comply to and then they are only assessed on Military Value. In the initial discussions with DESO there was an argument that DESO, the British industry will bring us additional benefits in terms of industrial participation and the discussion centres around how do you assess this additional value that the British industry will bring us in terms of Industrial Participation if we do not have an equation, an acquisition equation that takes it into account. So, I did then agree that we must formulate an acquisition equation that takes into account Industrial Participation as a discriminating criteria and not only as a critical criteria, and that was the concept at that stage.

ADV SIBEKO: Could you just remind us what the difference is between a critical criteria and a discriminating criteria in the evaluation process?

MR ESTERHUYSE: Critical criteria would be a single yardstick that says you have to achieve this yardstick to be able to tender, so we would have a figure of 50% for Military Industrial Participation. Any country that tenders must achieve this 50% Industrial Participation on military side and 30% on the National Industrial Participation. Those were critical criteria. A discriminating criteria would say if a supplier offer us more than the critical criteria, let's say they offer us 200% or 300% in terms of Industrial Participation we must give that country

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some value for the fact that they are bringing us more Industrial Participation than the critical value, therefore we are looking for a formula that will take into account the fact that we can get from a particular country more industrial participation than the threshold and that was the, then the critical criteria. No, the discriminating criteria.

ADV SIBEKO: So, in terms of the acquisition of the packages the offsets thus became an important criteria to be considered in the evaluation of the various bids received in respect of the capabilities?

MR ESTERHUYSE: Commissioner that is correct, but it's only true if you buy multi, if you procure multisource. If you are dealing with a single source supplier then of course this evaluation process falls away because then you are in a position that you buy from him and you have to negotiate what Industrial Participation you get, it is not a value equation that applies when you procure from a single supplier.

ADV SIBEKO: Thank you Mr Esterhuyse. Chair, I see it's about 13h10. Would this be a convenient time to take the adjournment?

CHAIRPERSON: Thank you, I think we will take the lunch adjournment until 13h45. Thank you.

ADV SIBEKO: Thank you.

(Commission adjourns.)

(Commission reopens.)

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

MR ESTERHUYSE: I do, yes.

ADV SIBEKO: Thank you Chair and Commissioner Musi.

5 Mr Esterhuyse when we adjourned you had just finished explaining the difference between a critical criteria and discriminating criteria in the evaluation process in respect of the offsets (indistinct).

MR ESTERHUYSE: Commissioner, that's correct.

10 ADV SIBEKO: And now once these concerns had been noted and you had discussed with Mr Haywood you state at paragraph 3.3.2 of your statement that in March 1997 the IPT's, and these would be Integrated Project Teams, were nominated, and the approval status of each project identified. Do you see
15 that?

MR ESTERHUYSE: Yes, I see that thank you.

ADV SIBEKO: Could you just quickly take us through the approval status of each of the projects that were identified at the time that the IPT's in respect of the various programmes
20 had been identified.

MR ESTERHUYSE: Commissioners, that state has been given at the Commission, but it's repeated in tab 7 page 89 which is a document that is not my origin but indicates the status of the various projects at the time that we were then going out on
25 request for information, so this point where I refer to is even

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earlier than that where we said that in terms of actual
baselines for sufficient, with sufficient information for
ARMSCOR to issue, go out on tender in the tender process is in
fact on the Corvettes. The others in terms of staff work as the
5 teams, witnesses from the different teams indicated were in
earlier stages than what you normally would expect when you
start your procurement process.

ADV SIBEKO: The document you are referring to is on
page 87, is that correct?

10 MR ESTERHUYSE: Chairman, that's correct.

ADV SIBEKO: Now you say that document has been
tendered in evidence before the Commission.

MR ESTERHUYSE: Commissioners that's my understanding, I
get this from the database but I can recall that somewhere this
15 document has already been submitted, but I speak under
correction.

ADV SIBEKO: Could you inform the Commission what that
document seeks to convey?

MR ESTERHUYSE: Commissioners, on the left hand is a scale,
20 a timescale that runs from early stage of a project down to
where you have the documents that's tendered in May 1998.
Now the Defence Force is responsible to identify the staff
requirements, the, first the staff targets, staff requirements,
the project studies and eventually the baseline that is
25 sufficient for to refine and issue into a tender. Now at this

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point on the 23rd of September the CoD then approved that ARMSCOR issues requests for information to the different contenders, that went via the South African ...

CHAIRPERSON: I'm sorry Advocate Sibeko, if you don't
5 mind there have been so much evidence about this (indistinct)
right from the beginning (indistinct) of the LFI's right up to the
day on which they made the last (indistinct). If you don't mind,
if you can just keep that in mind.

ADV SIBEKO: Chair, the purpose of the question put to
10 the witness only relates to the status, the approval status of
each of the projects at the time that the RFI's were issued, not
so much what the process, what process is required in respect
of each of the programmes which appears to be, and I accept
that that evidence has been tendered. The question only
15 sought to elicit that status of each programme at the time that
the RFI's were issued as the witness points out that in respect
of what is normally the process, the acquisition process within
the DoD ARMSCOR, certain milestones ought to have been
reached and that's all that this question sought to elicit from
20 this witness. Thank you. Mr Esterhuyse.

MR ESTERHUYSE: Fine, then we should look at the line that
says 23rd September 1997 in the vertical column in the left
hand side which is the point that we issue the RFI's, so in
terms of the submarine we have the FURS which is the
25 functional operational requirement status, it's the very first

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order indication of what is required for a submarine. On the Corvettes we already have an A-Specification which is a more advanced specification, it's a functional specification, you can in fact tender against an A-Specification. And the others, the
5 helicopters and operational requirement which is basically a very early stage of defining a requirement and the same with the fighter, the Gripen or the fighter aircraft, very early stage where we have an operational statement but not specifications and then as you are aware the trainer, the LIFT came much, in
10 a certain sense later than the other projects, so there was also not a baseline by the time that we issued the RFI's. The only one that's got fairly near to a technical baseline would then be the Corvette's.

ADV SIBEKO: So, if one has a look at the information
15 contained at page 87 one, it's reasonable to conclude as is pointed out, that in respect of the capabilities that were required in terms of the processes as provided for in the acquisition policies of the DoD and ARMSCOR it is only the Corvettes that was at such an advanced stage that an RFI or
20 RFO could be issued.

MR ESTERHUYSE: Commissioners, that would be my opinion. Correct.

ADV SIBEKO: And as for the other programmes these were still at an early stage and to justify the issuing of an RFI
25 still.

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MR ESTERHUYSE: Commissioners, under normal acquisition procedures we would not be ready then to issue these Requests for Tenders or Requests for Information.

ADV SIBEKO: And also in the course of your statement,
5 in fact in the following paragraph 3.3.3 going further you point out or you seek to indicate the urgency with which the acquisition had to take place. Could you take us through that?

MR ESTERHUYSE: Commissioners, certainly at that point in time there was a high level of urgency to get this package
10 content finalised and to be ready to contract the company or the DESO companies to procure the equipment.

ADV SIBEKO: And at meetings that you attended the issue of the urgency of the acquisition was stressed.

MR ESTERHUYSE: Commissioners, that's correct yes.

ADV SIBEKO: Now how was the Industrial Participation
15 Evaluation Process then determined after the appreciation of all the urgency and the importance of the Industrial Participation with regard to these acquisitions?

MR ESTERHUYSE: Commissioners, at this point in time and I
20 think we need to refer to 3.3.5, I engaged the CEO of ARMSCOR Mr Haywood, and I said fine, if we want to make an assessment of the value of the proposals from the British industry we should in fact go out on multi-tender to compare tenders and compare quotations against the offers that came in
25 from Britain. So, my suggestion then to him is that we from an

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ARMSCOR perspective issue multi-tenders, we go for the acquisition evaluation and then if the British bidder, one of the British companies do not come out first in the list, then the option is open to the Minister of Defence to take the issue to
5 Cabinet as an alternative to the preferred or the selected bidder.

Now in this process then the argument was that if we procure solely from Britain and we write any form of Industrial Participation, with the Industrial Participation goes a
10 penalty clause which in those days were approximately 5%, it would be natural for the supplier to add 5% to his price should he not perform on the industrial participation. If, however, it is under competitive conditions where you have a couple of companies bidding then tenderers will not easily add the 5%
15 because then they might lose the tender, so my argument with the CEO was if we go out on tender and we request the tenders in terms of Military Value plus Industrial Participation on a discriminating criteria, that would give us the best value answer in totality.

20 ADV SIBEKO: Now in terms of the evidence before this Commission various invitations or RFI's and RFO's were issued to different countries calling for participation of these tenders, so a competitive process, acquisition process was followed. Is that right?

25 MR ESTERHUYSE: Correct Commissioners. We then launched

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a competitive process for multi-tenders from multi-nationals.

ADV SIBEKO: We shall deal with that briefly later in your evidence. This brings us to Chapter 4 of your statement which you will find at page 20. Do you have that?

5 MR ESTERHUYSE: Correct, I've got it.

ADV SIBEKO: Now Chapter 4 of your statement deals with the management of the SDPP and this relates to the management committee that you have described and the approval to proceed with multi-tenders. Can you just take us
10 through that?

MR ESTERHUYSE: I think it's October 1997, the CoD approved that we go out on the basis of multi-tenders with an initial step of request for information. The chairman of ARMSCOR then issued an invitation to nine countries, I think
15 it's nine previous witnesses testified to request information from all these countries in terms of potential bidding which then opened the process to the multi-tender process.

ADV SIBEKO: Now once approval had been granted as you set out in page 21 what happened thereafter?

20 MR ESTERHUYSE: The RFI's been received, I think the period was approximately six weeks. The teams then ran through the RFI information and then started to compile the baselines for tenders which only went out later in the following year. The RFI's in principle what it says, it's a request for information,
25 it's not a process to evaluate tenders, it is collect information

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to be able to compile a request for tenders, formal tenders as best as possible.

ADV SIBEKO: Now before we deal with these RFI's just briefly can I ask you to turn to page 88 of your bundle and if
5 you could identify the document for the record please.

MR ESTERHUYSE: The document starts with a cover page that is issued to the embassies in South Africa that states that in terms of requirements that are listed on page 1 paragraph 3, Corvettes, helicopters, main battle tanks, submarines, light
10 aircraft to distribute in their industries for potential bidding ...

CHAIRPERSON: Advocate Sibeko I'm sorry, but do I understand you to be saying 88 because we are looking at 88 and we can't find what he's reading?

MR ESTERHUYSE: Could you refer me to the paragraph.

15 ADV SIBEKO: Just identify what appears at page 88.

MR ESTERHUYSE: Okay. The 88's a meeting of the Council on Defence, the CoD where the, and I must look for paragraph?

ADV SIBEKO: I need you to identify that document for the record.

20 MR ESTERHUYSE: Okay, for the record it's the minutes of a meeting of the Council of Defence on 19 September 1997.

ADV SIBEKO: Now just at the top before the heading, just after the heading it records the persons who were present at this meeting, do you see that?

25 MR ESTERHUYSE: I see that, yes.

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ADV SIBEKO: There's a Mr Joe Modise, Minister of Defence and he was the chair of this meeting, is that correct?

MR ESTERHUYSE: That's correct.

ADV SIBEKO: And there is Mr R Kasrils the Deputy
5 Minister, Mr P D Steyn, the Secretary for Defence and among others Mr Haywood, Executive Chairman ARMSCOR.

MR ESTERHUYSE: That's correct Chairman.

ADV SIBEKO: And these persons were the permanent members of the CoD, is that right?

10 MR ESTERHUYSE: That's correct, plus the Secretary.

ADV SIBEKO: Now if you turn the page, if you turn the page to 89 and you will see paragraph 4.9 it deals with "Government-to-Government Offers of Equipment", do you see that?

15 MR ESTERHUYSE: Yes, I see that.

ADV SIBEKO: And what is recorded here is that a General Du Preez briefed Council by means of an overhead slide, I suppose regarding these government-to-government offers of equipment, and you will see if you turn the page to
20 page 90 at paragraph 4.9.4 a recordal is made there after:

"After lengthy discussions of the pros and cons of the matter under discussion consensus was reached on: ...".

There is an "MoD Acting ..." - something. Are you able to make
25 that out?

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MR ESTERHUYSE: Commissioner no, I cannot decode the handwritten note there.

ADV SIBEKO: However, with regards to the typed minutes the following is recorded:

5 *"1. Planning must continue according to the graphs presented".*

Perhaps I have to stop there, are you aware of what these graphs are that were presented?

10 MR ESTERHUYSE: Chairman I was not present and I'm not aware what the graphs include.

ADV SIBEKO: Right, it talks of "proposed way forward is accepted, the workgroup is to continue". Do you know what workgroup is referred to in this minute?

15 MR ESTERHUYSE: Although it's not specifically stated that would then be the Management Committee that engage DESO on the discussions.

ADV SIBEKO: And at point 5 it says:

20 *"A Cabinet memorandum must be drawn up before December 1997 as part of the process of obtaining Government commitment".*

At 6 it says:

25 *"The letter to the various governments which had made offer must be dispatched as soon as possible so as to allow sufficient time for them to submit their offers in detail by the end of October 1997".*

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Now would this refer to the RFI's that were subsequently issued to various governments?

MR ESTERHUYSE: Chairman, that would be my conclusion.

5 ADV SIBEKO: If I could then ask you to turn to tab 9 of your bundle, there you will find page 91. Could you please identify that document for the record?

MR ESTERHUYSE: Commissioners, this would be the document that's been issued to the South African embassies to inform their respective industries of the requirement for the products listed at the bottom of the page.

ADV SIBEKO: And this would be the invitation that was sent to the various embassies that you have already alluded to in your evidence.

MR ESTERHUYSE: Commissioner, that's correct.

15 CHAIRPERSON: Advocate Sibeko, maybe for the purpose of (indistinct) what is correct, is that correct that letters that appear on page 91 (indistinct)?

ADV SIBEKO: Now look at page 91, could you just identify that document and having looked at it tell the Commissioners what that document is.

MR ESTERHUYSE: Chairman, the document states that it's addressed to His Excellency in this particular case, which is then the Commissioner of the Canadian Embassy in South Africa.

25 ADV SIBEKO: Now what is the heading of that document?

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MR ESTERHUYSE: It's called "Strategic Defence Alliances".

ADV SIBEKO: Now at paragraph 1 it says;

"In response to presentations made and proposals received on the Strategic Defence Alliance, herewith a response to such an overview of the way forward".

Perhaps let's for purposes for completeness, could you just indicate where this letter is from, we see that at the top right hand corner of page 91.

MR ESTERHUYSE: The letter is issued by the Office of the Minister of Defence on the top right hand side.

ADV SIBEKO: And what is the date of that letter?

MR ESTERHUYSE: 23rd December 1997.

ADV SIBEKO: Now if you go to paragraph 2 of that letter the following is recorded:

"Numerous products have been offered to the Ministry of Defence for consideration in response to the SANDF equipment requirements".

At 3 it's recorded:

"We are, as you are aware, wanting to procure a number of key products in our government-to-government procurement arrangement".

And it then proceeds to say:

"A full product range comprises of the following:

- Corvettes (including the Maritime Patrol

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Helicopter)

- *Light Utility Helicopters*
- *Main Battle Tanks*
- *Submarines*
- 5 - *Light Fighter Aircraft”.*

On the next page it says:

“The technical details of the hardware element requirements are available through ARMSCOR” .

10 And if I may draw your attention to page 93, at page [sic] it says:

“A response to the above on or before 11h00 on 31 October 1997 is required”.

And it is signed by Minister Modise. What do you understand the contents of this letter to be, or the import thereof to be?

15 MR ESTERHUYSE: Commissioners, I believe this letter is a statement to the different ambassadors of countries in South Africa, overseas countries in South Africa then to request them to approach their industries with the view of soliciting responses in terms of an RFI against these particular projects.

20 ADV SIBEKO: And these projects are similar to those identified as the core capabilities that were required in terms of the Defence Review and as you pointed out at page 86?

MR ESTERHUYSE: That is correct Commissioner.

25 ADV SIBEKO: Now can I ask you to turn to page 94 and would you please identify that document?

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MR ESTERHUYSE: Chairpersons, this is a document called the "Management Directive : Evaluation ...". This is the document identified as "Management Directive : Evaluation of International Offers" that has been issued as a directive under
5 the heading "Directive 4/414".

ADV SIBEKO: Now do you have page numbered 94 in the middle? It's a document that looks like this.

MR ESTERHUYSE: Pardon. Thank you yes, I've got it.

ADV SIBEKO: Can you then identify that document for
10 the record please.

MR ESTERHUYSE: The document says it's from ARMSCOR, it's signed by the Executive Chairman of ARMSCOR, it's called "Strategic Defence Alliances", and:

*"Attached please find a copy of the letter from
15 Minister of Defence".*

Which is the previous tab, and basically it's a cover letter. Pardon. It's a cover letter for the previous tab which is a document from ARMSCOR, signed by the chairman of ARMSCOR, executive chairman of ARMSCOR, called Strategic
20 Defence Alliance, where it basically states that:

"Attached is a copy of the letter from the Minister of Defence".

ADV SIBEKO: And it's also addressed to the Economic Counsellor of the High Commission of Canada, similar to the
25 previous letter you alluded to?

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MR ESTERHUYSE: Commissioners yes, correct.

ADV SIBEKO: Is it correct that similar letters were sent to various other high Commissions or consulate offices of the various countries?

5 MR ESTERHUYSE: Commissioners, that's my understanding, I have not seen all of them personally.

ADV SIBEKO: But you are aware that various countries were invited to respond to the Requests for Information that were required for the purposes of the acquisition of the SDP's?

10 MR ESTERHUYSE: Commissioners, that's correct.

ADV SIBEKO: Now at page 21 of your statement at paragraph 4.2.2 you make reference to a directive that was issued by General Du Preez, could you take us through that please.

15 MR ESTERHUYSE: Yes, General Du Preez is the Chief of Logistics in the South African Defence Force at the time and he issues a directive on behalf of the SANDF, which is the attachment 10, and according to this directive Du Preez would then chair the Management Committee that we previously
20 referred to and I would be secundus/leader. The committee remains a coordinating committee and the principles and rules of MODAC applies, although in this document he refers to a Ministerial Directive MOD4/147. Neither delegations or mandates were requested to support this directive and
25 therefore the Committee remains in principle a coordinating

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committee, however, in the document we also identify that the teams, the project teams, technical teams, the Offset or Industrial Participation Team and the General Manager Finance as the leader of the Finance Evaluation Team, which was the
5 Mr Pierre Hoffman.

ADV SIBEKO: Now before we deal with the directive in some detail you make reference to the lines of communication that are provided for in that directive. Could you just take us through that?

10 MR ESTERHUYSE: Commissioners, in Figure 4.2 I've indicated what the impact of this directive is in terms of lines of communication and basically it says that we now have integrated teams that, although they still report to their own divisions, that integrated team will be guided by this
15 Management Committee, but the responsibility to report into the MODAC structures remains as stated in MODAC.

ADV SIBEKO: Now can I ask you to turn to page 95, this is at tab 10 of your bundle.

MR ESTERHUYSE: I've got it, yes.

20 ADV SIBEKO: Can you identify that document for the record Mr Esterhuyse.

MR ESTERHUYSE: Commissioners, this document is the directive I've just referred to, "Management Directive: Evaluation of International Officers" and it's issued by General
25 Du Preez as a department, not a SANDF directive.

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ADV SIBEKO: At what stage during the acquisition process did you become aware of this document, if at all?

MR ESTERHUYSE: Commissioners, I'm not very certain when I first became aware of the document but the document had no direct impact on the activities and the processes we were following at the time and as far as I'm concerned I'm quite happy by the fact that General Du Preez would like to chair this meeting, so I did not object to it.

ADV SIBEKO: Now referenced in this document is a DoD Policy Directive 4/147 dated 8 August 1997 and it's entitled: "MoD Policy for dealing with International Defence Equipment Offers in the MoD". You will find that document, it seems to be a document that appears as from page 102 of that same tab 10.

MR ESTERHUYSE: Correct, I have the document.

ADV SIBEKO: Now that document is dated 8 August 1997 and records the following at paragraph 1 thereof:

"The process whereby international government-to-government defence equipment offers are dealt with in the Department of Defence and ARMSCOR is to be in accordance with this policy directive which includes the MoD Policy in Appendix A".

When did you see this document for the first time?

MR ESTERHUYSE: Commissioners, I must have seen it in that period because I'm one of the persons for information at the bottom of the document, I can't recall the detail of this

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document in that particular period, I became more aware of this document when the ARMSCOR witnesses start to give evidence here at the Commission.

ADV SIBEKO: But as this document provides at
5 paragraph 1 of the Policy Decisions” that the process in terms of which International Government-to-Government Defence Equipment Offers are to be dealt with in accordance with this policy directive, would it have been your understanding that there would be a deviation from the MODAC process insofar as
10 international government-to-government defence equipment offers were to be dealt with?

MR ESTERHUYSE: Commissioners, at the time that this document was drawn up and signed the involved authorities indicates to be only the Defence Force and the Secretary. The,
15 at the bottom it says ... Sorry, not correct. Item 3.4 says that for information ARMSCOR is included in this directive on a basis for information only. If we then read paragraph 5 it says that:

20 *“This policy is designed for use within ARMSCOR upon authorisation by the Armaments Acquisition Council (AAC)”.*

Now I’m unaware that at any stage the AAC discussed or issued this directive to ARMSCOR.

CHAIRPERSON: I’m sorry Advocate Sibeko, where are we
25 reading?

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ADV SIBEKO: I beg your pardon Chair, if the Chair could have regard, and Commissioner Musi, to page 102 of the bundle at paragraph 5, that is the reference that was made by the witness. It goes over to page 103. Have you found that Chair?
5 Thank you. Could you proceed Mr Esterhuysen, you were saying regarding what is set out in paragraph 5?

MR ESTERHUYSEN: Paragraph 5 states that:

"This policy ...".

In the second sentence there:

10 *"This policy is designed for use within ARMSCOR upon authorisation of the Armaments Acquisition Council (AAC)"*.

Now to the best of my knowledge this never served at the AAC and there's no reference in the documents at my disposal of
15 such a decision, so as far as the document is concerned, at this point in time the document is for information only to ARMSCOR.

ADV SIBEKO: Now if I understood your evidence one reads paragraph 3 of that document with paragraph 5, the
20 following conclusion must then be made that one; as set out in paragraph 3 of that document, this policy directive, the DoD Policy Directive was issued in relation to the authorities listed under paragraph 3a, b and c, is that correct?

MR ESTERHUYSEN: That's correct Chairman.

25 ADV SIBEKO: And that if one has regard to that

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paragraph 3a, b and c ARMSCOR is not included therein, correct?

MR ESTERHUYSE: ARMSCOR is not included as an executive authority as indicated in 3b.

5 ADV SIBEKO: Now if one has regard then to paragraph 5 ARMSCOR is only included for information only and not to action.

MR ESTERHUYSE: Chairman that's correct.

ADV SIBEKO: But that ARMSCOR would be required to use this document upon authorisation by the AAC.

MR ESTERHUYSE: Chairman, that's correct.

ADV SIBEKO: You state that as far as you are aware that is from your involvement in the acquisition of the packages up to the time that you stopped participating actively and you left ARMSCOR, the AAC did not make such authorisation to ARMSCOR to apply that policy.

MR ESTERHUYSE: Chairman, as best to my knowledge that's correct yes.

CHAIRPERSON: I'm sorry Advocate Sibeko, Commissioner Musi has just brought it to my attention that on this page 1 of 3 there's a note there which (indistinct), can you perhaps be in a position to assist us?

ADV SIBEKO: Mr Esterhuyse you will see that there is at page 103 provision made there for a signature of Chief of the Defence, the Defence Force General Meiring at the time, and

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the Secretary of Defence on the other side, Mr Steyn at the time, and it is written in longhand that "This is approved in Council of Defence", I presume the meeting of 8 August 1997 and there is a signature there, do you see it?

5 MR ESTERHUYSE: Chairman, is the question whether I identify the signature?

ADV SIBEKO: No, the question at this stage is do you see the, what's written in longhand there: "Approved in Council of Defence" and there's a date 8 August 1997, do you see that?

10 MR ESTERHUYSE: Yes, I see that.

ADV SIBEKO: Now there is a signature below that longhand inscription, are you able to identify that signature?

MR ESTERHUYSE: Chairman, as best as I can identify the signature it looks similar to the one that's just on top of it that says "Secretary for Defence"

15 ADV SIBEKO: Now in the light of what's written in there are you aware, what is your comment to what's written here that: "It was approved in Council of Defence Meeting of 8 August 1997"?

20 MR ESTERHUYSE: Chairman, without the full detail of the Council of Defence on 8 August that would be very much a subjective assessment I would be guessing.

CHAIRPERSON: Just hold on please.

ADV SIBEKO: Thank you. Are you aware of a Council of
25 Defence meeting which may have been held on 8 August 1997?

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MR ESTERHUYSE: There is in the database at ARMSCOR an indication of a meeting held but they are not complete minutes. Sorry, there is in the database an indication that a meeting was held on 8 August but the minutes are incomplete.

5 ADV SIBEKO: So, in the light of the incomplete minute of that meeting in the database that you have had access to during the course of preparing for this hearing you have not been able to ascertain for yourself if a meeting was held on 8 August 1997 at which this directive was approved?

10 MR ESTERHUYSE: The document in the database indicates in a handwritten note that the meeting took place but on the document itself I cannot confirm the date, so the answer probably then would be negative.

ADV SIBEKO: Alright. Now you have referred in
15 paragraph 4.2.2 of your statement at page 22 of the various project teams that were established, and you also dealt with the lines of communication. At 4.2.3 you make reference to a Cabinet Subcommittee that was also referred to as the Inter-Ministerial Cabinet Committee having been established in 1998,
20 so could you just run through this quickly.

MR ESTERHUYSE: Commissioners, to the best of my knowledge the Inter-Ministerial Cabinet Committee was established somewhere early 1998, I've not seen any reference in documentation or any mandate for this particular Committee,
25 but it certainly to my personal experience did exist from

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somewhere early in 1998 in terms of being a Committee that the Department inform on the progress of the Strategic Defence Packages.

ADV SIBEKO: And to your knowledge who were the
5 ministers or members of Cabinet who were involved, who served on that Cabinet Subcommittee?

MR ESTERHUYSE: Again to my understanding it was the Deputy President, Minister of Defence, Minister of Finance, Minister of Public Enterprise, Minister of Trade and Industries,
10 but I'm unsure, it could also have included the Deputy Minister of Defence.

ADV SIBEKO: Now if you turn the page in your statement to page 23 to paragraph 4.2.4 you make reference to a CoD Meeting that was held on 20 March 1998. Can you take us
15 through that quickly?

MR ESTERHUYSE: Commissioners, this is correct. We then have to look at the Annexure "EE11" as a reference.

ADV SIBEKO: Chair and Commissioner Musi you will find that at page 110 of the bundle. Could you please identify that
20 document for the record at page 110?

MR ESTERHUYSE: The documents are the minutes of the third Council on Defence Meeting held on 10 March 1998 at 10h00 in Pretoria and it is the permanent members of the Commission present, and at this stage yes, that's it.

ADV SIBEKO: If I may ask you to turn to paragraph 5.3.2

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of that minute you will find at page 112, there is a discussion there of the government-to-government offers, do you see that?

MR ESTERHUYSE: I see that Commissioners.

ADV SIBEKO: It is recorded there that Advocate
5 Hlongwane and Mr Shaikh and Commander Verster joined the meeting at that point, is that right?

MR ESTERHUYSE: Including General Du Preez, yes.

ADV SIBEKO: Yes. Now what is it that you seek to highlight in respect of the minutes, the CoD Meeting of
10 20 March 1998?

MR ESTERHUYSE: Can I refer you then to paragraph 5.3.4.

ADV SIBEKO: It's on page?

MR ESTERHUYSE: On page 113.

ADV SIBEKO: Yes?

15 MR ESTERHUYSE: Or let's start with 5.3.3:

*"Gen Du Preez state the aim of a presentation to obtain guidance from the Council regarding the overall management of this particular programme for the government-to-government offers. He presents
20 this with four slides that's attached to the minutes".*

That starts on page 118 and runs for four pages. My understanding of what General Du Preez is presenting is better described on page 119 which is his slides, where he sets out to get a formal constitution for a management committee to
25 manage the Strategic Defence Packages with the request that

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this Committee, this Management Committee would then consist of the members indicated there, with the Chief of Acquisition as the chairman and, or Chief of Acquisition as chairman and myself as co-chairman or alternative chairman between the two
5 of us. Then in paragraph 3 it states that the issue here is the constitution of a management committee with certain powers and the appointment of the chairpersons indicated above, and a directive to implement the evaluation which refers to the evaluation of the Strategic Defence Packages. That was the
10 gist of his presentation. Then there is a lengthy debate over a couple of pages, until we get to page 116 where under 5.3.19 at the bottom the Council of Defence made a decision and stated the following:

15 *“Decision. Council will come back to the working group ...”.*

Which is what he presented:

“... with a final decision. In the meantime nothing is stopping the working group from continuing with the work”.

20 ADV SIBEKO: Now if one has regard to the decision recorded there at page 116 at paragraph 5.3.1.9, is it fair to conclude that at this meeting of the Council on Defence on 20 March 1998 approval of the constitution of the Management Committee that was proposed was not approved?

25 MR ESTERHUYSE: Commissioners that’s correct, that’s also

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my interpretation.

ADV SIBEKO: Now can I ask you to turn to page 114 of that minutes. You will see at paragraph 5.3.8 the following is recorded:

5 *“Mr Shaikh said that by end of July the Department
of Defence will be able to make the decision on
what to buy. The timeframe suggested by slide 3,
page 3 Appendix H, allowed for consultation with
the AACB, AASB and the AAC. The AACB and AASB
10 can be eliminated, thereby moving the timeframe to
the left. How long it would take to get Parliament’s
approval was not under the control of the
workgroup. Once Parliament has decided which
contracts are awarded to whom ARMSCOR goes into
15 a contract management phase finalising the details
of the contracts. The equipment decided upon is
broken down to the smallest elements and contracts
are negotiated as to where and by whom the items
will be manufactured”.*

20 Now you see in the second sentence, or yes, the second and
third sentence reference is made to the elimination of the
AACB and the AASB as a result of the urgency of this matter.
What do you make of that?

MR ESTERHUYSE: Chairman I cannot really comment, I was
25 not at this meeting, but if I look at 5.3.10 there is clearly a

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major urgency to try and get the projects finalised by July, so now we're already in, is it March, and we're on a very tight timeline, so I would say, but it's interpretation, that the process running through the AAC and AASB is relatively time consuming, that a suggestion is made here that we can probably in a sense move, go directly to the AAC and not go through the process, the MODAC process in its entirety.

5

ADV SIBEKO: Now at the end of that discussion there's a decision recorded there that:

10

"All efforts must be made to achieve the original date of July".

Now would this be consistent with the elimination of the processes before the AACB and the AASB on the acquisition process regarding these capabilities?

15

MR ESTERHUYSE: Chairman, I can only give a personal view here. I would not have supported an elimination of those two committees, they are cardinal to the process of acquisition but that's a personal view.

20

ADV SIBEKO: Thank you. Now in 4.2.5 of your statement you make reference to a meeting of the IOMC of 1 April 1998.

CHAIRPERSON: Advocate Sibeko, which page are you referring to?

25

ADV SIBEKO: I beg your pardon Chair, this is page 23 of the witness's statement at paragraph 4.2.5. Thank you. Perhaps Chair for convenience it might just be of some help

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that the statement were removed from the actual bundle of documents because it makes for easier reading. Perhaps we'll attend to that during the course of the adjournment. Right Mr Esterhuysen, paragraph 4.2.5 that deals with the meeting of the IOMC, if you could just remind us what IOMC is?

MR ESTERHUYSE: Commissioners, when General Du Preez issued his directive that was then under name-change of the Management Committee to an abbreviation that is the International Offers Management Committee, which in fact is the same committee, so at a meeting on the 1st of April a document is tabled, but not discussed that includes a draft constitution for the IOMC but now referred to as SOFCOM.

ADV SIBEKO: Now this minute of the IOMC comes after the directive that was issued by General Du Preez in terms of which he appointed himself the chairman of the IOMC. Did he chair any meeting according to your knowledge?

MR ESTERHUYSE: Commissioners, as far as I can recall and as far as I can find information in the database, no.

ADV SIBEKO: The meeting on 1 April 1998 is chaired by yourself, correct?

MR ESTERHUYSE: That's correct.

ADV SIBEKO: What transpired with regard to the adoption of the constitution as proposed by Du Preez?

MR ESTERHUYSE: Chairman let me just make sure I understand the question. If we refer to the constitution

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proposed by Du Preez, are we referring to the constitution as proposed in the 20 March CoD Meeting I take it?

ADV SIBEKO: If you have regard to the second sentence of paragraph 4.2.5 at page 23 of your statement you state the following:

“The secretary of the meeting tabled a draft constitution for the IOMC, which would now be referred to as SOFCOM, for consideration prior to the next meeting”.

10 Now could you just tell the Commissioners what happened with regard to the tabling of that constitution?

MR ESTERHUYSE: Commissioners, that draft constitution is added to the minutes of the meeting. It was not discussed in the meeting, it says that under “Consideration” at the next meeting or prior to the next meeting.

ADV SIBEKO: Was that constitution subsequent to the tabling thereof at this meeting discussed or considered as proposed in the minute?

MR ESTERHUYSE: Chairman, my recollection is no, and I cannot find any reference in any minutes that the constitution of the SOFCOM has been discussed at the IOMC or the SOFCOM.

ADV SIBEKO: As you were the chairperson of this IOMC you have chaired the meeting at which this matter was discussed, isn't it?

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MR ESTERHUYSE: Commissioners, at the meeting 1st of April the document was just added, eventually added as an appendix as a ..., to the draft, to the minutes. It's a draft constitution attached to the minutes of 1 April, there was no discussion.

5 ADV SIBEKO: Right, at paragraph 4.2.6 page 23 of your statement you then deal with a progress report that you presented to the ARMSCOR Board on the SDPP's, could you just elaborate on that?

MR ESTERHUYSE: Commissioners that's correct, in May I did
10 a presentation, it's basically a slide presentation, to present the status on the defence packages. You will recall that the responses that came in from the tenderers were only received on the 15th of May, so this is a very early presentation on the status of the Strategic Defence Projects, we have not studied
15 the documents and I have confirmed certain understandings, the fact in terms of the Value System and I stated that we will after completion of the evaluations submit the recommendations to the AACB, AASB, AAC and CoD. And then once that's approved in principle for procurement we will then return to the
20 board before the final recommendations that would eventually go to Cabinet.

I explained in this particular meeting that the Secretary for Defence as a director-general of the department is the accountable officer in the Department of Defence.
25 ARMSCOR under this umbrella is responsible for best value

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procurement, therefore the Department of Defence and Secretary for Defence is responsible for the funding, the financing of the project, ARMSCOR cannot issue, finalise tenders before such financial arrangements are in place. And
5 then I indicated:

“The Board is fully responsible for the execution of the SDPP’s”.

And there’s a copy attached as tab 13.

ADV SIBEKO: Can I ask you to take your attention to
10 page 136 of the bundle and ask you to identify the document you will find at tab 13. Could you identify the document?

MR ESTERHUYSE: Yes, I can identify the document. These are the minutes of the meeting, board meeting on the 25th of May and it’s the ARMSCOR Board present and there are
15 a number of people invited as attendees, myself, Mr De Jager and some of my colleagues.

ADV SIBEKO: Chair, it is page 136.

CHAIRPERSON: Oh, the 26th of May and 5th of May? I think it’s very confusing.

20 MR ESTERHUYSE: It says at the top 26th of May.

ADV SIBEKO: Yes, you may proceed Mr Esterhuyse. You’ve stated that is the meeting that you are chairing, is that right?

MR ESTERHUYSE: That’s correct, yes.

25 ADV SIBEKO: Now if you turn to page 141 of that minute

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you will find the heading says "Government-to-Government Offers" and somebody wrote in longhand "Progress Report". Is that the progress report you were referring to earlier in your evidence?

5 MR ESTERHUYSE: Commissioners, that's correct.

ADV SIBEKO: And if one has regard to page 143 there are various capabilities that are referred to. At page 143 you will find Corvettes, Light Utility Helicopters, Tank, Forward Plan, and this is what, this the progress you gave to the
10 Board?

MR ESTERHUYSE: Commissioners, that's correct.

ADV SIBEKO: And at page 144 you will see at the middle of that page you make reference to certain recommendations that relate to the tendering process as well as the
15 accountability regarding the management of these tenders, is it correct?

MR ESTERHUYSE: Commissioners, that's correct.

ADV SIBEKO: And that coincides with what is set out in paragraph 4.2.6 of your statement at page 23.

20 MR ESTERHUYSE: Commissioners, that's correct.

ADV SIBEKO: Now if you turn the page to page 24 of your statement at paragraph 4.3 that deals with some kind of mathematical process that seeks to give meaning to the Best Value Equation Evolution that was to be used in the evaluation
25 of the various tenders. Could you take us through that please.

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MR ESTERHUYSE: Commissioners, this is the paragraph that defines the evolution of the Best Value Equation where we in the first round generated and developed a model that says the best value we will take into account on the basis of 50% military value and 50% industrial participation value. In this process we then said fine, we must include the assessment of Industrial Value, we must then, I then tasked the ARMSCOR Countertrade Division to develop an Industrial Participation model that will take DIP, Defence Industrial Participation and National Industrial Participation into account on an equal basis so that they weight both equally in terms of the normalisation process.

I then presented this model to Mr Haywood as a weighted distribution indicated, as in indicated in Figure 3.3 and this model we will find in the different ARMSCOR documentation and the DoD documentation and it's best to look at the figure that says the best value is this military value plus the industrial value, both on an equal basis of 50% each, divided by financial considerations.

Financial considerations at this point in time is not clearly defined because financial considerations can have different interpretations. We must still establish at this point in time what we use as the denominator in the equation. What do you use to divide the values at the top to obtain best value. That's currently what's shown there in Figure 3.3.

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One can take that equation mathematically and you can say best value is military value over cost, you then have to define what you understand under cost, plus industrial participation over cost. This eventually can translate then into a best value equation that's equal to Military Value Index and an Industrial Value Index. The concept is important because this concept carries over finally to the final selection process in June 1998.

ADV SIBEKO: You mention in the explanation of that concept of the best value to a 50/50 ratio that was arrived at eventually. Now could you just take us through that?

MR ESTERHUYSE: Chairperson, the 50/50 equation or value distribution was entirely an arbitrary ratio. There is no mathematical or engineering method to really determine a ratio between the two values. What I argued is that in terms of Military Value, if we can make sure that the products that we tender, that we have in our tender meets the Defence Force requirements then we should allow for the industrial participation, if one country or company presents better industrial participation, that that could on the basis of a discriminating criteria swing this, the preference to a company that offers more industrial participation. That was the concept based in that formula.

ADV SIBEKO: Now the best value 50/50 equation that was developed, who developed that?

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MR ESTERHUYSE: Chairman, in terms of development it was more a case of making a subjective judgement between the relative weights, military and industrial participation, and this in fact was my recommendation to divide the two weights
5 equally.

ADV SIBEKO: So, you were the author of, and developer of the 50/50 equation?

MR ESTERHUYSE: I would say I suggested it.

ADV SIBEKO: Now this was presented, this 50/50
10 equation for best value evaluation, was presented to the ARMSCOR Board for approval, is that correct?

MR ESTERHUYSE: That is correct. Could you just indicate the paragraph to me?

ADV SIBEKO: If you have regard to page 25 of your
15 statement at paragraph 4.3.7 reference is made there at 1 October 1997:

“Mr Haywood with the support of the Board and Captain Dewey presented the 50/50 equation to the CoD”.

20 Could you take us through that?

MR ESTERHUYSE: That’s correct, I was not present at the meeting but Mr Haywood and the secretary for the Management Committee Captain Dewey then presented by slides this equation to the Council of Defence which then approved the
25 equation basically under statement as “Accepted as a tool for

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officials during evaluation phase”.

ADV SIBEKO: Now perhaps before the presentation to the CoD, if you look at 4.3.6 of your statement at page 25 you say that:

5 *“A ratio of 50/50 MV and IP was formulated and discussed at the MC”.*

This would be the Ministerial Committee, is that right?

MR ESTERHUYSE: It’s Management Committee.

ADV SIBEKO: Management Committee. This will be the
10 Management Committee of ARMSCOR.

MR ESTERHUYSE: No, this is not the Management, this is the Management Committee for the Strategic Defence Package which we formulated in March 1997.

ADV SIBEKO: You then say:

15 *“I presented to Mr Haywood the value equation with a weighted distribution as indicated in Figure 3.3 and this was submitted to the Board for approval”.*

Do you have personal knowledge that the Board did that, or you (indistinct)?

20 MR ESTERHUYSE: I do not have any reference in documentation that it was approved. The fact that I made a presentation late in May 1998 which we already referred to that’s restated this, indicates that it was accepted by the Board, but as such I do not have a written confirmation of that
25 acceptance.

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ADV SIBEKO: But you do say at paragraph 4.3.7 at page 25 that:

"This matter was submitted to the CoD which approved the usage thereof as a tool for officials during the evaluation phase".

5

MR ESTERHUYSE: Commissioners, that's correct.

ADV SIBEKO: Can I ask you to turn to tab 14 of the bundle and go to page 146.

MR ESTERHUYSE: I have the document, yes.

10 ADV SIBEKO: Now the document has the heading "Ministry of Defence". It says "Minutes of the Ninth Council of Defence Meeting (9/97) Held in Pretoria on 31 October 1997" and it is signed by a K W N Snowball, Military Secretary. Who is Snowball?

15 MR ESTERHUYSE: Commissioners, my understanding is the Military Secretary of the Minister of Defence and he's also the secretary for the CoD meetings.

ADV SIBEKO: Now if I ask you to turn to page 147, that's the next page, there is a recordal at 5.5 dealing with
20 "International Offers : Contender Evaluation". Do you see that?

MR ESTERHUYSE: I see that, that's correct.

ADV SIBEKO: Now under paragraph 5.5 there are certain points referred to there which refer to Mr Haywood, making
25 reference to the Best Value for South Africa and three aspects

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were important, and it refers to the Military Value, secondly offsets and thirdly overall financial considerations. It goes on and if you see the next page at 148 at 5.5.12 it's recorded there:

5 *“Mr Haywood emphasised that the decision needed from the Minister was if he was happy with the 50/50 ratio between Military Value and Industrial Participation”.*

Do you see that?

10 MR ESTERHUYSE: Yes, I see that. It's correct.

ADV SIBEKO: Now if you turn to page 150 you see something under the heading “Second Order Evaluation Value System”, it says “Best Value = Military Value + Industrial Participation” and there's a denominator “Financing Considerations”. Would the figure set out there, does that figure have any relevance with Figure 3.3 that he referred to in the evidence which appears at page 25 of your statement?

15 MR ESTERHUYSE: Commissioners that's the same equation, the same figure.

20 ADV SIBEKO: So, this is the confirmation that it was resented at the CoD, is that right?

MR ESTERHUYSE: That's correct Commissioners.

ADV SIBEKO: Now at page 26 of your statement you make reference to what you've stated earlier that:

25 *“The financing considerations aspect of the*

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equation ...".

Presented a challenge. Could you just tell us, remind us what this challenge was precisely?

5 MR ESTERHUYSE: Commissioners, the, when you look at the equation, the component under the line, the denominator can be a number of options which could consist of, you can take either the tender price or you can take the programme cost price or you can take cost, the cost plus financing costs. There are a number of options. Probably the most valid one
10 would be lifecycle cost but lifecycle cost are close to impossible to calculate with any accuracy. Therefore at this stage what we started, a debate, where we said let's use the nett present value as the denominator under the equation which would be the closest to a fair assessment of the tenders we
15 received from the bidders. And that point then we were not yet, we have not yet confirmed what should be the denominator in the equation.

ADV SIBEKO: You mentioned that the use of the nett present value, nett present value was considered to be used in
20 the issue or in the denominator of financing considerations as lifecycle costs were difficult to calculate. What is the nett present value you are talking about?

MR ESTERHUYSE: Nett present value is a ... Commissioners, nett present value is a calculation that indicates to you if you
25 are going to finance a project or you are going to ask

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somebody to finance the project what would the cost of that project be in current day values, in current day Rand. That calculation is the best way to compare two bidders against each other if they have different payment schemes presented in their bidding. That's the reason for nett present value and this then applied to the Defence Packages, since there's been a large financing component included in the package that stretch over 10 to 12 years.

ADV SIBEKO: At page 27 of your statement paragraph 4.3.11 you elaborate on the concept of the nett present value calculation and you refer to an example that is contained in Annexure 15 of your, of the bundle, in which you try and explain how the nett present value actually works and I would like to request the Commissioners to turn their attention to page 151 of the bundle as the witness takes us through the concept of the nett present value. You will find that under tab 15.

MR ESTERHUYSE: Commissioners, 151 in fact starts off with the process of calculating best value, but the nett present value concept is on page 154, in fact 153 starts with the concept of the nett present value. What I've done is I've taken a very simplified model where I said let's take an example where we have two bidders, a Bidder A and a Bidder B. They present a product to us and both present the price of R1 million.

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The difference between Bidder A, that's bullet, paragraph 5 there, the difference between Bidder A and Bidder B is that Bidder A demands payment immediately on, over the counter on receipt of the product, and Bidder B allows us terms of payment that we can pay only after two years. Now if we want to assess these two bidders against each other then we say which one in fact will give us a better tender, the money has got a certain time value which is called the discount factor.

The discount factor in the defence, Strategic Defence Packages was given to us by Treasury at 13.5% as Pierre Hoffman indicated, therefore the, if you then calculate these two bids, one that you pay immediately and the one which you pay after two years the process is the nett present value of Bidder A where you pay immediately is R1 million, Bidder B allows you a grace period of two years, therefore you can in fact take that money and go and invest it at the Treasury rate of 13.5%, that would give you an interest over two years of R0.288 million, which means that the nett present value of Bidder B is in fact R1 million minus this factor, the nett present value, the discount factor of R0.288, so effectively Bidder A is charging you a substantially lower price than Bidder A. That's in a simplified model.

Now if you page over and you say fine, I intend to purchase R30bn of equipment and I want to spread the payments equally over a period of 10 years at an amount that

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accumulates to the total of R30bn, then on the graph there we can see that if we take that R30bn and we take it at a discount factor of 8%, then the nett present value of this proposal would be R19.5bn. The concept is that in fact that I'm paying in
5 current day Rand, although we're paying over a schedule, I'll be getting value for R19.5bn which is a great saving in terms of value to the client. In the case of the, that's at 8%. In the case of the Strategic Defence Projects, in the submissions to Cabinet which we will later indicate, the nominal value in 1998
10 as presented in the tables has been R29.66 million and on the same tables we indicate that the nett present value in 1998 was in fact at the Treasury discount rate R17.6bn. It's a relatively difficult concept to kind of digest but we have in terms of the Defence Package received packet, the kind of total value at a very much lower nett present value than the R30bn that's
15 shown in the documentation. It's a concept of value for money.

ADV SIBEKO: Now using the nett present value approach you say that the packages were acquired at a much reduced price than was budgeted for, is that correct?

20 MR ESTERHUYSE: Should we have paid immediately on receipt, on the point that we receive it, we would have paid more.

ADV SIBEKO: So, using the nett present value as a denominator there was a saving by Government in the
25 acquisition of these packages by spreading the payments

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schedule over a number of years?

MR ESTERHUYSE: Commissioners that's correct, that is what Donaldson presented to the Commission is the use of the financing over an extended period and of course the unknown
5 factor here is that we started off with the projection of 13.5% Eventually Treasury used other percentages in their calculations but I think in total what we can say is that the Defence Packages that we procured under the Strategic Defence Programme was in fact very good value for money.

10 ADV SIBEKO: And that's applying the nett present value approach rather than the other financial considerations?

MR ESTERHUYSE: That is correct. At this point in time we're of course not yet contracted. The intent was to use nett present value to distinguish between contractors.

15 ADV SIBEKO: And you say at the conclusion of paragraph 4.3.11 of your statement at page 27 that the nett present value results were reflected in the presentation to the Ministerial Committee as a standalone consideration and this one would find at Annexure "EE16" to the bundle of documents. Is that
20 right?

MR ESTERHUYSE: Commissioners, that's correct.

ADV SIBEKO: Can I ask you to turn to tab 16 of the bundle of documents, it starts at page 155. Page 155.

MR ESTERHUYSE: I have the document.

25 ADV SIBEKO: Could you please identify the document for

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the record.

MR ESTERHUYSE: The document is called "Defence Strategic Package Offer Evaluation" which is the actual document that was presented to the Interdepartmental Cabinet Committee on the 31st of August 1998, which is the final document in terms of all the calculations regarding the value systems and value considerations for the Strategic Defence Packages.

ADV SIBEKO: At page 158 of that document you will find the "Executive Summary" and when you turn the pages there are cost summaries relating to the various programmes, is that right?

MR ESTERHUYSE: That is correct.

ADV SIBEKO: And it is the cost summaries as presented at pages 159 and 160 which were submitted to the Ministerial Committee or the Cabinet Committee for their consideration?

MR ESTERHUYSE: That is correct.

ADV SIBEKO: The further pages in this document ...

COMMISSIONER MUSI: (Indistinct).

MR ESTERHUYSE: Commissioners, this had been presented to the Cabinet Committee on the 31st of August 1998.

COMMISSIONER MUSI: Thank you.

CHAIRPERSON: Am I correct to assume that you were part of the people who prepared this document?

MR ESTERHUYSE: Commissioner, can you just repeat the question, I didn't ...

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CHAIRPERSON: Am I right to say that this is the document you presented to Cabinet, the one which appears on your (indistinct), you were party to its preparation?

5 MR ESTERHUYSE: Commissioner to elements of it, not the complete document. Some elements in this document will come from DTI and from Treasury, so there are elements yes, that I participated in.

CHAIRPERSON: I see that from your previous evidence that were led that SOFCOM, one of their functions was to
10 consolidate the results, what does that mean to consolidate the results?

MR ESTERHUYSE: Chairman we will..., Chairman to answer to that question I would like to hold it until we get to the minutes of the 1st and 2nd July 1988 where we actually have the
15 consolidation of all the information into one, at one step, or we must, we can go there now but then we need to find the minutes of that particular meeting where this process took place in terms of consolidation.

CHAIRPERSON: Advocate Sibeko, you can do it the way
20 you want to do it, as long as at the end of it he explains to us exactly what it means to consolidate the results.

ADV SIBEKO: We will do Chair. Just briefly conceptually without going into details we will deal with in the fullness of time, what was, what involved the consolidation of results of
25 the various evaluation processes undertaken by various

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integrated project teams at the SOFCOM level?

MR ESTERHUYSE: The consolidation refers to the selection of the individual teams, the technical teams, the financial team under Pierre Hoffman, the Industrial Participation Team, that
5 Barry De Beer gave evidence on, so you have all these blocks that you then combine into the one final best value equation and that process was called consolidation of the information coming from these different sources. One of the reasons why we have these different sources, in the early stage of the
10 evaluation I made a ruling that says we will take the tenders that come in from the overseas suppliers and break it into elements and give it to individual groups and with the understanding that this information stays within a group, in a certain sense it's an anti-collusion process, that they then
15 compute their individual responsibilities and then finally integrate it into one equation and that integration took place between the 2nd of July 1998 and the 8th of July 1998 where all this information is then integrated into one set of equations.

CHAIRPERSON: I'm sorry Sir, we may take time to
20 understand some of this please. The (indistinct) which came from the financing (indistinct) you had the NIP and DIP which were combined, which was (indistinct), all these things were taken over to SOFCOM. What did SOFCOM do to those results, did they interfere with the results or they just calculated them
25 as they are without interfering with them? Basically that's

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what I'm trying to find out.

MR ESTERHUYSE: Commissioner, I was not at the workshop. My understanding at that point in time is that at that particular workshop, the 2nd of July, all the elements of the equation was
5 not fully yet in place, so somewhere between the 2nd of July and the 1st, the 8th of July as Mr Griesel indicated, he finally integrated the information into these equations. There's one element that's certainly been under discussion and that in that period according to Mr Griesel he's instructed to calculate an
10 equation that says "non-costed". That equation is a deviation from the rules, the standard rules of procurement, so there is one element that we can clearly say is an exception, the others to a large extent is the value system and I will indicate later in my evidence what the effect of that calculation is, how it
15 impacts on the final results, but the only one, if the question is can I identify a deviation then I would say the one that I, that is clearly visible is the question of non-costed, of a non-costed equation.

CHAIRPERSON: Advocate Sibeko, maybe we'll have to
20 adjourn. I see it's 15h50.

ADV SIBEKO: I will endeavour Chair to try and deal with this in a manner that is as elementary and as digestive as possible so that we may be able to understand not only the integration of results but the moderation and the auditing as
25 the concepts that seem to have impacted on the functions of

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SOFCOM as in terms of the evidence that is before the Commission.

CHAIRPERSON: That will be of great assistance. Thank you. Unfortunately we'll have to adjourn until Friday. It was
5 brought to my attention during teatime that the venue is not available and the venue is not available Wednesday and Thursday and we were not given notice in advance. I was only told during the tea break. I was hoping that you know we'll be in a position to finish with the witness before Friday, but
10 unfortunately we are not (indistinct) determine that they need use of the venue this coming Wednesday and Thursday, and they also claim that you know it's because of circumstances beyond their control. So unfortunately we'll have to come back on Friday, we're going to be sitting here on Friday, Wednesday
15 and Thursday we will not be sitting , we will only come back on Friday.

ADV SIBEKO: Thank you Chair.

CHAIRPERSON: Would it be correct to say that maybe we should start at about 09h00, it increases the chances of us
20 (indistinct) the witness on Friday?

ADV SIBEKO: It is a possibility Chair.

CHAIRPERSON: It's a possibility. Should (indistinct) won't have a problem with that. Okay, then let's start at 09h00 on Friday. Thank you. We'll now adjourn.

25

(COMMISSION ADJOURNS)