

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

PHASE 2

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(PAGE 8785 - 8921)

11 NOVEMBER 2014

PHASE 2

HEARING ON 11 NOVEMBER 2014

CHAIRPERSON: Thank you. Good morning. Advocate Sello?

ADV SELLO: Morning Chair, Commissioner Musi. I think, the witness must be sworn in again.

5 **SHAMIN SHAIK:** (s.u.o.)

ADV SELLO: Thank you. Commissioner, Chair, Chair and Commissioner Musi. Thank you. Chair and Commissioner Musi, yesterday, when we were about to deal with the paragraph that comes with the issue costed and non-costed, the chair requested that we stand that point down and deal with it this morning. We are, Mr Shaik has not finished going through his statement. But, perhaps, it might be appropriate to deal with that issue of costed and non-costed options now, because, as we move through the statement, it would become apparent to the Commissioners that it keeps recurring, time and again, in the documents and that the witness refers to. So, perhaps, we could get the order of documents right, it might assist us with general understanding of the genesis of this option, or this consideration and how it worked through the different forum, until the various communications were approved. That is why we intend to do this, right now. Thank you, Chair.

MR SHAIK: Chair and Commissioner Musi, we, we are going to work through this on a, a time scale. So, we will start with the 24th of April, which is the date, the date of the document that reflects this issue and then the document that witness says is the first in traits, regarding the matter of this issue. We will then, then approach it from, on the basis of document to document to document on different dates. Now, if at any point, the Commissioners want the witness to address any specific issue, regarding the

11 NOVEMBER 2014

PHASE 2

document, we would be happy to do so. So, the Commissioners may interject, as and when issues arise. Thank you. Mr Shaik, then, as, as you had undertaken yesterday, you are going to deal this morning with the costed and non-costed option. Could you turn to your statement at page 16? At 5 page 16, paragraph 40, you deal with the minute of the 24th of April 1998 and you describe that as the special Ukhozi control council meeting, held on the 24th of April 1998. You attach the minute of that meeting and you have marked that ANNEXURE M, M for Mary and that annexure itself appears at page 264 of Bundle A. Now, Mr Shaik, can you take us through this minute? 10 Firstly, indicate the important issues or the issues relevant to the question, posed to you, by the Commissioners in this meeting. Then, take us to the relevant parts of that meeting, to indicate where exactly these issues are covered. Can you do that for us?

MR SHAIK: Yes, I will. It is the 24th of April 1998, Ukhozi control council 15 meeting. As I eluded yesterday, that Ukhozi is a project name given to the LIFT programme. Now, of significance at that meeting was the issue of setting a limit, a value higher than 60 per cent. The other was the issue of cost effectiveness above eight. So, they used a number of cost effective above eight and a value system above 60 per cent. If you turn to the minutes 20 of that particular meeting, on page 264, it shows you that it was the Air Force personnel, Major General Burger chairing. If you turn over the leaf, on page 265, on agenda item 5.1.2:

“Decision, the following manufacturers/aircrafts should receive a RFP, based on the military value result, from a value system above 60 per cent 25 and a live cycle cost effectiveness of eight.”

11 NOVEMBER 2014

PHASE 2

Underneath it, note 2, it says:

“The Hawk 100 is the only aircraft in the recommended short list that could be linked to the Alfa procurement in the government to government packages.”

5 So, this is setting, where you think the value system should be, it is setting competitor against a competitor. It is also making a note that says in commonalities between aircraft the, the Hawk has some commonality with the Alfa, if the Gripen is chosen, because that is the only commonality, you can literally draw is that the Hawk and the Gripen have a commonality. So, 10 the significance of that meeting, had to do with the level in which you, you set, set it at 60. So, if you set it at 60, then that is the cost effectiveness within that bracket and I will come to that, as I go along.

ADV SELLO: Okay. Thank you. You then, at paragraph 41 of your statement, at page 16 still, deal with the minute of the 30th of April 1998 and 15 you attach a copy of that minute as ANNEXURE N, for Nellie. Could you what you stated in paragraph 41 and point out the significance of that meeting?

MR SHAIK: Yes. Paragraph ...[intervene]

CHAIRPERSON: I am sorry, ANNEXURE N, on which page is it?

20 ADV SELLO: Oh. I, I apologise, Chair, that would be ...[intervene]

MR SHAIK: 268.

CHAIRPERSON: 268.

ADV SELLO: 268, my apologies.

MR SHAIK: It is ANNEXURE N, page 268. It is listed as the minutes of the 25 special Ukhozi control council meeting. That is chaired by the Chief of Air

11 NOVEMBER 2014

PHASE 2

Force, Lieutenant General Hechter. My apologies are recorded as I was not present at that meeting. Of significance on the very next page, 269, on item 5.1.2:

“Decision, the following manufacturer’s aircraft should receive an RFP, based on the military value result from the value system above 68 per cent and cost not taken into account.”

So, this is the first time, definitively the Air Force is saying, do not take cost into consideration. It is based on what is the short list you are going to present to the Minister. So, there they say, do not take cost into consideration and they moved the level of the value system from 60 to 68, from one presentation to the other. Thank you.

ADV SELLO: And it is that short list, as they set out in 5.1 that will be tabled at the AAC meeting, scheduled for the same day, as reflected in 5.1.3. Not so?

15 MR SHAIK: Yes. That was it. So, this was a morning meeting, to present to the Minister, later that day.

ADV SELLO: Thank you. You, you then deal, at paragraph 42 on page 17 of your statement with SAAF meeting, no, sorry, you deal with a combined AAC and AASB meeting of the 30th of April 1998 and that is ANNEXURE O, at page 272.

MR SHAIK: Yes. This is a presentation by the project team and is correctly reflected as a SAAF project officer and the Armscor programme manager. This is the same project team, who made the presentation earlier on, that day to the Ukhozi/SAAF command council and now, is following on that presentation, in the morning, now to the combined AASB/AAC meeting,

11 NOVEMBER 2014

PHASE 2

which the Minister is present. Before I get to the minutes, the significance is the military value system is now being changed from 68 to 69 and a presentation is made that only talks about excluding cost. No presentation is made about including cost. I will go to the presentation in the annexure. So, 5 if we could look at page 272, right in the bottom, it is a recommendation by the project Winchester control board. Contenders, it is about all the contenders scoring above 69 per cent. It turns onto page, the second page 273. So, right on the top, it says scoring below 69. So, here again, the number went from 68 in the morning, to 69 by midday. It gives you the 10 aircrafts in that category. On paragraph 8, the project team and I will read into the record:

“The project team presented the meeting with an affordability analysis of the LIFT contenders, without costs consideration. The selection process is biased towards the higher performance category of the aircraft. These 15 aircrafts are, however, also significantly more expensive to acquire, operate and maintain. Thus, unless additional funding could be found to support the acquisition of a more superior aircraft, the Air Force would have to take cognisance of the budgetary constraints in the selection process.”

So, here the aircraft is, here the Air Force project team is saying the higher 20 cost aircraft has a better performance. But, if we do not have the money, then we have to worry about the performance. The Minister, on paragraph 9, sorry.

ADV SELLO: Before you move onto that, you mentioned that as, at one point, the cut off point was a score of 60 per cent and moved to 68 per cent 25 and in this meeting is now reflected as 68 per cent. Can you explain what

11 NOVEMBER 2014

PHASE 2

would be the effect of that moving score line?

MR SHAIK: That is best demonstrated in the presentations, where you have to look at what makes the difference. So, if I were to look at, example, page 290 on the, page 290 of that meeting.

5 ADV SELLO: Just a second. Just one thing. Just to assist the Commissioners.

MR SHAIK: Sorry.

ADV SELLO: To assist the Commissioners, because we are dealing with the minute, which would run from pages 272 to 276. Is that so?

10 MR SHAIK: Yes.

ADV SELLO: And from page 276 to 292, 294, please identify that batch of documents, for the record?

MR SHAIK: That would be the presentation made by the project team to the Minister and the committee.

15 ADV SELLO: And you wanted then, to draw the Commissioners' attention to a specific page or slide of that presentation.

MR SHAIK: Yes. In particular, it will be on page 290 and if you look at page 290 on the horizontal and the vertical axes. The Horizontal axes give you the percentile in performance. There is a 60, 70, 80 is where we are
20 looking at and the horizontal is the acquisition cost, in terms of dollars. So, if you notice that, if I took 60, as my result and stuck with 60, I would get two other aircrafts into that category. By moving that line to 69, the lowest cost category is already 339. If you took it to 70, that would then have excluded the MB-339. So, the significance of moving the number is who you are
25 taking out and who you are leaving in. So, I could very well have done a

11 NOVEMBER 2014

PHASE 2

military evaluation or military value of between 50 and 70 and I would have
get, got a whole different sets of results as who then, would be the successful
winner in that category. But the, but the Air Force felt that 69 is the number
that they require. Now, nobody amended, adjusted what the Air Force
5 determined. So, that number of 60, then 68 and then 69 is really an Air
Force Ukhozi, or Air Force command council decision.

ADV SELLO: Now, were you involved in the calculation and re-calculation
of, of this score line, at any point?

MR SHAIK: No. I was not. I am merely a process manager that received
10 the scoring from the project team to present. So, I am merely a participant in
the presentation. That is about it.

ADV SELLO: So, what informed the change from the accepted value of 60
per cent to 69 per cent and to recommend to the Minister is a matter that can
only be clarified to the Commissioners, by the Air Force commander. Is that
15 your suggestion?

MR SHAIK: Yes. That, for me, would be better answered, by the Air
Force.

ADV SELLO: Okay. Dealing with that minute then, you raised two issues
that were presented to the AAC and AASB meeting of that date, we have
20 now dealt with the military of 69 or increasing that to 69. You said the
second, in your statement, a presentation was made, excluding costs. Can
you talk us through that and direct us to the relevant portion of the
presentation, where cost is excluded?

MR SHAIK: Yes. If you turn to page 286, that is the project team, making
25 the presentation to the combined AASB/AAC. A slide indicates, right on the

11 NOVEMBER 2014

PHASE 2

top, with a handwritten note that says excluding cost. It was my understanding, at the time, that only a slide, excluding cost was presented.

Hence, the reference to paragraph 8 that says:

*“These aircrafts are, however, also significantly more expensive to
5 acquire, operate and maintain. Thus, unless additional funding could be
found, to support the acquisition of a more superior aircraft, the Air Force
would have to take cognisance of the budgetary constraints in the selection
process.”*

So, they were saying, this is what it looks like, but excludes cost, because
10 that is a better performance aircraft.

ADV SELLO: Do we understand you correctly, therefore, that if, what is
stated in paragraph 8 of the minute is the Air Force command, showing the
military performance of the aeroplanes, the various aeroplanes and a desire
to demonstrate to the Minister or to the meeting, what that performance
15 would look like, if one does not take cost into consideration. Is that it?

MR SHAIK: Absolutely and that is reflected on that page 286, by giving
Hawk 81 per cent on the top, followed right down, by another cluster. So,
you can see a big separation and between the Hawk and the L-159 and that
is more graphically represented, than verbal. So, by looking at the graph,
20 you could see that the MB-339 was, number five down.

ADV SELLO: And so, if cost, if budget, as they call it, taking cognisance of
budgetary constraints, budgetary constraints could dictate one outcome. But,
if cost is not taken into consideration, a different outcome might be possible.
Is that, or how would you understand that meant?

25 MR SHAIK: Yes. That is correct. If a budgetary constraint comes in, I

11 NOVEMBER 2014

PHASE 2

would then contend, neither would the MB-339 come in. Because there was a presentation made, to the Council of Defence that said, if we choose the Hawk aircraft, if my memory corrects me and we come to it later, it is a higher deficit. But, if we choose the MB-339, it is a lower deficit. It is still a deficit, nevertheless. So, you would still have to find money, whether you choose outside the budget, whether you choose either the MB-339 or whether you choose the Hawk. So, both of them, we had a deficit on, irrespective of the choice.

ADV SELLO: Okay. So this presentation is then made to this combined AASB/AAC meeting. What is the outcome, what then, becomes outcome of this meeting?

MR SHAIK: I, I would volunteer to offer a, a, an explanation of the way I read the vision. It is slightly different in the way it would have been read by others. The Air Force indicated to the Minister that if, if cost is not our consideration, we would like to have a better performance aircraft. If I take cost into consideration, I will have to sacrifice performance. It is stated time and time again, in the minutes. The reading of the Minister's vision, the Minister of Defence cautioned the meeting that a visionary approach should not be excluded. My understanding, he was not including a visionary, he is merely telling the Air Force do not exclude your vision. They came with a presentation to say, this is what it looks like, if I do not have this cost constraint on me. So, the Minister is saying do not give up your vision.

ADV SELLO: And is this, what is then captured in paragraph 9 of the minute, from page, the bottom of 273 onto 274?

MR SHAIK: Yes. I, I may just add, that is my interpretation of the minutes

11 NOVEMBER 2014

PHASE 2

and of the meeting and the discussions.

ADV SELLO: Okay. Just, just so we are clear about what transpired there, may I ask you to read, to read into the record what is stated at paragraph 9. We have noted your interpretation. If you could just read what is actually
5 noted.

MR SHAIK:

*“The Minister of Defence cautioned the meeting that a visionary approach should not be excluded. As the decision on acquisition of the new fighter aircrafts, trainer fighter, trainer aircraft, would impact on the RSA defence
10 industry chances to be part of a global defence market, through partnership and major international defence companies, in this case European companies. With this vision, the most inexpensive option may not necessarily be the best option. The Minister requested that the DOD acquisition staff should bear this vision in mind, during the selection process.”*

15 ADV SELLO: And then, this reflects, the, the Minister, the fact that the Minister was somewhat persuaded by the SAAF argument and request of the acquisition staff to bear this vision in mind, when evaluating

MR SHAIK: Yes. That was an instruction to the acquisition staff to bear the vision, as proposed by the Air Force to the Minister.

20 ADV SELLO: Thank you. If you, we proceed then to your paragraph 43, you introduce the minute of the 5th of May 1998 of the Ukhozi control council and you annexed a copy of that minute as ANNEXURE P, for Peter. That would be at page 296, Commissioners, of the witness’s statement. Could you indicate the relevance of this minute to the issue of costed and non-
25 costed and draw the Commissioners’ attention to the relevant items in the

11 NOVEMBER 2014

PHASE 2

minute?

MR SHAIK: The Ukhozi council meeting of 5th of May, which was chaired by Eric Esterhuysen of Armscor, in that minutes there is some housekeeping, where it is brought to the attention of the members that the previous meeting
5 of the 24th of April was incorrectly recorded as an Ukhozi council meeting, but in fact, it was an Air Force meeting. So, there is some correction and housekeeping. What is significant is that Eric is briefing the meeting to say why the recommendation to the combined AASB/AAC was not based on cost effectiveness and why it was felt that the, the value should have changed
10 from 60 to 69 and offered an explanation on, on the Air Force. I will take you through the minutes on appendix P. I will read in, read into the record 7.1.1 on page 297:

*“The meeting of 30th April was an Air Force command council meeting, not an Ukhozi council, control council meeting. The decisions, taken at both
15 meetings are regarded as recommendations to the AASB/AAC meeting, held on 30th of April.”*

And the recommendations ...[intervene]

ADV SELLO: Now, if I may interject there, based on what you have just read into the record, at 7.1.1 of the meeting of 5th of May 1998. The
20 correction that must, we must make here is our ANNEXURE M, for Mary, at page 264, should actually, that this is the minute of the meeting of the 24th of April or is the ANNEXURE N, at 268 that is said to be the SAAF council and is miss-named as an Ukhozi control council. Is that the case?

MR SHAIK: Yes. That is ANNEXURE N, should in fact read Air Force
25 command council.

11 NOVEMBER 2014

PHASE 2

ADV SELLO: So, say that again N?

MR SHAIK: Yes. For the record it is ANNEXURE N, which is incorrectly labelled as an Ukhozi council meeting and it should not be that. The meeting says that the 30th of April was an Air Force command council meeting and
5 the decisions, taken at both meetings that is regarded as recommendations to the AASB/AAC meeting of the 30th.

ADV SELLO: Please have regard to page 268 and that is your ANNEXURE N, N for Nellie. Is that properly labelled, the Ukhozi control council meeting of 30th of April? Or is that also an Air Force command council meeting, in,
10 according to you, in paragraph 7.1.1 of the 5th of May meeting?

MR SHAIK: On page 268, it reads the minute of the Ukhozi control council meeting and it should have read meeting of the Air Force command council.

ADV SELLO: Thank you. You were, I, I interjected, when you were about to deal with another issue, I think, arising from paragraph 7.1.1. Please
15 proceed.

MR SHAIK: The significance of 7.1.1 is who would then receive ...[intervene]

CHAIRPERSON: Where are we reading now, which page are we on?

ADV SELLO: Chair, can you, we are now reading from the 5th of May, Ukhozi control council meeting, starting at page 296 and we are back at page
20 297, item 7.1.1. What, what we just attempted to do, it was to appreciate what is set down, what is set out in paragraph 7.1.1 and locate, in our bundle the relevant meeting that is referred to in 7.1.1. Thus, make a point on, on that document that that is, although entitled Ukhozi project meeting, it was
25 actually a command, an Air Force command council meeting. So, now, we

11 NOVEMBER 2014

PHASE 2

are back at 7.1.1. Thank you. Thanks, Mr Shaik, you may continue.

MR SHAIK: Commissioners, if I can go back to page 297, the significance of paragraph 7.1.1 was to take a decision or to get the Council of Defence to take a decision, as to who should then receive the RFO and who should be
5 eliminated. So, the moving of 60 to 68 to 69 is merely to eliminate. So, it is stated here, who then, should then be receiving a RFO. On the next paragraph 7.1.2, the combined AASB/AAC meeting, held on the 30th of April, approved the recommended short list of the contenders, to receive the RFO. So, this is, was a recommendation put forward, by Air Force to the Minister's
10 forum at AAC and that was adopted, if we were to turn the page on 298 on paragraph, on item 7.1.3. It stated and I read into the record:

*"The reason why the recommendations to the combined AASB/AAC were not based on cost effectiveness was because it was felt that the cost constraints for the inclusion of the LIFT into the strategic defence packages
15 would be determined by the AAC.*

7.1.4 The reason for the minimum accepted military value to be raised from 60 to 69, during the SAAF command council meeting, held on 30th of April was two fold.

*71.4.1 The higher the military value would provide the aircraft with a better
20 product, when they could always prefer the better product, within the budget.*

71.4.2 The higher military value would also limit the short list to a manageable quantity of aircrafts.

*71.4.3 The aircraft under minimum value are considered to have a limiting
25 applicability in the LIFT roles."*

11 NOVEMBER 2014

PHASE 2

So, it is stated, in my interpretation clearly, that the, the aircraft that has a better military value is the one with the higher, with the higher value, has a better performance is the one with the higher value. That is what the military will always prefer.

5 ADV SELLO: So, if one has regard to item 7.1.3, the SAAF reaffirmed the position they have adopted earlier that they would like for the AAC to be the forum that finally determines, which aircraft is to be preferred.

MR SHAIK: Yes. That was my understanding.

ADV SELLO: Okay. You proceed then, at paragraph 51 to deal with the
10 minute of 29th of June 1998 of the command council and this appears as ANNEXURE W, at page 333 of your bundle a. Have you located it? This is a meeting you say it was chaired by Lieutenant General Hechter, Chief of SAAF of the 29th of June. It should appear as ANNEXURE A in your bundle. Can you point out the relevance of this minute and then, take the
15 Commissioners to the specific items that are relevant to the question before you?

MR SHAIK: Yes. Again, this is an Air Force command council meeting, convened on the 28th of June 1998. This is a few days away from the Softcom meeting. So, it is literally four, five days away from the Softcom
20 meeting. It is at this meeting, where a decision is taken, what to present to Softcom, where a decision to present both a cost and, cost and non-costed option to be presented to Softcom. Evidence was presented to the Commission that I may have instructed someone to present. I am saying that is not true. That was a decision taken a few days earlier, by the Air Force
25 command council, chaired by the Chief of SA, the Air Force and that decision

11 NOVEMBER 2014

PHASE 2

was taken there. The project team made the presentation and a decision was taken at that meeting, because the presentation would have included, both the cost and non-cost. Of significance is that presentations were always made to the Air Force command council, without cost. So, it is the opposite.

5 The first time, they presented to the command council, with cost. So, they then, took a decision to go with cost and without cost. So, if I were to turn to ANNEXURE W, 333, it shows that the chairperson there is Lieutenant General Hechter. If we turn the page to 334, at point, item 3.6 decision and I will read into.

10 ADV SELLO: If I, I may request that we take this sequentially. Before you go into paragraph 3.6, could we deal with the other items, regarding the, you know, comparison of the aircrafts? I think that would start at 2.5 and could you explain what that, that decision means, a decision at 2.6, at page 334? Have you located the page? Are you on 334?

15 MR SHAIK: Yes, I am on 334.

ADV SELLO: Okay. If, if you could, like, deal with 2.5, 2.6, 2.7, 3.2, 3.3, 3.5 and then 3.6 last and then you can follow the order of decisions.

MR SHAIK: Okay. On a decision, sorry, on decision 2.5:

20 *"The remaining three aircrafts in contention, namely the Hawk 100, the L-159 and the MB-339, all have a number of mandatory requirements that are not met, but are considered as acceptable to SAAF. These aircraft will remain on the short list."*

The next decision on 2.6:

25 *"The remaining three aircrafts, in contention, namely the Hawk 100, the L-195 and the MB-339 would all, adequate bridge the training gap between the*

11 NOVEMBER 2014

PHASE 2

Astra and the anticipated Alfa.”

Decision on 2.7:

“*The MB-339 might have a life span limitation, in providing training up to the year 2035, since the Italian Air Force plans to phase out the MB-339, in*
5 *the year 2025. This risk has to be managed accordingly.”*

The significance of this point is in the value system that was applied, this risk was not mitigated that what would happen after a certain time period, if you kept the MB-339. So, there is a discussion about how to mitigate this risk. How do you accommodate this risk in a value system that did not make
10 provision for this risk?

ADV SELLO: Thank you. The minute, the minute then proceeds at point 3, under the heading recommendation and states:

“*Before a recommendation could be made, a number of issues were highlighted, for incorporation into the evaluation results.”*

15 Could you please refer us to the decisions, relevant to this, to the necessary recommendations required under item 3?

MR SHAIK: Item 3.1 decision:

“*Although the risk, associated with each option was considered and qualified, it was not taken into account in the calculation of the military value*
20 *of each contending aircraft.”*

Now, that can be seen on page 338, where you have the value system results and how you get to a score. I can just read out a few of the subheadings. It is programme management, it is engineering management, it is training, functionality, logistic support, engine, airframe, avionics,
25 availability, log strategy, LSA support strategy, mission support training

11 NOVEMBER 2014

PHASE 2

systems, roll equipment, training like a flight evaluation, supporters and evaluation, ILS elements. There is no risk for what will happen, after a certain time period, when the manufacturer has moved the aircraft out of circulation. So, there, there was a limitation, in the way the value system was, was designed and it, and it says at, to that effect decision on 3.2:

“A credible way of introducing risk into the final recommendation, both, with and without cost of the aircraft should be identified and applied on the results of the evaluation. These revised results will then be presented to Softcom.

10 3.3 *Decision, a separate recommendation is required, where cost is not taken into account, as per, the request from the Minister of Defence.*

3.4 *The wording, least preferred option, associated with the Yak-130 should be changed to unacceptable offer.*

15 3.5 *The inter-dependency of the Alfa and the LIFT should first be pointed out, during the presentation to AASB, not before.”*

Thank you.

ADV SELLO: You then wanted to deal with the decision at 3.6, starting at the bottom of page 334 onto 335, at the top of the page.

MR SHAIK: Yes. This is where I am, I am saying that the project team went to the Air Force command council. A decision was taken there. The final recommendation gets two alternatives. The first alternative being the most cost effective solution, based on achieved military value and the second alternative does not take the cost of the aircraft system into account. So, this whole idea of cost, non-cost is really an Air Force idea. I would repeat, in the very first presentation on the short listing of the RFI that they made that

11 NOVEMBER 2014

PHASE 2

presentation to the Minister, it had only to do with no cost. This is the first time, where they brought cost as an element. So, the Air Force did consider cost, but they were still hoping that they could present both the options to Softcom and carry through that decision to the Minister.

5 ADV SELLO: Now, at page 335, we are provided with alternative a and alternative b. Are you able to, to explain what, what those are?

MR SHAIK: It is mere, purely a mathematical number calculation, if you take alternative a, alternative b, [indistinct] preferred option in both the cases, they are saying it is the MB-339. But, if you take cost out and cost in, that is
10 how the numbers come. Hawk then, moves from third to second. They wanted to hedge the, my understanding, they wanted to hedge their bets, by making the Minister makes the final decision on whether cost should become a consideration or cost should not become a consideration.

ADV SELLO: So, and then, and this alternative a, or alternative b, basically,
15 the race is between MB-339, L-159, Yak-130 and Hawk, and the Hawk.

MR SHAIK: Yes. It is based on cost and functionality. It was stated earlier on that higher performance aircraft has more functionality. This was not given additional scores. So, if an aircraft had more functionality, it does not necessarily means it scored more. It, it did not get the value for it. So, it was
20 not technically two performing aircrafts with two different prices. It was different functionality with different prices.

ADV SELLO: Now, if I can refer you to page 334, decision at 3.4 it reads:

“The wording least preferred offer, associated with the Yak-130, should be changed to unacceptable offer.”

25 What does that mean?

11 NOVEMBER 2014

PHASE 2

MR SHAIK: It means that the Air Force was not willing to accept the offer, for whatever the functionality, it felt it did not meet it, its requirement. So, the word unacceptable offer is used, rather than least.

ADV SELLO: If, before we leave this minute, can, can I point you to page
5 334, item one, which sets out the objective of the meeting? If you could read that into the record for us.

CHAIRPERSON: Which page are we talking about, now?

ADV SELLO: We, Chair, we are at still ANNEXURE W, page 333. I am referring the witness to item, headed objective and, and request that he, he
10 reading that objective of the meeting, as the minute states, into the record.

MR SHAIK: On page 334?

ADV SELLO: 333.

MR SHAIK: Yes.

*"The objective of the meeting is to inform the SAAF command council on
15 the results of the evaluation of the LIFT offers that were received on the 15th of June 1998 and to formulate a recommendation to Softcom on the SAAF preferred option."*

ADV SELLO: Thank you. I will then refer you to the next minute, you deal with, which is the minute of the 1st and 2nd of July of Softcom and you deal
20 with that, at paragraph 52, page 20 of your statement. That minute is, you annexed as ANNEXURE X, which starts, Commissioners, at page 345 of the bundle. Now, considering that there are, the current discussion revolves around costed, non-costed options, please explain the relevance of this minute and proceed to deal with it, in the manner that you think is relevant to
25 the issue.

11 NOVEMBER 2014

PHASE 2

MR SHAIK: So, on the, in that minute on the section of LIFT on paragraph 29, which is 348, on page 348, the secretary for that meeting, Captain Dewey recorded the are two options that must be provided are. In other words, the Softcom received two presentations on that day, because the Air Force had wanted us to carry it through to the Minister. The Softcom is not a decision making body. It is, it is not a recommending body, as such. It was merely receiving the Air Force's input of the two options and it is recorded that the two options that must be provided are. So, we have to then take it to the next level, which is AASB and the one higher, which is the Minister's forum. That is where the Chief of Air Force, now makes his case to the Minister.

ADV SELLO: And in terms of paragraph 29, just state for the record, what those option that must be provided are.

MR SHAIK: The minutes read, the two options that must be provided are, a, an option, including acquisition cost and b, an option excluding acquisition cost.

ADV SELLO: From page, paragraph 53, you deal with the acquisition forum period. There are, however, as we saw yesterday, certain minutes that once again reflect, or keep making reference to the costed, non-costed option. At 53, you will, you deal with the presentation to the AASB on the 8th of July 1998 and you state, in 53 that the LIFT programme had both the costed and non-costed option in the slide presentation. Now, your 8th of July minute appears in your bundle as ANNEXURE 9, at page 359. Can you, can you deal with this aspect, as relates to that meeting?

MR SHAIK: That was a briefing made, on the 8th of July to the AASB and as I stated yesterday, it had three Director Generals in it. The Secretary of

Defence, being a Director General, the Chief of SANDF, being a Director General, as well as the Director General from DTI. So, present in that minute, on page 339, I think, I think it is 339, 359, sorry, Sir, 359 it is recorded as invitees are the Director General from DTI and the Chief of SANDF. If you were to turn to the page relevant to the LIFT and that would be page 363, just under paragraph 26, it says lead in fighter trainer and it has a cost option ranking and it has a non-cost option ranking. So, both the option were presented to the, to the AASB, on that day.

ADV SELLO: And a further presentation you, you testified yesterday, were made to the AAC on the 13th of July and you refer to that presentation from your paragraph 54 of your statement. You annexed a minute of that meeting, as ANNEXURE Z that appears from page 382. Could you direct the Commissioners, where in that minute the issue of costed and non-costed is dealt with?

MR SHAIK: Yes. The minute of the AAC is on page 382. Of significance is, the Minister of Trade and Industry is also invited, so is the Director General of DTI and so are the Arms of Service Chief, Chief of Army, Chief of Air Force, Chief of Navy, Chief of Medical Services, Chief of Finance and various representatives from Armscor, being Eric Esterhuyse, the acting general, the General Manager for aerial and maritime. Now, in that presentation is also the other senior members of Softcom. A presentation was made and in particular, the LIFT aircraft appears on page 384, just under item 9, page 384. It reads the lead in fighter trainer cost option ranking, it has the Italians, the British Hawk, the Czech, the Italian Yak and underneath it, it has non-costed option ranking, the British Hawk, the Italian MB-339, the

11 NOVEMBER 2014

PHASE 2

Czech L-159 and the Italian Yak. Again, I am saying a presentation was made to more than one Director General, to more than one Minister.

ADV SELLO: A discussion follows that listing at paragraph 10. Would you like to deal with that?

5 MR SHAIK: I read into record:

“Two consolidated summary evaluations, one of a cost summary value and one of a non-costed military value are shown. The need for a non-costed matrix is queried and explained, by means of two clusters of contenders. The Chief of the Air Force highlights the limited operational
10 *capability of the more expensive cluster, compared to that of the cheaper cluster and the relative cheaper SAAB preference of a training aircraft, which will meet the minimum SAAB pilot qualification requirement, starting with the Astra, stepping up from there.”*

I could read the balance, but it, it does not relate to the, to the two decisions.

15 ADV SELLO: Thank you. I agree with you. We just want it on record that those aspects that relate to the issue of the costed and non-costed. Now, as far as, annexures you had already placed on, on record, we had gone as far as ANNEXURE Z, which is the, the 13th of July meeting. You, however, have indicated to us, as I have mentioned, we have gone yesterday, as far as
20 dealing with ANNEXURE Z. In preparing on this point, you mentioned that there are other minutes and minutes beyond the 13th of July that deal, also deal with this issue of costed, non-costed that we have not come to, yet, in your testimony. Would you like to refer us to the relevant minute, after the 13th of July, where this issue was once again, dealt with?

25 MR SHAIK: After the 13th of July briefing to the two respective Ministers

11 NOVEMBER 2014

PHASE 2

and the respective Director Generals, the Secretary of Defence was of the opinion that the Department of Defence needed to be more up front and assertive, as to what is the option it is recommending, within its budgetary constraint. So, the Secretary of Defence, in my view, reconvened another
5 AASB meeting on the 16th of July, to ensure that a single recommendation goes back to the AAC. Now, this is unusual from me, in the sense that, after you have taken your decision to a higher body, you then come back to your very own body that you chaired, to rechain the recommendation you made. So, as the process manager, we had to reconvene a new AASB meeting and
10 record what was the preference of the department. In that meeting, we then go forward and say it is now our recommendation that the MB-339. So, we were caught up in going back to yourself, to make a recommendation to a higher body. So, of relevance is that it has never happened before, where you take a recommendation to a higher body, you are not quite happy at
15 what happens. You bring it back to yourself, to go back, to get a new recommendation, to go back up. So, this is the first time it is there. It is recorded. I was instructed to make that presentation, back again, to the AAC and it then follows on the following chapter. So, I can go back to ANNEXURE AA.

20 ADV SELLO: Okay. If, you deal, we deal with this minute at your paragraph 55, page 21 and you attached a copy of that minute, as ANNEXURE AA and that appears, Commissioners, as the first document in bundle b, at page 400. Now, would you like to, and remembering that we are currently restricting ourselves to the costed and non-costed debate. So,
25 would you like to, to draw our attention to a particular paragraph in this

11 NOVEMBER 2014

PHASE 2

minute that deals specifically with that issue?

MR SHAIK: So, there are many issues that I raised in this document, of the 16th of July. It is better that the entire document be read, in its entirety. But, what comes out clear is that a new recommendation has to go out to the AAC. So, if we start of by saying on paragraph 2.

ADV SELLO: Page?

MR SHAIK: On page 400.

"The Chairman introduced the item, by referring to the initial progress report on the International Offers to the AAC on the 13th of July 1998, where the AASB failed to present a clear, unambiguous recommendation, specifically, with regard to the LIFT, the lead in fighter trainer. The chairman stressed that the recommendation, regarding project Winchester must be firmed up."

So, here is an acknowledgement by the Chairman that says his failure to make a recommendation to his Minister, has to be corrected.

ADV SELLO: And we know, from your testimony yesterday, that, at the previous 8th of July meeting of the AASB it was specifically noted that the AASB notes the progress and resorts not to make a pronouncement on what was presented at the AAC.

MR SHAIK: That was correct.

ADV SELLO: And referring to your ANNEXURE Z, which is the AAC minute of 13 July 1998, we note, if we read the minute correctly, that Mr Steyn, who is the Chairperson of the AASB, attended this AAC meeting. At which, from the portion of the minute of the 16th of July, which you just read, the Chairperson states, of the AASB states that the AASB failed to make an

11 NOVEMBER 2014

PHASE 2

unambiguous recommendation. Do we understand you correctly?

MR SHAIK: Yes.

ADV SELLO: Having gone, having decided therefore, to firm up, to firm up a clear and unambiguous recommendation, as set out in paragraph 2, what,
5 how did the meeting deal with this matter?

MR SHAIK: Commissioners, if I could proceed on that page 401, on some of the issues, I think, that needs to come out. On paragraph 6 it said:

*“The Chief of Acquisition contends that the AAC instruction, to adopt a visionary approach, that involves major international defence equipment in
10 the LIFT acquisition resulted in the generation of two options in the evaluation team and Softcom recommendations. The Chief of Acquisitions further advised the meeting that the above mentioned sensitivity analysis (because we now got presented with sensitivity analysis) is new information, not presented at the Softcom and that the LIFT project was restricted by time
15 factors.”*

So, here we have sensitivity analyses, as to why we should go to one aircraft, not to the other aircraft. But, this is new information that has now been presented. So, of significance, this was new information, paragraph 7:

*“The Chairman rules that the AASB must submit a logical and rationale
20 recommendation to AAC.”*

Now, I need to stress, Sir, that I am not taking issue with the Secretary. I am saying he is the accounting officer. Alright. He needs to, to be accountable to the Minister and for the budgetary constraints. But, as project managers, or process managers, we can merely record what decisions are taken at any
25 forum, be it at the Minister’s forum, be it at the project officer’s level. We

11 NOVEMBER 2014

PHASE 2

merely record what the discussions are, what the issues are. We are not making decisions. We, we are merely presenting to different forae. If I were to go on, the next page 402, it says:

5 *“The information presented to the AASB, but not to the Softcom, was to inform the AASB.”*

So, we were then saying, traceability of the international offers information must be assured.

10 *“The Chief of Acquisition confirmed the existence of the Softcom data pack, handed out to Softcom members, attending the 1st and 2nd July Softcom work session. The information presented to the special AASB, held on the 8th of July is traceable to the data pack, which is under the configuration control of Armscor. The Chairman stressed the point that the minutes of this meeting did not reflect a preferred option. The Softcom made two recommendations to the LIFT project to the AAC on the 13th. The first*

15 *recommendation a, was an option, taking cost into consideration. The second option recommendation, being an option to exclude costs, as a determining factor. The Chairman advised that, from the DOD perspective, only the costed option could be considered and the AASB, thus, support the first recommendation.”*

20 This is the first time, where the Chairman of the AASB is now saying, this is what I am, I am recommending. So, we now have to go back again, to the Minister for a new position that we are not leaving it up to the AASB anymore. We are no making a recommendation.

ADV SELLO: Now, would we be correct in saying, the decision of the
25 AASB, on this particular day, effectively went against the wishes of the SAAF

11 NOVEMBER 2014

PHASE 2

command, as previously expressed to the AAC that the option, excluding cost be considered and the matter be left to Cabinet to decide. Would we be correct in that conclusion?

MR SHAIK: Yes.

5 ADV SELLO: Okay. We are now then, at the 16th of July 1998 and we know the AASB has eventually decided not to present both option to the AAC and recommends presentation of only the one option and specifically to recommend MB-339. Is that correct?

MR SHAIK: Yes. I made that presentation and I was required to now
10 make a presentation, together with the SAAF project officers that it is now the AASB recommendation that only the MB-339 be considered. We then, made a presentation of the deficit of the Hawk aircraft and the deficit of the MB-339. So, if we were to go look at the presentation, it is, it is much more on that.

ADV SELLO: Now, staying with this minute at 402, item d. I think, on my
15 reading and I need you to confirm, it is, it is at item d that the actual recommendation was of the AASB is reflected. Could you, can you confirm that and read that into the record?

MR SHAIK: Yes. It is two recommendations. I will read it into the record. It is on page 402 d, under paragraph d:

20 “The issue of short listing, which involves exclusion of contenders, scoring less than 69 on the initial military value, evaluation is a SAAF preference. If a value system for the preferred three tier system were to be established, this exclusion could be tested. However, CAF confirms that the outcome would remain the same. The Chairman ruled that the AASB recommendation is the
25 MB-339 FD, as evaluated and noted that this result is the SAAF preference,

11 NOVEMBER 2014

PHASE 2

within the envisaged SAAF fighter training system, required by SAAF.”

ADV SELLO: We now know what the recommendation of the AASB as at 16 August 1998 is. Where does this issue of costed, non-costed next arise, after this decision?

5 MR SHAIK: We were required, as the DAPD department to represent to the AAC. The best we could have achieved was a combined COD, AASB, combined COD, AAC on the 21st of August 1998.

ADV SELLO: And for reference purposes, Commissioners, with that, the witness confirm, confirms ANNEXURE DD at page 425, is an agenda and
10 attachment for this meeting and ANNEXURE EE, starting at page 437 is the minute of, this actual minute of the meeting. If you confirm I, I identified them correctly, Mr Shaik, would you like to deal with the two sets of documents?

MR SHAIK: Yes, Sir. There was some evidence led, to the Commission that this meeting may not, in fact, have taken place. I beg to differ. If you
15 look at page 426, an agenda was drawn up and the agenda item reads:

“Items for the agenda of the COD (as AAC meeting) to be held in the Ministry of Defence conference room, 21st August 1998.”

There are two sections to it. There is this Winchester that, that is really the Hawk decision and that, is listed under paragraph A1. It reads:

20 *“Confirmation of the minutes of the previous two AAC meetings.”*

And under item one is:

“The 30th of April, combined AASB, where the project Winchester shortlist of contenders were authorised.”

And number two is:

25 *“The 13th of July and 16th of July special AASB on the international offers,*

11 NOVEMBER 2014

PHASE 2

et cetera.”

If I just read that correctly:

“The 13th of July and 16th of July 1998, special AAC briefing on the international offers (to be distributed before the meeting.)”

5 ADV SELLO: Now, staying with page 426 at, at B, it makes reference to the international offers briefing and it at, and identifies this as enclosure two. Can you, can you describe for the record, what these documents are?

MR SHAIK: Yes. This, to do some good housekeeping on 428, enclosure one is the minutes of the AAC and AASB meeting and then, item two was the
10 minutes of the special AAC on the 13th of July. So, you go back to the forum, to sign the very minutes, they have undertaken previously. So, it is important to note that the minute of the 13th of July was also handed out. Enclosure two is the SAAF fighter aircraft submission record and it shows you the history of the two projects Ukhozi and [indistinct].

15 ADV SELLO: Thank you. We then, you then follow that pack with ANNEXURE EE, which is titled the minutes of the seventh Council of Defence meeting 7/98, held on 21st August 1998. In so far as the issue of costed and non-costed is concerned, could you please direct our attention to the relevant portion in the minute, dealing with this issue?

20 CHAIRPERSON: Which page are you referring to, please?

ADV SELLO: Chair, I do apologise, 438, and I see maybe, if I may start again. We, we have identified ANNEXURE EE that starts at page 438. These are the minutes of the Council of Defence meeting of the 21st August 1998. I request you, Mr Shaik, to direct us to the relevant portion of this
25 minute that relates to the issue of costed and non-costed.

11 NOVEMBER 2014

PHASE 2

MR SHAIK: Chair, on page 438 it reads:

“The minutes of the seventh Council of Defence meeting, held on 21st August, 10:30 in Pretoria.”

Now, the agenda would have stated this is a Council of Defence (AAC). The membership for Council of Defence and the membership for the AAC are identical. Present at this meeting, you notice, is a very limited audience. This time, it is just purely, the Council of Defence members, or you could also say the Armaments Acquisition Council members. They are identical. Absent from this meeting is the Minister of Trade and Industry, the Director General of Trade and Industry and his representatives, the Arms of Service Chiefs, et cetera. So, even here, there is a limitation on, on who is at this meeting. Of significance, is on page 440, paragraph 7.3.8:

“The Secretary of Defence remarked that the Hawk doubled the cost of the LIFT aircraft for an increase in performance of approximately 15 per cent, hence the AASB recommendation that the cheaper option be recommended.

7.3.9 *The Minister enquired as to what the recommendation of the Minister of Trade and Industry was.”*

And I may point out, the significance is, you are now making a presentation, excluding the Minister of Trade, which happened in the previous AAC meeting.

ADV SELLO: And , what was the decision that came out of this meeting on this, on this point?

MR SHAIK: There, there was some discussion about when can we brief the Minister of Trade and after that outcome, is, on paragraph 7.3.12:

“Mr Shaik said that the Minister of Trade and Industry would be available

11 NOVEMBER 2014

PHASE 2

for discussion the following week.”

And 7.3.13:

“The Minister said that the Deputy President was keen and that the department now starts moving with respect to the government to government offer.”

So, a decision to go and brief the final briefing of the Deputy President, the Minister of Trade and Industry and the Minister of Finance must be arranged as a matter of urgency.

ADV SELLO: Did this meeting decide in preparing a presentation to the, the final briefing for the Deputy President and the Ministers? Did this meeting decide to present, as far as the LIFT programme is concerned, to present only the MB-339, as a recommendation or to present various options that can be requested by the Air Force commander?

MR SHAIK: The meeting or the briefing to the Sub-Cabinet Committee took both the options of the Air Force to the Minister’s Committee. The Minister of Trade and Industry was not available at this meeting or not present, at this meeting to, to make any contribution as to whether a option should be selected, as was the case of the 13th of July AAC meeting. So, a decision to go and present to the Cabinet Sub-Committee was taken and both the options were then, subsequently presented to the Cabinet Sub-Committee.

ADV SELLO: And the subsequent Cabinet Sub-Committee, you are referring to the meeting of 31st of August.

MR SHAIK: Yes, I am.

ADV SELLO: Please then, take us to this minute and deal with this issue,

11 NOVEMBER 2014

PHASE 2

where it appears? Chair, my attention is drawn to the fact that we are probably have run a bit over and it might be tea time. On, on Mr Shaik's preparation for, to, to address the Commission on this point, this minute, he refers to is the last in the series. Then, as far as his preparation from last
5 night is concerned, or in fact, in the statement, he would have dealt with the issue of non-costed, from when and how it was born, to the last meeting that dealt with the issue and made a decision on the issue. This is the minute he is about to address now. So, if it is not torturous for the Commissioners, we would request that perhaps, we need a minute or two, just to dispose of this
10 matter. When we come back from tea, then we will proceed with the rest of the statement. Thank you, Chair. Now, Mr Shaik, you have annexed to your statement a document, a minute, minutes of the meeting of the 31st of August 1998 of the Ministerial Sub-Committee. There are, according to your statement, there is draft one, draft two, draft three, draft four. We will deal
15 with that detail later. For purposes of what we are discussing now, it suffices to refer only to one of the drafts. In that regard, I would like to point you to ANNEXURE FF, at page 445 and to point to the Commissioners where this costed and non-costed issue is dealt with, by the Ministerial Sub-Committee.

MR SHAIK: Commissioners, on page 446, paragraph 8 of the initial draft
20 that I have submitted, it is also reflected in the final document, signed by the Ministers, that we will come to later, on page 477 and they are both on paragraph 8. Now, I read into the record:

*“Two options were proposed in the Softcom presentation for the lift programme. Option A, consider the military value system, including
25 programme cost, option B, consider the military value system, excluding*

11 NOVEMBER 2014

PHASE 2

programme cost. Option A, considered and selected an aircraft from the lower cost cluster, while option B, considered and selected an aircraft on the higher cost cluster. Option A, MB-339 offered only a pilot training capability at lower cost. Option B, Hawk offered a dual role aircraft, both pilot training

5 *and a limited operational use capability at higher cost.”*

ADV SELLO: And is it at this meeting that a decision, regarding which option to choose was finally made, according to your, your evidence?

MR SHAIK: Yes, it was.

ADV SELLO: Thank you. Chair, Commissioner Musi, these are the

10 documents and the order, in which the issue arose, of the costed and non-costed option. From the very first meeting of the South African Air Force command, to a decision on that score, being made by the Cabinet Sub-Committee that the witness has been able to locate and has tendered to, to the Commission. We trust that the witness has answered the questions,

15 direct question that was specifically posed to him, yesterday, by Commissioner Seriti.

CHAIRPERSON: Thank you. I think, to a very, very great extent. That really helped, because, you know, I thought it is an issue that needs to be dealt with properly. We all know what the allegations were around this issue

20 of costed and non-costed option. So, yesterday, I felt that this is an issue that needs to be dealt with, properly. Up to now, it appears that you have succeeded with that. Thanks a lot. But, in the meantime, before you, before you start with another item or you proceed with the statement, we would like to take a tea adjournment. We will come back after 15 minutes. Thank you.

25

(COMMISSION ADJOURNS)

(COMMISSION RESUMES)

SHAMIN SHAIK: (s.u.o.)

ADV SELLO: Thank you, Chair, Commissioner Musi. When we broke for tea, we had suggested that we had completed the witness's response, in respect of the costed and non-costed options. During the tea break, the witness drew my attention to the minute that he had earlier dealt with, of the Air Force command council on the 29th June 1998 and that is ANNEXURE W, page 333 of your statement. The witness feels compelled to clarify one issue, in respect of that minute and with, with your permission, Commissioners, if he may.

CHAIRPERSON: I am sorry, in your statement, where does it deal with, with that minutes?

ADV SELLO: In his statement, it deals with the minute at paragraph 51, he annexes the minute and marks it W and that appears at page 333, the actual minutes. There, there is an issue, he would like to clarify, appearing on that minute and if may be permitted to do so. Thank you, Chair, Commissioner Musi. Mr Shaik, please point out what, in particular, you wanted to clarify on that minute.

MR SHAIK: Sir, the minute is titled the minutes of the special SAAF command council and that was the one, dated the 29th of June 1998. That was the three days, before a presentation could be made to Softcom. All earlier presentations, by this, Air Force or the Ukhozi council had to do with military value the word military value comes out, military value. Presentation to the Minister on the short listing was based on military value, with no costs. Three days before the Softcom meeting, a presentation was made to the Air

Force command council. If you look at page 334 under paragraph 3.6, the final recommendation gives two alternatives, the first alternative being the most cost effective solution. So, this is the first time now, you will get a new evaluation, called cost effectiveness, or cost effective solution. The second
5 one being, the second alternative does not take cost into consideration. Now, if you turn the page over, on page 335, you then have an alternative A, which is a new criteria introduced, called cost effectiveness, by the Air Force. There is no other programme that has cost effectiveness. My understanding and if you go to and I just take you back a little, it is page 323, where it was
10 determined, page 323, that was the special meeting that Mr Eric Esterhuysen chaired to say this is how the project team should make a presentation to Softcom. It says under paragraph 3.2, the format for presentation to the AAC and it says you should include programme, country, supplier, product name, quantity, programme cost, financing, value, military value, industrial value,
15 best value and ranking. It does not say anywhere that it should have cost effectiveness. So, this concept of cost effectiveness, although it is a right one, I am not disagreeing it is not a right one. It is the first time it does come into, into consideration and I did say earlier on, it is the first time the element of cost became an issue, in the Air Force. So, that is how come we had a
20 new element coming in. Although, it could be argued that maybe, no consistency, or what is stated in paragraph 3.6 to what is really reflected, under the next page, alternative A and alternative B, because if you do not take cost into something, then it cannot be cost effective. So, it is the, you either have cost or you do not. You cannot call both cost effective. So, I just
25 needed to put that on record. So, it is a new way of looking at your ranking

and a new ranking of cost effectiveness came in. Thank you.

ADV SELLO: Just, just, again for the record, you indicated, during the break that the appendix C, referred to under alternative A and alternative B, you, you spoke about, about that. Have you had opportunity to consider that
5 document? Does it form part of your bundle today?

MR SHAIK: No. That appendix does not.

ADV SELLO: Thank you. Have you clarified the issue that you wanted to raise with the Commissioners now? Are you satisfied with that?

MR SHAIK: To some extent. I, I do not want to take the Commissioners
10 back and forth. The presentation made to the Minister on the AAC and it is on page 286 shows that the Hawk comes out on the top, when you exclude cost. If you turn to page 289, when you introduce a new concept, called cost effectiveness, you would see that the MB-339 scores 12.7, although that is an RFI state, it would be almost consistent in the next round. So, there is
15 something, when the presentation was made to Softcom, we never altered what the Air Force presented to us. We merely used that number and mathematically added the NIP's and DIP's against that number. That is how the outcome came out, where in one case, without cost, it is the Hawk with the cost is MB-339. We did not go back to the Air Force and tell the Air
20 Force do not do military effectiveness. We accepted their number. Thank you.

ADV SELLO: Thank you, Mr Chair. Chair and Commissioner Musi, if, if there is no question arising from the explanation by the witness, on the costed and non-costed issue, we would like to pick up from where we left the
25 statement, yesterday. Thank you, Chair. Mr Shaik, yesterday, we had taken

11 NOVEMBER 2014

PHASE 2

it as far as page 21 of your statement and today, we have dealt, we have taken it as far as paragraph 54. Today we have dealt with the minute, you discuss at paragraph 55, being the AASB meeting of 16 July 1998. What we must do now, is to deal with what you state from paragraph 56 on page 31 of
5 your statement and take it from there. In paragraph 56, you deal with a briefing to Parliament on the 3rd of August 1998. What, what would you like the Commissioners to understand from that?

MR SHAIK: Yes, Sir. This was a briefing by the Chairman of Armscor to Parliament and this was a copy, I got, from the Department of Defence. In
10 that briefing, the Chairman of Armscor is briefing Parliament on the progress of the Strategic Defence Offers Committees. Bear this against the background that Members of Parliament were requesting the Minister to respond to some of the questions, asked in Parliament. These are official correspondence between Members of Parliament to the Ministry of Defence,
15 where the Minister had to answer a set of questions, asked by Members of Parliament and the Minister had to provide answers. At some point in, in August, before we briefed the Minister's Sub-Committee the Chairman of Armscor, then went to brief Parliament, to give a status report of where the Department of Defence, Armscor, DTI, Department of Finance are, with
20 respect to the programme. This is before the Cabinet Sub-Committee meeting. I, I do not want to bore the, the Commission with, with the details of it, other than to say, this was a presentation to Parliament, by the Chairman of Armscor on the status of Softcom, on the status of the, the NIP's, the DIP's and the countries that were partaking in the offer to the State. Thank you.

25 ADV SELLO: You not, in your statement suggest that you were a part of

11 NOVEMBER 2014

PHASE 2

delivering that brief, briefing to Parliament. Are you aware, at all, whether Parliament objected to what was briefed, being briefed about, at the time?

MR SHAIK: No. I was not party to the brief, nor am I aware that Parliament objected to what was contained in it.

5 ADV SELLO: If we turn then, to page, to page 22, paragraph 57. You deal at paragraph 57 with a Softcom meeting, held on the 5th of August 1998. You talk to this meeting, its importance and the issues that were discussed in that meeting. You annexed a copy, I think, of the minute as ANNEXURE CC and Commissioners that will start on page 419 of the second bundle.

10 MR SHAIK: Sir, this is a quick feedback session that the Softcom had or made presentation to its members on the state of Softcom's briefing to the AASB, the AAC and then back again, to the AASB and we are still going back again to the AAC. So, this is a, a briefing of where the project teams are, where is Softcom at, in the process. Of significance is the attendance of
15 Mr Roland White from the Department of Finance. This is handwritten note. I could not locate the typed minutes. But, these are the notes of the secretary of the meeting, Captain Derik Dewey. In attendance would be Mr Eric Esterhuysen, Roland White, Alan Hirsch from DTI and myself, amongst others. It was a situation briefing as to what has happened and what has
20 transpired. It dealt, a large part of the impact of the financing of the special defence account, of the, of the packages. So, it had to do with economic benefit, versus financing, et cetera. Mr Roland White expressed how best to represent it. So, it is merely a briefing, a report back session to the committee.

25 ADV SELLO: Now, you, you mentioned that Mr Eric Esterhuysen was a part

11 NOVEMBER 2014

PHASE 2

of this meeting. Could you identify him on the list of attendees?

MR SHAIK: Sir, right on the top is EE, it stands for Mr Eric Esterhuysen.

ADV SELLO: Now, if we could work a bit, through this minute. Under overview it makes reference at page 422, it makes reference to MCC and
5 then MCC presentation, shown by Chippy and, and it notes, priority, this is the sequence, second point, reduce quantities, third point, removal of tanks. It closes that with the statement, Chippy says that the financing can be removed. Could, could you explain what that discussion is about?

MR SHAIK: Sir, the entire package, at that time, was becoming, or being
10 realised to be far in excess of what the department could sustain in its budget. It was in excess of R66 billion. The acquisition department is merely a process manager. We had to go back, instruction from the Arms of Service Chiefs to present any reduction to the military command council. It would then be a military command council decision on what to reduce and what to
15 remove from the packages. So, this is merely showing that the process of engaging the military command council, if any reduction is to be executed. So, it shows what the priority is, what is the reduction. The role of the military command council is significant in the fact that it is the ultimate body that determines what the, the number of equipment that should be acquired is,
20 within the SANDF. Then it goes out of that to the Minister and from there, to the Ministers.

ADV SELLO: The next, the next point, against an asterisk states Chippy shows that RB7, I take it to be R7 billion shortage appears. Ronald White queries inter-payment for, or associated with the R7 billion. Can you expand
25 on that?

11 NOVEMBER 2014

PHASE 2

MR SHAIK: Sir, we were working on what is the shortfall, if we had to reduce the package and if we had to remove the tank and, and we were getting to first indicative numbers of that shortfall. But, what it shows is the interaction between ourselves and Department of Finance. In understanding
5 the shortfall and where the shortfall would come from.

ADV SELLO: Now, if we go further down the document, under the heading economic impact study. The first three lines deal with a comment by Roland White, regarding the inflow studies required. Now, there are three, four points below, I do not know if you can assist, they read:

- 10 *“1. I queried the audit ability of the information.*
 2. I queried, showing just the winning info.
 3. I queried the process, the processed nature of the info, particularly the tank.
 4. The Department of Finance should be involved in the recalculation.”

15 Firstly, who does the I, do you recall who the I, in this instance refers to and what are the issues being referred to here?

MR SHAIK: Sir, I would assume that the I refers to the scribe, being Captain Derik Dewey, where he is, he is responsible for the audit ability of the information that we captured, between the various departments, as the
20 process manager. So, he is the recorder and the scribe of the meeting and making sure that all documentation is adequately captured.

ADV SELLO: Now, if you go over the leaf at page 423, there, there is an item five. I do not necessarily see four. But, somewhere midway in the page is item five, prep of Cabinet memo and a few entries that appear to be a
25 discussion around this, concluding with the, just before the words additional,

11 NOVEMBER 2014

PHASE 2

towards the bottom of the page, Chippy says that the Ministers must meet with DG's and then it must be further structured. Can you talk a bit to that?

MR SHAIK: Sir, this is just after the meeting we would have had with the AAC, on the 13th of July. By then, the AASB reconvened on the 16th of July.

5 We have to go back now, to the Ministers. So, there is a note, where Chippy says that the Ministers must meet with the DG's, because it is, it is a programme between the Minister of Defence, Minister of Finance, Minister of Trade and Industry.

ADV SELLO: And then, there, it must be further structured, does that refer
10 to the Cabinet memorandum, which is the heading of that section?

MR SHAIK: Yes. All Cabinet memorandums must have the combined effect between the departments you are working with.

ADV SELLO: And lastly, at the bottom under additional, there is an entry against an asterisk, LIFT issue has been taken to the AAC. Does that reflect
15 a decision by Softcom, on the 5th of August to take firstly the LIFT issue to the AAC and what exactly is meant by the notification?

MR SHAIK: This is not a Softcom decision. This is after the 16th of July meeting, where the secretary now, made the recommendation that we should take the MB-339. So, this is merely recording that the LIFT issue now, is
20 going back again to the AAC.

ADV SELLO: If we move on then, if we move on then to your paragraph. Oh, before I do that, there have been suggestions, before this commission that the meeting or the work session of the 1st and the 1st and 2nd July 1998 were actually the last meeting of Softcom, as a body. Against the
25 background of this handwritten minute, what is your comment to that?

MR SHAIK: I could not locate the typed minutes. I presume that the members present, those that could recall it, would have recalled the meeting taking place. But, in, other members may not have recalled that such a meeting took place. But, for the record, I thought it would have been
5 complete, even if we show the handwritten minutes, so it makes it complete.

ADV SELLO: And if I may just take you a step back to page 420, of your second bundle and just explain what that document is?

MR SHAIK: That is an agenda, prepared by the secretary of the meeting, Captain Dewey, outlining what would be presented on the 5th of August and
10 circulated to the members.

ADV SELLO: Proceeding then, to your paragraph 58, you deal with a COD, AAC meeting of the 21st of August 1998 and you refer to ANNEXURE DD in your paragraph 58. Please deal with the contents of 58 and ANNEXURE DD. Commissioners, ANNEXURE DD appears at page 425.

MR SHAIK: We address this issue of ANNEXURE DD on, if you look at
15 page 426, it is the agenda item that we said. There was an agenda. It did go out, as a Council of Defence/AAC. My contention is that meeting did take place. It was an AAC meeting. There are many items on it. Of importance was the Winchester LIFT programme, we discussed on page 426.

ADV SELLO: Now, if you could quickly run us through what is contained at
20 page 430? You have earlier made reference to it, being a schematic, I think, approval history of the Alfa and LIFT, 430. If, if you could just quickly assist us in reading this and giving a time frame to what is captured here.

MR SHAIK: Ja. This would have been part of the presentation,
25 requesting, it would have been part of the agenda, my attachment to the

agenda item. Where an indication is to take a historic perspective from the start of the programme from 1994, where you had Ukhozi, Camaral, going to a three tier, two tier, then going back to a three tier and it gives you when the various staff targets, staff requirements were approved. So, it is merely a
5 graphical way of saying something that gives you a good, quick flow, how you move from three to two and back to three and when did the staff targets get approved and which forums did, gave the approval. Thank you.

ADV SELLO: And having followed the split between the two am I reading it correctly to say that the last block on that table is the culmination of that
10 whole process, culminating in the combined evaluation results, being presented to the forums listed there?

MR SHAIK: Yes, it is.

ADV SELLO: Now, that is ANNEXURE DD. Is there anything else you would like to draw the Commissioners' attention to on ANNEXURE DD?

15 MR SHAIK: Yes. On the last block, on page 3, on page 430, it indicates when did Softcom get the presentation, when was the first AASB, that is the 8th of July. When was the AAC briefing, 13 of July. Then, it says there is another briefing to the AASB on the 16th and it says LIFT only. It has an indication that there is a special AAC on the 16th. But, that was in the
20 afternoon, in respect of the NIP's and DIP's programme. So, it does show that it served before the Council of Defence, that these meetings took place and the members of that council will then, acknowledge the correctness that if these meetings, in fact, did take place.

ADV SELLO: That then, takes us to ANNEXURE EE, starting from page
25 438 and you deal with this annexure in paragraph 59 of your statement.

11 NOVEMBER 2014

PHASE 2

Now, we touched on this annexure earlier on, when we were dealing with the issue of costed and non-costed. I would like to draw your attention to other aspects of, of this meeting, other than the costed and non-costed issue. If you turn to page 440, you, you, at item 7.3.3 there is reference to the military command council and what steps you had taken. There is a discussion in 5 7.3.4 down to 7.3.7, without reading the detail in there could you explain the nature of the discussion that is taking place here?

MR SHAIK: Yes. We are informing the Council of Defence, sorry, we are informing the Council of Defence, which includes the Chief of SANDF, who is 10 the Chairman of the military command council. We are saying we made this presentation. There is a, a number reduction that we are presenting and we have the approval from the military command council to do the number reduction. We have followed due process, within the department to get an authorisation to reduce the number. So, that paragraph is merely informing 15 the Minister that we did go to the command council and we did get approval to reduce the number. Now, sitting in the meeting is the Chief of SANDF, who is the Chairman of the military command council. So, it is significant, in the sense that we got authorisation to reduce the number. It is significant, in the sense that, we are now doing a number reduction and in the end, we will 20 end up having a lower financial liability on that reduced number.

ADV SELLO: Now, at, at the end of 7.3.6, the very last sentence it reads:

"The total expected deficit is therefore, R7.3 billion."

Is that the R7 billion we, we came across in the Softcom minutes earlier?

MR SHAIK: Yes, it is.

25 ADV SELLO: And at 7.3.7, the minute deals with, if I may call them, two

11 NOVEMBER 2014

PHASE 2

kinds of deficits. Have you located that?

MR SHAIK: Yes.

ADV SELLO: And, and it indicates that, if the one plane is chosen, MB-339, the deficit is, no, that, the deficit is R2.9 billion and if, instead R618 million.

5 What is that all about?

MR SHAIK: From the accounting officer's perspective, he wanted to make it visible to the Minister what would be the deficit, if we chose the Hawk aircraft or if we chose the cheaper MB-339. So, he wanted visibility, to show that, as the accounting officer, this is the number that he will be short of, in
10 his budget. The point, I alluded to earlier on was irrespective of the aircraft you choose, you still have a deficit.

ADV SELLO: Now, if you turn over the page, at page 441, at the bottom of that, there is a decision. I take it, a decision of this meeting. Could you read that decision into the record?

15 MR SHAIK:

"The council agreed that the tanks be removed from the package, but not from the SANDF's overall requirement. Final briefings for the Deputy President, the Minister of Trade and Industry and the Minister of Finance, must be arranged, as a matter of urgency."

20 ADV SELLO: Now, if, if one continues in that minute, it would appear that other issues were discussed. Just very briefly, for purposes of this Commission, different, other issues appearing in this minute are dealt with at 7.3.16, 7.3.19, 7.3.22, 7.3.25 and 7.3.28. Now, starting with the first 7.3.16, just to give us a sense of what the issue is there.

25 MR SHAIK: Sir, the other issues of importance was the, the industrial

11 NOVEMBER 2014

PHASE 2

participation that Mr Eric Esterhuysen speaks about, under 7.3.16. Speaking generally, Eric said that at present, we are getting offset in the region of 400 per cent. Nowhere else, in the world have such terms been on offer. So, it is about the offset that was presented to the various fora. Now, the Minister
5 has been saying, Eric is saying to the Minister, do not forget about the offsets.

ADV SELLO: And if you go further down, there is 7.3.19.

MR SHAIK: The Chairman of Armscor makes this statement and if I will read it in record:

10 *“Mr Haywood said, if approval is not obtained, we will be importing all our hardware in two to three years’ time, because our defence industry will have to close down.”*

ADV SELLO: And, and what exactly is Mr Haywood referring to there?

MR SHAIK: At, at that point in time, as I started my presentation, right in
15 the beginning and I said there was anxiety, by Armscor, Department of Defence and the industry that the shrinking defence budget and acquisition budget was getting to a point, where industries were on, at that point, in which they had to make very hard decision of staying open or closing down, because there has been a lack of defence acquisition spending, up until that
20 point, after 1990. It, there was a concern, if this decision is delayed that it may adversely affect the defence industry. I would not want to add more to it, other than, read anything other than what Mr Haywood said. It is better that he answers on that.

ADV SELLO: Now, at, at 7.3.22, if my understanding is correct, it would
25 appear that there is a discussion about some benefit to industry, could, could

11 NOVEMBER 2014

PHASE 2

tell us about that, 7.3.22, at the bottom of page, at the bottom of, at the bottom of page 442.

MR SHAIK: Yes. It, it is a discussion again, by the Chairman of Armscor, which talks about the two thirds of what we have spent will be coming back
5 into the industry. Again, this is about the, the DIP's, mainly in the DIP's. So, there was some concern and if you really look at the way Defence Department made its presentation, it includes the statutory costs, which is VAT, VAT and import duties, et cetera, plus the benefit is going to the local industry. So, Haywood, Mr Haywood was of the view that a large part of that
10 would be coming back into the country.

ADV SELLO: This then, takes us to your next heading, which is the Cabinet Sub-Committee period, starting at page 22 and you deal with this in paragraphs 60 to 64. You have attached a number, of what we call drafts of the meeting referred to, starting at paragraph 60 on the 31st of August 1998.
15 Could you take the Commissioners slowly, through each draft? Firstly, what you state in 60 and then, take the Commissioners through each draft, in turn.

MR SHAIK: Yes. The meeting was scheduled and, and planned for, to happen in Durban, as there was a, a governmental conference, taking place, down in Durban, during that time. A will get the exact name of that. So, the
20 briefing was set, pre-arranged. We went down to do the briefing, in Durban. Present at that meeting were the various Ministers, listed on the minute, the Minister of ...[intervene]

ADV SELLO: Sorry, to just, to assist the Commissioners, the first, what you call draft one, appears as ANNEXURE FF, from page 445 of the witness's
25 bundle, file two. Thanks, continue.

11 NOVEMBER 2014

PHASE 2

MR SHAIK: Sir, the first draft that was out there, indicates the, those present, at the meeting. I will talk a little bit about the meeting and then, go on about the sequencing of the minutes. That may have created some confusion. At that meeting, it was chaired by the then Deputy President, it was the Minister of Defence, it was the Minister of Trade and Industry, 5 Minister of Public Enterprise, Deputy Minister of Defence and there were the Director Generals, if I could loosely call it, of Defence, Trade and Industry and the Chairman of Armscor, Mr Haywood, CEO of Armscor and the General Manager of, in Armscor and myself, the Chief of Acquisition and Mr 10 Vernon Pillay, from DTI. This meeting started off with a presentation, by myself, which were slides that were prepared to, for me, by the Softcom coordinators, both Derek Dewey, Dawie Griessel and [indistinct] from Armscor. So, this was a presentation of the results that we obtained from Softcom that was presented to the AASB and then presented to the AAC. I went about, 15 making a presentation, in almost a similar format to the Ministers, about, per programme, what was the outcome of the scoring, out of 300. I did two presentations on the issue of the LIFT. It was both the costed option and the non-costed option, as I have done previously, at the AAC. My recollection is that, at the end of the meeting, I started to take notes. There was a 20 discussion, by the Ministers, specifically around the issue of the LIFT. The only programme that did not have a forthright recommendation was the LIFT programme. Every other programme made a recommendation of what was the mathematical adding of the scores and that number has never changed, from the time, it was received by Softcom, until the time it went to the Cabinet 25 Sub-Committee. So, the, the ranking order of the tank programme, ranking

11 NOVEMBER 2014

PHASE 2

order of the maritime helicopters, ranking order of the Alfa, ranking order of the LUH, ranking order of submarines, ranking order of the Corvettes were all presented. The only programme that required a decision or a discussion, revolved around the, the LIFT programme. This is where the Minister of

5 Public Enterprise had a direct role to play in the programme, in so far as Denel was a State, a company under Schedule 21 of the State entities and it, the State was the owner of Denel and Denel would have received substantial benefit from it. So, there was a discussion, by the late Minister on the contribution of the, of Denel. My recollection is that the Chairperson

10 requested dialogue, from the respective Ministers. At the end of the Ministers' dialogue, my recollection is that he asked the Secretary of Defence, the Director General of DTI and if I am not mistaken, the Chairman of Armcor for any comment. At the end of that meeting, a decision was taken to select the Hawk programme, from what the Ministers have decided. I was

15 requested to, to write the minutes of that meeting. It is a function, within my delegation to be the, for the DAPD to provide secretarial services to the Minister. So, the Minister within, requested that I write the minutes. I did not think it unusual, because it was part of my responsibility. So, I have, I came back from Durban, the next day, drafted a set of minutes, which I refer to as

20 draft one and that is ANNEXURE FF, on page 445, following to 446, culminating at 447.

ADV SELLO: You, you mention that there was a discussion and a decision was taken. Can you point us to the decision in that minute, as recorded by you, the drafter?

25 MR SHAIK: Page 446, paragraph 8.

11 NOVEMBER 2014

PHASE 2

ADV SELLO: Paragraph?

MR SHAIK: Paragraph 8, it talks of two options, we have proposed in the Softcom presentation.

ADV SELLO: And, does the minute record, whether a decision was taken,
5 as to which to prefer?

MR SHAIK: Under decision taken, paragraph 11, it says:

“After lengthy discussions by the Ministers, it was decided that option B (Hawk) should be recommended, as the best option to meet all military and national economic strategic requirements for South Africa.”

10 And the word is on recommended.

ADV SELLO: Now, as, as you mention that DAPD had the responsibility of providing secretarial services and a secretary then, for that meeting and the discussion around the recommendations arising from the COD/AAC meeting of the 21st of August. Are you aware of more than one meeting of the 31st of
15 August at which, the Sub-Committee of Cabinet was briefed on this matter?

MR SHAIK: To my best of my recollections, there was only one meeting.

ADV SELLO: Thank you. You may proceed.

MR SHAIK: Commissioners, upon my return, I drafted a set of minutes that I alluded to, under 445, 446, 447. I handed a copy of the same minutes to Mr
20 Eric Esterhuyse and I asked him to look at it and to then hand it to the Minister for distribution. I was leaving for Farnborough, I think, the following day or a day later and I thought it will be best, if I hand these minutes to my colleague, as a co-chair of Softcom. I was hoping that, if there were any spelling errors or minor changes that he would correct them and hand them
25 to the Minister.

11 NOVEMBER 2014

PHASE 2

ADV SELLO: Having handed the minutes or the draft minutes to Mr Esterhuysen as your co-chair, what then happened?

MR SHAIK: I went to the Farnborough air show air show, where it is an international air show, pre-arranged some time before. While I was away,
5 there was a meeting on the 18th of September 1998, which is a Council of Defence meeting, where it is recorded of my travel to Farnborough. This new appointed CEO of Armscor, Mr Swann, on page 450, I read into the record:

“Mr Swann joined the meeting. Mr Swann reported that the Deputy President and the Ministers Erwin and Sekgoa had been briefed in Durban.”

10 ADV SELLO: Just, for, for record purposes could you mention the item number against which you are reading?

MR SHAIK: Ja. My apologies. It is item 4.7, titled government to government offers and it is page 450 and it reads:

*“Mr Swann joined the meeting. Mr Swann reported that the Deputy
15 President and the Ministers Erwin and Sekgoa had been briefed in Durban and basic approval had been given to the recommendations, made by the team. However, Minister Modise, the Deputy President, Minister Erwin needed to brief the Minister of Finance. Minutes of the meeting in Durban had been forwarded to the Minister for distribution.”*

20 What everybody was now waiting for was a decision to negotiate with the preferred suppliers.

ADV SELLO: And you deal with, with that meeting, the ANNEXURE GG at paragraph 61, starting at page 23 of your statement. In that paragraph, you also make reference to the Secretary of Defence. Would you like to talk
25 about that?

11 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes. Upon my return, yes, upon my return from Farnborough UK, my staff presented me with a letter, sent from the Secretary's office to myself. That is on page 454, appendix HH. It is a letter from the Secretary of Defence to the Chief of Acquisition and it is entitled special briefing to the Deputy President on the progress of the strategic defence package programme, 31 August 1998. Paragraph 2 is of significance, oh, paragraph, sorry, let me read paragraph 1:

"Mr Esterhuysen handed me a copy of the minutes of the abovementioned meeting."

10 That is the same minutes, I just gave to Eric to distribute. Paragraph 2:

"I questioned the completeness and the accuracy of paragraph 11. I cannot recall that a decision was made. The merits of either the Hawk and the MB-339 were discussed. The fact that MB-339 meets the SAAF LIFT requirement adequately (with reference to the pre-determined criteria) is not reflected. The Hawk is not 'the best option' from a military point of view. The fact that its acquisition cost would solicit substantial more IP, apparently carries the day."

He uses the word carries the day.

"SAAF however, will have to absorb considerably higher operating costs, during its life cycle."

Paragraph 3:

"As far as I can recall, the choice between the Hawk and the MB-339, will be made later, in Cabinet. Hence, the Italians should be offered the opportunity to respond with other successful bidders. If we fail to do this, I submit that the ensuing facus could derail the initiative completely."

11 NOVEMBER 2014

PHASE 2

I am not too sure what focus he was referring to.

"In any event, my keeping the Italians in play, it would sustain the element of competition."

Signed, Secretary of Defence.

5 ADV SELLO: Okay. Now, what, just to check, if I am understanding you, it probably, it is the same as yours. That is, according to Mr Steyn, in paragraph 2 of that letter, second line, at least the merits of the Hawk and the MB-339 were discussed. That we can confirm and you confirm that that happened.

10 MR SHAIK: Yes.

ADV CANE: Sorry, Chair, may I interject? The evidence of Mr Steyn on the 15th of May 2014 was the fact his version was that neither the merits of the Hawk, nor the MB-339 were discussed. So, he corrected that either to read neither, just for clarity.

15 ADV SELLO: I accept that and I thank my learned colleague, Chair. Alright. Do you understand, Mr Chair? Mr Steyn raises an issue that the sentence at point two, that reads:

"The merits of either the Hawk and the MB-339 were discussed."

Is, is a miss-printing there and the word either, should actually read neither.

20 So, it should be the merits of neither the Hawk and the MB-339 were discussed. That is the evidence of Mr Steyn, as I remember it, before this Commission.

MR SHAIK: Ja. That would be his evidence and it is his error in both the paper and, and himself.

25 ADV SELLO: Okay. I am ...[intervene]

11 NOVEMBER 2014

PHASE 2

CHAIRPERSON: I am sorry. I do not quite understand there. The witness is saying, Mr Steyn says that the merits of neither the Hawk nor the MB were discussed. Would that be the correct assertion about it? I mean, it is not even put here.

5 MR SHAIK: No. I am saying that it was discussed. The merits were discussed. A decision was taken. I was merely reading his letter into the record, where he acknowledges that a discussion did take place, in his letter, not in his evidence. So, in his letter, he acknowledges a discussion did take place and he goes down further, by saying IP apparently carries the day. So,
10 he is acknowledging there was a discussion on IP, as well. That is, that, that again, is just on his letter.

ADV SELLO: Accepting the correction, as offered by Mr Steyn, that Mr Steyn's evidence is at least the opposite that no such [indistinct] the merits of either the aircraft ...[intervene]

15 COMMISSIONER MUSI: I am just, I am just pointing out some, some language problem, in the correction of that sentence, because if you say the sentence, as it reads now, the merits of either the Hawk and the MB-339 were discussed. If you change it to read neither, the merits of neither, then you must also change and say nor. Because correct English would say
20 neither nor. It cannot be neither and. So, I am just pointing this out.

ADV CANE: Sorry, Chair. I see, I have introduced some confusion to proceedings. The only purpose of presenting that, at this point, as being a version of Mr Steyn is so that the [indistinct], that this witness can comment on, on both. So, in fact, Mr Steyn says the letter should have read that
25 neither the merits of the Hawk nor the MB-339 were discusses, was this

witness's version on that version. Thank you.

COMMISSIONER MUSI: Yes. No, no. Agree and call up that evidence, as well. Thank you.

ADV SELLO: Yes, Chair. Thank you. I understood the point, raised by my
5 learned friend Ms Cane. I am also reminded that, in fact, Mr Steyn did say
that. I then, want you to place that version before the witness and test, and
find out what, what his comment is, based on his recollection. I would do so,
in the following manner. I would confirm that, according to this letter, Mr
Steyn takes issue with accuracy of specifically paragraph 11. Is that not so,
10 Mr Shaik?

MR SHAIK: Yes, he did.

ADV SELLO: Now, earlier, when you were dealing with ANNEXURE FF,
which is your first draft of the minute, you read into the record item eight of
that annexure, appearing at page 446. Do you confirm that?

15 **MR SHAIK:** Yes, I did.

ADV SELLO: Or maybe, I should ...[intervene]

MR SHAIK: 11 ...[intervene]

ADV SELLO: No. I should mention, I should call it paragraph 8, you read
paragraph 8 into the record.

20 **MR SHAIK:** Yes. I read paragraph 8, as well.

ADV SELLO: And what we note at page 454, the letter from Mr Steyn, he
takes issue with the correctness and accuracy of paragraph, paragraph 11
specifically, which according to, what you have testified, 11 reflects the
decision. He does not appear to take issue with what is stated in paragraph
25 8, which is where this, the discussion about the two options is recorded. Do

11 NOVEMBER 2014

PHASE 2

you confirm that?

MR SHAIK: Yes.

ADV SELLO: In light thereof, do you have any comment to Mr Steyn's contention, as corrected that neither the Hawk or the MB-339 were ever
5 discussed, at this meeting of 31st of August of the Sub-Committee of Cabinet?

MR SHAIK: Yes. To the best of my recollection, a discussion did ensue. The Ministers that were present did have a discussion. It was my understanding, it was a Minister's meeting, a Cabinet Sub-Committee
10 meeting and the Ministers eventually made a pronouncement on which was their preferred, recommended option and they used the word recommended, because it was my understand they would recommend it to the full Cabinet.

ADV SELLO: Chair, Commissioner Musi, I see, it has gone past one. With, with your permission, I would like to deal with the last issue and then we are
15 done with that annexure. Then, we break for lunch. I am indebted to the Commission. Further, the, the letter that, or ANNEXURE HH, at 454, at point three makes the following point:

"As far as I can recall, the choice between the Hawk and MB-339 will be made later in the day."

20 So, later, in Cabinet, was that your understanding, as well, coming out of the meeting on the 31st of Augusts of the Sub-Committee of Cabinet?

MR SHAIK: No. It was not.

ADV SELLO: So, difficult, as it is, to determine from the reading of this letter, and one cannot easily take issue with, with the contention that this
25 choice would be made later, by Cabinet, do you confirm that, where ever Mr

11 NOVEMBER 2014

PHASE 2

Steyn derives this understanding, it is not from the meeting of the 31st of August?

MR SHAIK: No. I cannot comment on, on that, on what Mr Steyn would have derived, where he would have derived that understanding. All I can say
5 is, on that day, at that meeting, a decision did ensue. A decision was taken.

ADV SELLO: Yes. I am going to invite you to, to explain when you have got that understanding. I just want to confirm that it is your testimony that where ever he may have derived it from, it is not from the meeting that you attended on the 31st of August, because such a discussion or decision was
10 not taken that a decision, a choice will be, is yet to be made by government. Is that correct?

MR SHAIK: That is correct.

ADV SELLO: Chair, that brings us to the end of what we wanted to point out in, in ANNEXURE HH and we shall be moving to a next item. I see it is
15 now, has gone slightly past one. It might be an opportune time to take the lunch adjournment.

CHAIRPERSON: Thank you. Let us adjourn until quarter to two. Thank you.

(COMMISSION ADJOURNS)

20 **(COMMISSION RESUMES)**

CHAIRPERSON: Thank you.

MR CASSIM: Commissioner, my client has requested that I ask you if possible that he could complete his testimony this afternoon. He has a commitment outside the country tomorrow morning.

25 CHAIRPERSON: Ja, I hear that, but I hope you realise that is totally out

11 NOVEMBER 2014

PHASE 2

of our hands.

MR CASSIM: I have already discussed it with my learned friend and she indicated that we may possibly have to ask you to extend the sitting hours this afternoon.

5 CHAIRPERSON: Ja, it will depend also on whether is the people that are going to cross-examine him, although it seems unlikely but [indistinct].

MR CASSIM: Yes, thank you sir.

MRS SELLO: Thank you chair. Yes, like my learned colleague says ,
10 the witness [indistinct]. I definitely will finish my leading the witness today considering what remains of his statement. What then happens beyond that, is dependent on other factors. But I think [indistinct] that I will be done within today.

Mr Shaik, we had just dealt with the letter from the
15 secretary of defence of 7 September 98 Annexure HH. We will now move on to your paragraph 63 at page 24 of your statement, and the corresponding annexure thereto which you have numbered Annexure II and the chair and commissioner would see that Annexure II begins at page 455.

20 Now Mr Shaik, you can turn your attention to paragraph 63.

CHAIRPERSON: Is it II or HH?

MRS SELLO: HH chair is the letter from the secretary of defence dated
7 September and that one is at 454. That is the letter that we were
25 dealing with just immediately before we go to lunch, and unless there

are other questions arising there from, I am suggesting that we move on to the next annexure which is Annexure II starting at page 456 and the issues relating to that annexure, the witness deals with at paragraph 63 of his statement at page 24.

5 I request Mr Shaik to read us your paragraph 63.

MR SHAIK: Yes. The letter sent to me from the secretary of defence was of a serious nature. It queried the accuracy of a minister's meeting and chaired by the deputy president.

MRS SELLO: If I maybe assist the commission, [indistinct]. You may
10 proceed, thank you.

MR SHAIK: Chair, this is unusual in the sense that this is a minister's meeting and my immediate boss or superior at that time, Mr Steyn, is telling me that he does not agree with the meeting of a minister's committee. It was an important point if I can recall correctly, I
15 addressed that matter with the minister. It is recorded somewhere there in the counsel of defence that the minutes were distributed.

The minister thought okay, why should he not consult all the other ministers. So what I then proceeded to do was look at some of the notes that I made on that day, restructure the minutes where I said
20 there are members and invitees, because the minute I take an instruction from an invitee I am infecting the rights of the ministers.

So I restructured the meeting, went back to my notes, resubmitted a new draft which we then referred to draft 2, and that will be on II and you can take it from page 458, 459, 460. So what we
25 proceeded to do and that is again my department, and the

11 NOVEMBER 2014

PHASE 2

administration function of that will be captain [indistinct].

We then gave the deputy minister a copy of this letter. We then gave the minister of trade and industry, the minister of public enterprise the letter. Evidence on page 456 is an official receipt form to
5 say that it is written there from the [indistinct] and it is from the chief of acquisition and in the bottom is Mr Ronny Casrils, who was then the deputy minister.

The minister looked at the minutes. He gave me a confirmation on the accuracy on the paragraphs in concern, and the
10 minutes to that again I said it is 458, 459 and 460.

MRS SELLO: And in paragraph 63 of your statement, about halfway through that paragraph, you state I complete the drafts, made some changes for clarity purposes, restructured their attendance list and submitted a revised draft copy. Now let us understand. What changes
15 did you make, and remember this is following the letter from the secretary of defence queering the accuracy of paragraph 11.

Would you address yourself to that paragraph?

MR SHAIK: Yes. I will come to it in a second. It is the restructuring of separating the members from invitees and going back to the decision
20 that was taken addressing paragraph 11. So it is really on paragraph 11 that we are looking at. So each of the three ministers were given a copy of the minutes and a letter to each of the ministers were attached and I may have just moved it off a little bit. If you look at page 462 it is a letter given to the minister of trade and industry where I am saying enclosed
25 please find a draft copy of the minutes of the special ministerial briefing

11 NOVEMBER 2014

PHASE 2

on a strategic defence package program that was held on 31 August, the [indistinct] conference room Durban.

It says it is humbly requested that written confirmation of the contents of the minutes with particular attention to paragraph 11, 13
5 and 13 be provided to this office at your earliest convenience and if all possible by 2 October and I signed the letter and I submitted this to the ministers, and then got a response from the minister of, the deputy minister of defence, and on page 459 you could see Derrick [indistinct] scribbling in the response that he got back from the deputy minister and
10 he adds that part in and that response back from the deputy minister is on page 457.

The response I got back from the minister of trade is on 464. If I could read into record the note I got back from the deputy minister of defence on page 457. It is to [indistinct] Shaik. Confirmation
15 of minutes. These appear in order suggest add to paragraph 11. Discussion point relating to the advantage of the dual role of the hawk (although this is not apparent in the value system applied in making the military performance recommendation the final decision is for the executive level). Signed R Casrils and in the response from the minister
20 of trade and industry, it says point 12 should read the shortfall of the funds towards the SDP as indicated in the DOD planning was noted.

This matter was to be raised with finance to determine the mechanism of finance in the SDP over the projected period in view of the shortfall. The results of this interaction was crucial to the final
25 decisions. The minister of trade and industry would also liaise with

11 NOVEMBER 2014

PHASE 2

finance on this matter and then the final answer I got back from the minister of public enterprise and again a receipt note is on page 468.

It shows it was delivered, received by minister [indistinct] and a letter to the minister is on page 469. Exact same letter same to
5 the minister of trade and industry and the deputy minister of defence that is 469 and the letter I received back from the minister of public enterprise is on page 470 and I read into record:

Mr S Shaik department of defence headed special ministerial briefing on the strategic defence package program.
10 Reconfirmation of 31 August 1998 minutes. I concur with the completeness and the accuracy of the said minutes.

Now here I was asking ministers to specifically address this issue about did a decision take place and was that decision correctly recorded and the minutes correctly reflect their decision made,
15 and I have all the minister concurring. When I incorporated the deputy minister of defence recommendation and the minister of trade's recommendation, I then made another set of minutes which is draft 3 for the chairperson of the meeting and that minutes went out with a letter from the minister of defence office to the deputy president and chairman
20 of the cabinet subcommittee, and that is on page 471.

So by this time I got the input from trade and industry, I got the input from the department of public enterprise, the input from deputy minister of defence and minister of defence, reincorporated all their recommendations to the changes to be made. Now we have draft
25 3.

11 NOVEMBER 2014

PHASE 2

So now the minister of defence now submits that final draft to the chairman of the subcommittee for consideration and it reads if I may read into record.

MRS SELLO: If I may just come in there. Just now we get lost in the many drafts. Just to recap, is it your testimony that you [indistinct] the first draft [indistinct] Mr Esterhuize and we dealt with the letter by the secretary of defence Mr Steyn queering the correctness of your paragraph 11, and thereafter prepared draft 2, which you say you made changes to the first draft for [indistinct]. That is what draft 2 is, am I correct?

MR SHAIK: Correct.

MRS SELLO: So you submitted to the members of the subcommittee of cabinet draft 2 not draft 1 and requested them to confirm the accuracy of what is reflected therein and to comment thereon and you received comments from the minister of, deputy minister of defence and the minister of trade and industry, is that correct?

MR SHAIK: And the minister of public enterprise, correct.

MRS SELLO: And the minister of public enterprise. You state there that you then produced draft 3. Did you incorporate these changes that is the suggested changes into draft 3 now from the various ministers?

MR SHAIK: That is correct.

MRS SELLO: Please turn to your page 472. Is that the start of your draft 3?

MR SHAIK: Correct.

MRS SELLO: I would like, the deputy minister of defence had

11 NOVEMBER 2014

PHASE 2

suggested you include something about the dual , the advantage of the hawk. Is that so?

MR SHAIK: Yes, he has.

MRS SELLO: I want you to please have regard to paragraph 8 and a
5 particular about line 5 from the bottom. There is an entry there this dual advantage of the hawk is not apparent in the value system of [indistinct] in making the military performance recommendations. Was that, that is the amendment introduced by the deputy minister of defence?

MR SHAIK: That is correct.

10 MRS SELLO: Now the minister of trade and industry had wanted an amendment to paragraph 12 of your second draft, and what is now contained there in 473 does not reflect the recommendations of the minister of trade and industry?

MR SHAIK: That is correct.

15 MRS SELLO: Okay. I interjected you at the point where you said or you were talking about the minister of defence forwarding draft 3 which is the further amended draft to the deputy president. You can continue from there.

MR SHAIK: Okay. On 2 October a letter was sent out that I drafted on
20 behalf of the minister and my name appears right at the top under enquiries, to the deputy president, saying that minutes of the strategic defence package briefing on 31 August 1998 that is page 471. I would like to read it into the record:

25 "Please find enclosed the minutes of the above meeting held in the [indistinct] conference room in Durban on 31 August 1998. A

11 NOVEMBER 2014

PHASE 2

draft copy of the minutes has been distributed to the ministers present at the meeting for comments and confirmation. Your confirmation of the above minutes would initiate the next phase in the acquisition process of the strategic defence package (SDP) as outlined in paragraph 14 and 15 of the minutes. Awaiting your guidance. Yours faithfully. Signed Mr Modise.”

MRS SELLO: After this the minister dispatched this draft 3 to the deputy president, what happened thereafter?

MR SHAIK: About a week or two later the minister told me that there are no more changes to be incorporated and the office of the president had no changes to be made. I then proceeded, he then instructed me to proceed to get the minutes all signed. I then added there is no change to the paragraphs. The only I think it is minute 4, the only change that is now made, is the inclusion for signature where the deputy minister of defence, the minister of public enterprise and that is reflected on page 478.

MRS SELLO: And the page 478 you are suggesting is the signature page of your draft form which start at page 476?

MR SHAIK: That is correct, and that is the only change that was now introduced was the addition of signatures of the ministers again that was the deputy minister of defence, minister of public enterprise, minister of trade and industry and the minister of defence.

MRS SELLO: Thank you. If you go on at page 25 of your statement at paragraph 64 to deal with your powers to provide secretarial functions to these various forum, can you deal with what you set out in page 64?

11 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes. The functions of the defence acquisition procurement division, in the constitution of the [indistinct] you will see provision made that the secretarial functions are provided by the defence acquisition procurement division. So are merely executing a function dedicated to
5 me.

MRS SELLO: You deal with the question of delegation or non delegation of your responsibilities.

MR SHAIK: Yes. The second part of that statement in paragraph 64, when I handed the draft or signed minutes to Eric, it was not my
10 understanding that I authorised him to change substance of the minutes. It was not a function I could delegate and give over. I was merely asking to assist, asking him to assist me in the distribution of the minutes.

MRS SELLO: Were you ever provided with or are you aware of a copy
15 of the draft minutes that was prepared by Mr Esterhuize regarding the same meeting?

MR SHAIK: If I can recall correctly, either during the [indistinct] or during this commission made aware of a minutes drafted by Eric that was submitted or discussed with the CEO or Armscor, but I was not
20 made aware of it at the time when I was drafting the minutes to the respective ministers.

MRS SELLO: What is your comment to the fact that Mr Esterhuize the prepared minutes of a meeting of a subcommittee of cabinet, of which you were the secretary without your delegated authority?

25 MR SHAIK: I do not know what informed him or why he took the

11 NOVEMBER 2014

PHASE 2

decision to write minutes on behalf of the defence of acquisition and procurement division. It would be almost as if I am writing the Armscor board meetings. So I have not delegated that responsibility. So I cannot answer why he went about doing it.

5 MRS SELLO: But you never discussed the matter with him?

MR SHAIK: No, I have not. I cannot recall discussing that matter with him.

MRS SELLO: Do you confirm that you sat through the entire meeting and you only left at the conclusion of the meeting of the cabinet
10 subcommittee on 31 August?

MR SHAIK: Yes, I sat through the entire meeting until the chairperson left the room.

MRS SELLO: Can you recall at all whether Mr Steyn or Mr Esterhuize or any of the invitees left the meeting before that meeting concluded as
15 you say where the chairperson left the meeting?

MR SHAIK: Chair, I cannot recall again out of memory. I can recall [indistinct] until the chairman left. I dare venture to say that I have never seen someone leave a meeting in front of presidents who is sitting in the meeting.

20 MRS SELLO: To your recollection, were any of the invitees excused before any decisions were taken by the subcommittee?

MR SHAIK: Again from recollection I cannot recall. It may have happened, but I cannot recall it.

MRS SELLO: Thank you. At paragraph 65 then to 68, from pages 25 to
25 27 you moved to a different period which you [indistinct] and you started

11 NOVEMBER 2014

PHASE 2

paragraph 65 with the draft cabinet memorandum. Can you take us through that?

MR SHAIK: Yes. The cabinet period which I break down as the cabinet period, is when we are busy writing up a cabinet memorandum, on 18
5 September you will see a note in the counsel of defence that there is a draft cabinet memorandum being prepared by the department of defence. All government related cabinet memorandum have to be circulated amongst the affected ministries.

In this case it would have had to go to DTI, would have
10 had to go to department of finance. They would have to make comments to the cabinet memorandum before it is tabled in [indistinct]. So there is that period where we are busy discussing with other government departments on preparing a cabinet memorandum.

So on the 28th, if I can just go back to the cabinet, I think
15 I dealt with JJ. JJ would be that draft cabinet memorandum we are talking about. On page 481.

MRS SELLO: We are not at Annexure JJ at page 481. If you could help us understand this document. Perhaps you could do so by reading into the record the purpose of this document which appears at paragraph or
20 item 2 at page 481 and then it highlights key issues you are saying the commission must pay attention to.

MR SHAIK: Yes. The cabinet memorandum's purpose was to table to the cabinet what was discussed by this cabinet subcommittee. So on paragraph 2 the purpose to inform the cabinet of the results of the office
25 or the strategic defence acquisition packages received from the

11 NOVEMBER 2014

PHASE 2

respective bidders and to obtain approval for the department of defence recommendation regarding the preferred bidders, so that is the purpose of the cabinet memorandum is to seek approval.

MRS SELLO: And this cabinet memo, is it then directed to cabinet or
5 distributed to all cabinet members?

MR SHAIK: It will eventually be distributed to all cabinet members once the affected departments have all commented on it.

MRS SELLO: The copy that you have provided at 481 is this the final memo submitted to cabinet or is this a draft yet to be commented on by
10 the various departments to your recollection?

MR SHAIK: To my recollection it has been many years gone by. It could be the final one that eventually tabled.

MRS SELLO: Is there anything else you would like to finalise on this memo?

15 MR SHAIK: Yes. On page 484 and starting from 483 in the bottom at 4.3 it talks about the results that was provided to Softcom and it eventually goes down to the force design on paragraph 4.5 and it talks about the original force design number and the revise force design number. So you see the light utility helicopters going down from 60
20 down to 40. The alpha going down from 38 to 28. Maritime from 6 to 4. There is the issue about coverts 4 to 5. The fifth was never procured.

There is a submarine from 4 to 3 and there is a leading fighter that stays at 24 and there was an issue about the tank. On the next page it will be financial implications. Right in the bottom on
25 paragraph 7 other departments or bodies consulted. It would be the

department of trade and industry and department of finance.

So when you compile a cabinet memorandum you have to state which are the other departments you consulted and which other departments your memorandum may have an impact on. Thank you.

5 MRS SELLO: For clarity sake, at page 484 you speak of original, there is a [indistinct] at 4.5 under the name force design. Is it so that in the table the first column deals with program which refers to the specific equipment. When the document in the second column states original force design, these were the quantities per program as had been
10 tendered for. Is that correct?

MR SHAIK: Yes, that is correct.

MRS SELLO: And under the revised force design, these are the quantities following the reduction of quantities you earlier referred to, suggested or approved by the MCC. Would our understanding be
15 correct?

MR SHAIK: It is the revised force design, so we are merely talking force number, force design numbers. We notice the tank program is still staying in. A statement is made that it is not that the tank requirement has been eliminated from the force design. Just a reduction in the
20 number.

So speaking to the moderated numbers, but at the same time saying that it is also the force design. If you go down to paragraph 4.7 you will see a special note there that says that it was recommended to the AAC that the main battle tank program be removed from the
25 strategic defence package due to the new force deal signed

requirements and its direct implications to the costing there of.

The AAC supported and approved the removal of this program from the defence packages. The MBT will however remain as a requirement in the future defence planning.

5 MRS SELLO: I just wanted us to be clear because the defence review speaks of a force design so we should not confuse what you have under the revise force design as coming directly from the defence review. This is merely intended to reflect the reduced quantities agreed to within the MCC and the department following the submission of tenders.

10 Is the distinction I attempt to draw correct?

MR SHAIK: To my recollection, yes.

MRS SELLO: Okay, thank you. At paragraph 66 ... [intervene]

CHAIRPERSON: Sorry, let me just find out. At the time when the minister made announcements about projections as far as investments
15 and job creation is concerned, was he using the figures or the figures that were used are the ones that you call the original force design or are the figures, because I think I have seen some of it [indistinct] revised equipment fees and then I also have another column which they call [indistinct].

20 Now my question is when the minister made the announcement right at the beginning, were they using the number of equipment as contained in your document here which is [indistinct] provisional force design or not?

MR SHAIK: Chair, from my recollection the first time the cabinet
25 through the minister would have made the pronouncement on

investment / job creation, would have been on 18 November 1998 and that would have used then the revised numbers.

MRS SELLO: In fact before we leave this cabinet memo, please refer to page 485. Item 6.4 and that paragraph deals with revised force design
5 amounts and I think there is an explanation in there that might be relevant to highlight. So consider 6.4 and clarify any issue that you think the commission might benefit.

MR SHAIK: Yes chair. At some point there was confusion on bidders on whether their price were cheaper than what was offered. What
10 resulted to some confusion was when the cabinet eventually made the decision to select preferred bidders, the department of defence had to include statutory costs, importation and transportation costs. So the figure that we show out after that point is no more tender price figures.

It is the price of the equipment plus the statutory costs
15 and plus what we call program management costs. So it is not the price a bid attended for. It is a whole lot of other prices including financing etcetera that comes in. So if I can read it:

“The total cost of the defence package requirement as indicated in the revised force design amounts to 29.773.13 over a 17
20 year period and that period was from 2001 to 2016, 2017. These costs exclude all financing costs, but includes other costs such as statutory, importation and transportation costs. This leaves the DOD with a shortfall amount of 9 705 million over a 31 year planning cycle and a shortfall of 11 920 over 16 year planning cycle. The shortfall is derived
25 from using a fixed budget allocation of 9 721 billion per annum to the

11 NOVEMBER 2014

PHASE 2

DOD.”

So it gives you an idea of the shortfall that we are talking about and we are stating it up front to the cabinet in the meeting, this is the shortfall. Another point to be noted on that same page is on
5 paragraph 4.8. And it says clearly:

“A special ministerial briefing for the progress of the strategic defence package was presented to the deputy president, minister of defence, minister of trade and industry, minister of public enterprise and a deputy minister of defence on 31 August.”

10 So it is saying the cabinet subcommittee as appointed, it was briefed and now the department is making the memorandum to the cabinet.

MRS SELLO: So most importantly when we hear the figure of 29 billion 773 million [indistinct] referred to in paragraph 6.4 we should understand
15 that to be the cost of the revised force design but not including the financing cost of this entire package.

MR SHAIK: That is correct.

MRS SELLO: If I may then turn to your paragraph 66 at page 25. You deal in this paragraph with an internal memorandum from an [indistinct].
20 If you could just take us through that.

MR SHAIK: Yes.

MRS SELLO: The witness deals with that on page 25 of his statement, paragraph 66.

MR SHAIK: Chair, before I proceed I need to just reflect back again
25 where we are at. We are now in the month of October. In August late

11 NOVEMBER 2014

PHASE 2

August, 31 August we briefed the minister subcommittee. Early September I wrote the first draft. I went to [indistinct] on I think it is 16 September. In the counsel of defence there is a note in the minutes that says the secretary of defence has tendered his resignation.

5 So the secretary of defence would have tendered his resignation somewhere just after the briefing to the ministers in Durban and before the counsel of defence on the 16th. So in the first week of him coming back from Durban he may have tendered his resignation and there is a recording of that.

10 MRS SELLO: Can I help you with that just for precision purposes? Are you referring to the meeting of the COD of 18 September 1988, a mandate of which appears at page 449 and marked Annexure GG?

MR SHAIK: Yes, I am.

MRS SELLO: page 449.

15 MR SHAIK: Yes, if I could read it into the record. Page 449:

 “The minutes of the counsel of defence meeting held on 18 September 1998 at 10:00 in Pretoria.”

 On paragraph 2.3 it reads:

 “The minister then formally informed the counsel that Mr
20 Steyn had requested that his contract be terminated with effect end of November 1998.”

MRS SELLO: Okay, I just wanted to get the right document for record purposes. You may continue with reading.

MR SHAIK: We are in the month of October and there are various
25 housekeeping exercises to do with regard to the various forums, signing

11 NOVEMBER 2014

PHASE 2

of minutes, etcetera. It has now come to the attention of the department that the secretary of defence has tendered his resignation.

My staff that manages the secretarial work of the defence acquisition and procurement division had tried to approach the secretary of defence office to set up the meetings, the AASP meetings where he can then sign the minutes. So I would like to read into record page 487. It is a letter from the director weapon systems that reported to myself, addressed to chief of acquisition and it reads as follows:

“Ommittion to establish an AASP meeting scheduled at the defence staff counsel, renders this directorates efforts in this regard fruitless and utterly frustrating. Similar difficulties were reported in June 1998 to no avail. The third 1998 AASP meeting scheduled for 21 October 1998 in consultation with the office of the secretary of defence, an AASP members was cancelled and rescheduled for 30 October 1998 in consultation with the office of the secretary of defence for several reasons. The 21 October was once again reserved for transformation DSC and the secretary of defence will not accept a [indistinct] for acquisition at the ASSP. During preparation for the ASSP on 30 October, the secretary of defence advised that this slot was not available due to a long standing appointment he had with the reserve bank. The schedule appointment for 30 October has once again to be cancelled and the attempt to reschedule to 3 November when both secretary of defence and the chief of acquisition are available, is pointless due to the unavailability of the chiefs of arms of service. Convention of an ASSP meeting before the final departure of the

secretary for defence is necessary to conclude a back log of decisions / issues about which he is informed. It is required that the date and time for the final ASSP of 1998 be established that the defence staff counsel had tendered by the majority of the ASSP members, including the chief
5 of arms of service and that this date be advised so that an amended agenda can be promulgated timorously.”

It is signed by the director of weapon systems.

MRS SELLO: And we are to understand from what you state at paragraph 68, I am reading this annexure that there was a general
10 frustration around the inability to hold meetings and difficulties that members were experiencing with regard to the ASSP meetings and these are as a forum that was [indistinct] by the secretary for defence. Is that correct?

MR SHAIK: Yes, that is correct and the follow up annexures to that
15 letter is reflected on page 489 where the agenda for 21 October that was cancelled by the secretary it shows clearly on page 489 item 2B. It says [indistinct] held on 16 July and it says appendix A and the first would have been the special ASSP meeting on 8 July.

So were they going to table the 8 July meeting and they
20 were going to table 16 July meeting for his signature while he was still in the employee of the state? And if you turn the pages over, two pages over on page 491, it gives you the minutes of the [indistinct] board meeting number 2/98 held on 16 July and on page 492 it is the start of the minutes for 16 July.

25 So this pack would have went to his office. So he would

11 NOVEMBER 2014

PHASE 2

have known that he has his minutes to sign, because when the agenda goes out, and as we showed on the agenda on page 490 of the agenda, it says for action secretary of defence copy number one. Then by then we now appointed the deputy secretary of defence action 2, and in
5 action 3 chief of policy and planning, action 4 chief of finance who eventually signed the document.

So he is on the distribution list. He is for action. He is not for information. So his office received the pack. He just did not want to have the meeting on 21 October, because I was not available,
10 because I was called with the minister to go down to Cape Town to brief cabinet.

So he is told that I should not be briefing cabinet, I should make myself available to him, so and that was the reason for him not to have the meeting on 21 October.

15 MRS SELLO: You ... [intervene]

MR SHAIK: I just need to clarify who I am talking about. That is the secretary of defence, Mr Steyn. So he felt that as a subordinate I should be presenting at the ASSP and not with the minister presenting to a full cabinet. So it is a tussle between the minister and the secretary
20 sir.

MRS SELLO: Are we to understand you correctly that when the agenda at page 487 dated 15 October 1998 was distributed and you read out the names or the persons to whom it was distributed, the names appearing at 490, when that agenda was distributed annexed thereto
25 were the draft minutes of 8 July and the draft minutes of 16 July.

11 NOVEMBER 2014

PHASE 2

So those persons listed at page 490 would have received both the agenda and the draft minutes?

MR SHAIK: That is correct.

MRS SELLO: Mr Steyn testified that he only saw the minutes of 7 July
5 ASSP and 16 July during the course of preparation for this commission. For giving testimony before this commission, because the draft minutes were not available by the time he left office. So the drafts have not been prepared for his consideration by the time he left office.

What would be your comment to that?

10 MR SHAIK: Chair, I am not the drafter of the minutes in the recording. That is a function of a department or a defence acquisition procurement division and captain [indistinct] will draft up the minutes and distribute them for signature and draw up the agenda. This was presented on the agenda item as stipulated and copies, numbers are reflected and the
15 only way you can get a copy number is if everything is distributed for the agenda and what is going to be on the agenda has been distributed to those who are members of the committee.

MRS SELLO: Now you say that the scheduled ASSP meeting was for 21 October as appears on the agenda at page 489 and that is the date
20 he was scheduled to present to the full cabinet in Cape Town and it is as a result of your absence that the secretary of defence took the decision that the meeting cannot go ahead in your absence.

MR SHAIK: Yes. As reflected in [indistinct].

MRS SELLO: Now after your presentation to cabinet, were you ever
25 again invited to an ASSP meeting that failed to take place on 21 October

11 NOVEMBER 2014

PHASE 2

for the reasons stated before the secretary of defence retired?

MR SHAIK: Yes, as reflected in the letter scheduling the next meeting at 30 October was also again cancelled.

MRS SELLO: And to your knowledge were any other meetings
5 scheduled post 30 October for the same ASSP meeting, and most importantly before the secretary of defence left office, to your recollection?

MR SHAIK: To my recollection we could not get a meeting with the secretary of defence.

10 MRS SELLO: You deal with this date on 21 October in your paragraph 67 and you speak of in that paragraph you make reference to this presentation arranged to cabinet. Could you deal with that?

MR SHAIK: Yes chair, in October once we got the cabinet memorandum drafted with intra departmental cabinet memorandum
15 drafted, you would table it to cabinet secretary. I was invited by the minister to make a comprehensive briefing to cabinet on 21 October. Myself, the deputy minister of defence and the CEO of Armscor went down to Cape Town to do a briefing to full cabinet.

It was a comprehensive briefing on all bidders on the
20 process on what made up the concept of [indistinct], what were technologies, what were technology multipliers used in the offset calculation, what was the benefit per country, per product, what was the number of jobs offered.

It was a very detailed comprehensive briefing that I
25 made. It was a very robust discussion and presentation. At some point

11 NOVEMBER 2014

PHASE 2

I was asked to leave the room, because the ministers wanted to have further discussions amongst ministers. In the chair at the time was the late president Nelson Mandela who chaired that meeting.

Now at that meeting, the chairman of the subcommittee
5 was not in country, so the minister of defence was responsible to do the briefing on behalf of the cabinet subcommittee. There were other members of the cabinet subcommittee present and it was then the minister of defence responsibility to brief the entire cabinet and after my and Mr Swan's presentation, we were asked to leave and cabinet then
10 deliberated even further.

MRS SELLO: Now chair and commissioner, the witness has shared with us this presentation that was made to cabinet. We however ran into a little bit of a problem. Currently the country does not form part of the bundle and that is because we realise that that presentation had not
15 been declassified.

We have requested declassification from the DOD through the secretariat or we were hoping for assistance from the DOD through the secretariat to have that presentation declassified in order to put before you or without [indistinct] we were not in a position to do so.

20 And at that point what happened before, unfortunately before the witness [indistinct] to this aspect of his statement. So we will enquire and we will be advised by the DOD whether or not this classification or the declassification is appropriate.

CHAIRPERSON: Firstly we know that was [indistinct]. I do not think he
25 is the first witness to talk about that. Although we know that [indistinct]

11 NOVEMBER 2014

PHASE 2

who made that presentation. I am sure we can use another witness to submit that document to the commission, because [indistinct] around that document as far as I am concerned.

We can at a later stage get another witness from DOD to
5 come and submit that document.

MRS SELLO: That could very well be done chair, and we accept that. We just wanted to mention as far as this witness is concerned is the inability to provide that presentation currently. Mr Esterhuize has provided the first presentation which was made on 31 August to the
10 subcommittee.

There is this presentation of 21 October but as the chair says Mr Swan is one of the people who attended this briefing on 21 October to the full cabinet, and maybe through him then that presentation could be made available.

15 Thank you chair. Now Mr Shaik, in this presentation and indeed to the presentation to the subcommittee, is it so that you presented what in the cabinet memorandum you referred to as the original force design which is the original tender quantities and the costs of the tender in respect thereto on the one hand and you presented the
20 revised force design that is the reduced quantities and the costs associated with the reduced quantities. Is that so?

MR SHAIK: Yes, my understanding of the presentation would have went hand in hand with the discussion around the cabinet memorandum.

25 MRS SELLO: Now when one considers that presentation, the original

force design, the costs reflected therein, derive from the evaluation reports as presented by the various program teams to [indistinct]. Is that so?

MR SHAIK: Yes.

5 MRS SELLO: Now just for clarity. As regards to the revised forced design, and reduction in quantities, how are the costs associated with each program reduced in quantity calculated, how were those arrived at that you presented to cabinet?

MR SHAIK: After the presentation to the military command counsel,
10 when I went back to the project teams, where I then extracted the information from the tender documents and they would have worked with the Armscor finance department to ensure that the price reduction and the number reduction is audited.

So that number would then come back and be fed back
15 to us from the project teams and from the Armscor finance department and that number then would be incorporated. So this is numbers that I would have represented given to me by the coordinators being Derrick and Dawie who then would have got it from the project teams and would have got it from the finance department.

20 MRS SELLO: Thank you. You move on to paragraph 68 where you deal with yet another presentation to cabinet. Would you like to deal with that? Your paragraph 68 starting at the bottom of page 26.

MR SHAIK: Yes, before I move on on that one, just to make sure that the first cabinet meeting on 21 October is reflected on page 499 under
25 Annexure LL.

11 NOVEMBER 2014

PHASE 2

MRS SELLO: Just a minute.

MR SHAIK: So it is just the cabinet minutes of 21 October 1998 where it indicates those present and the minister and Mr Shaik brief the cabinet on the program on the procurement offer details specified from A to F
5 and then the cabinet discussed the presentation and resolved that. That the committee dealing with the procurement must further consult on the recommendations with the minister of finance after which the matter must be resubmitted to the cabinet.

So a decision is taken here, have a discussion with the
10 department of finance and come back. B, the committee must also consider the implications of the procurement in real terms for the budgets of other government departments, must give a clear indication on the benefits of the procurement with the social sector and indicate which areas of industry will benefit most.

15 So with that in mind, the minister had to go back and have further consultations. The department had to have further consultations with the department of finance. A new presentation was put for the minister so that he could make a presentation to full cabinet on 18 November. The results of which I attach the government
20 communication GCIS which is reflected on Annexure MM, page 501.

The minister of defence made that presentation to cabinet and at the end of the cabinet briefing GCIS made a public announcement as to what was the decision taken by cabinet. I was not present at the 18 November meeting, but the minister himself made the
25 presentation with the rest of his colleagues of the cabinet subcommittee.

11 NOVEMBER 2014

PHASE 2

MRS SELLO: Thank you. If we move then to your paragraph 69 and the next few paragraphs you deal with the international office negotiating team, now starting at paragraph 69 on page 27, could you take us through this?

5 MR SHAIK: Yes chair. This period started off by the cabinet subcommittee saying that they would like an independent person to coordinate between the various ministries that should not report to any one particular minister. The concept of an independent chief negotiator was then proposed.

10 Terms of reference for that team was then drawn up and each party within the negotiating team was then delegated a responsibility. That was signed by the respective ministers and that resulted in the negotiating team with responsibilities for technical given to Armscor, both technical [indistinct] and chief of acquisition was
15 supposed to offer a support role.

DTI was given the responsibility of [indistinct] and the department of finance was given the responsibility of financial transaction negotiations. So the team was comprised of an interministerial work group of which Armscor now, we are in the
20 contracting mode and if you go down right to the beginning where I said the role of the various parties in acquisition in contracting the role of Armscor then is the process leader.

So hence in this particular case the CEO of Armscor is leading that negotiating process. My department is merely providing a
25 support oversight role.

11 NOVEMBER 2014

PHASE 2

MRS SELLO: In paragraph 69 you explain the relationship between the project control [indistinct] and the [indistinct] and you also make reference to the role of the project control board. Would you like to say something about that?

5 MR SHAIK: Yes. From my recollection and I have explained this in detail in my Section 28 to the joint investigative team, the project control board was an idea thought about before cabinet took a decision on what to do. So the first PCB will be traced back to [indistinct], but the cabinet subcommittee took a decision in early 99 to appoint a negotiating team.

10 So PCB became in many ways a [indistinct] body in the sense that there was no roles spelt out for the PCB in the terms of reference of point. You merely had the Armscor CEO who was given that task. In discussion with the CEO of Armscor and the arms of service chief, it was felt that we should keep the PCB as an oversight
15 function to assist the chief of [indistinct], to assist the CEO of Armscor.

So this was not a mandated body, but is merely a body to assist the CEO of Armscor and contract negotiations.

MRS SELLO: Now can you contrast that rule with the project teams that were already in place at the time?

20 MR SHAIK: The project teams were still the main function for contracting. The project control board did not replace the project team. The project team were the only individuals that interfaced with the contractor on matters of technical.

MRS SELLO: So we are to understand therefore that the PCB provided
25 more an assistance role, or take an assistance role and provided

11 NOVEMBER 2014

PHASE 2

oversight over the process?

MR SHAIK: It provided an oversight to assist the team and the CEO of Armscor.

MRS SELLO: Now did the PCB take decisions or have power to take
5 decisions and or overturn the decisions of project teams?

MR SHAIK: From my recollection it did not have that power. It had an oversight role. It made, inflammation may be presented to them to ratify, but it is not ratify as to agree or to approve. These are decisions that the main contractor takes. So yet again it is not that the project
10 team is selecting.

It is the main contractor that is selecting.

MRS SELLO: And what would happen in situations where the project team makes a decision on any matter falling within its mandate following discussions or negotiations with bidders or suppliers of equipment and
15 that project team then presents to the PCB what would be the status of that decision before the PCB.

Would that decision be open to interrogation and subject to possibly being overturned?

MR SHAIK: That decision was merely for information for the PCB. The
20 PCB made up of managers, be it the chief of navy, be it the chief of the air force, be it the chief of acquisition. We were budgeting authorities, so it was for information's sake. We have not overturned [indistinct], we merely received the decisions that were made at the main contractor level.

25 MRS SELLO: And paragraph 70 then you deal with the period of

11 NOVEMBER 2014

PHASE 2

negotiation from January 1999 till signature of the contracts on 1 December. Would you like to highlight anything in particular in that paragraph?

MR SHAIK: Other than what was said by Mr Naidoo, there was an
5 affordability investigation that we were required to do. That was largely led by department of finance. My recollection, it was at the university if I am not mistaken Stellenbosch University where they [indistinct] a [indistinct] model on broad banding of the impact of offset on the greater economy.

10 Scenarios were played out with regard to what was the minimum acceptable level of offset working and there were scenarios laid out what if scenarios, what is 20 percent of the offset took place, what if 30 percent of the offset took place. So that was largely a department of finance initiative.

15 They had economists on that committee etcetera and the University of Stellenbosch was merely the economics department if I can recall correctly. The other point of significance was there was no clarity as to whether government will approve the entire packages. I mean the entire revised force design.

20 So within the department of defence or the defence acquisition procurement division generated about a 129 different combinations that we could get, which means it is a clinical multiple combinations and the combinations could go zero ship, zero submarines, only aircrafts and that is a combination.

25 It could have one ship, a few submarines, a few

11 NOVEMBER 2014

PHASE 2

helicopters. So in a clinical sense, there were over 129 of those combinations that was generated. We took it to the defence staff counsel. We said here are the various combinations you can go, depending on where the total package value will sit at.

5 If government came back to us and said we can only offer you 15 billion then this is what you can get for 15 billion. It is a pure non arm of service way of looking at it, which means you are not impartial or partial to any arm of service. So the 129 options were generated.

10 It was presented to the defence staff counsel and the defence staff counsel and the military command counsel was presented on 27 August. We presented to them and both the secretary of defence and the chief of SANDF eventually made a recommendation to the minister of defence indicating what equipment and what equipment
15 number they will prefer within a certain price bracket and if I could draw your attention to ... [intervene]

MRS SELLO: I think we will deal with those issues at your paragraph 72 on page 28 and you attached Annexure PP which appears from page 517 as the three options that were forwarded to the [indistinct]. Is that
20 correct?

MR SHAIK: Yes, that is correct. If I could just refer the commission as to page 517. In paragraph 2 we say in order to discuss this matter with the minister of defence on Friday 20 August you are kindly requested to indicate your preference scenario within each cost bracket and deliver
25 the results in writing by hand to the chief of acquisition on or before

Wednesday 18 August 1999.

If you turn the page to 518 so for action, it means those that has to do something, is the chief of joint operations, chief of army, chief of air force, chief of navy, and chief of policy and planning. On
5 page 519 if you take a cost bracket A and cost bracket A means you have got 23 billion and cost bracket B meaning you have 19 billion and cost bracket C meaning you only have 15 billion authorised, what is it would you prefer from that cost bracket.

So we put it out to them and say you pick what is the cost
10 bracket, what scenario you would prefer in cost bracket. So that was given to the arms of service chiefs and for them to come back and indicate to us what it is that they would like as the arm of service under the military command counsel.

On page 521 both the newly appointed secretary of
15 defence it is Annexure QQ and it is starting from page 521. It is a letter written to the minister of defence, Mr Lakota, and it is from the secretary newly appointed acting secretary of defence and the chief of SANDF.

They indicate to the minister what is that type of equipment they would prefer as the military within a cost bracket and on
20 page 522 they indicated what is that they would prefer. They indicated to the minister that cost bracket C which is the 15 billion option, and it reads as follows:

“The department can make no recommendation for such an option. If however captain makes such a recommendation then the
25 department of defence must consider a fundamental review of the entire

11 NOVEMBER 2014

PHASE 2

defence force structure and function. The department would like to recommend to the minister an affordability scenario between the cost bracket A and B. It is the considered view of the department that such a scenario would accommodate the minimum requirement of the department of defence without any long term erosion of the strategic defence capabilities within the SANDF.”

Paragraph D gives an indication of that moderated A and B cost bracket being 21 billion as a minimum and it is listed as three submarines, four corvettes, maritime helicopters four, utility helicopters 13, lifts that is hawks 12 and alpha as a minimum 9.

So that then was presented to the minister to say this is what his arm of service can live with minimum and that is not a defence secretariat function as such, because really it is a process within the military command counsel taken to the defence staff counsel, supported by the secretary of defence and jointly presented to the minister of defence, so he can then go to his colleagues should a number other than what is recommended by the minister of finance come about.

He could then present his department’s case. So I thought that was important to introduce here. The other important aspect was that my office received a letter from the auditor general’s office ... [intervene]

MRS SELLO: Just for record purposes. Before we move off this topic, the issues that you have just dealt with, you have [indistinct] in paragraph 72 and 73 and we are to understand that your department made a presentation to the defence staff counsel regarding the various

11 NOVEMBER 2014

PHASE 2

combinations that could be considered and in 73 you state that the department of defence through the chief of the SANDF and the acting secretary for defence having considered the options given them, made a determination that the department would best be served by a
5 combination of what we call option A and B which is reflected in the letter to the minister.

Is that correct?

MR SHAIK: Yes, that is correct and a more significant point was if option C were to be considered then, a whole new re-think of the
10 department needs to be considered. So that whole issue about them saying you may have to have a fundamental briefing.

MRS SELLO: So now we conclude that side of things. Now we are turning to an issue that raised in the earlier part of your statement, that would be at paragraph 71 and I think this is the issue relating to the
15 request by the [indistinct], is that so?

MR SHAIK: Yes.

MRS SELLO: Please proceed.

MR SHAIK: Chair, from my recollection the department of defence is one of the few departments that have an office of the auditor general
20 within the building of department of defence. So if I could recall correctly on the first floor there was an office allocated to the auditor general's function.

So the auditor general was an interactive part of the department of defence. I received a letter from a Mr Cloover indicating
25 that they would like to run an audit on the special defence account act. I

11 NOVEMBER 2014

PHASE 2

forwarded that letter to the minister's subcommittee and I do not have a copy of that letter, but what I do have to show is the minutes of 26 May 1999 of the cabinet subcommittee where there were a couple of issues discussed.

5 Amongst them and if I may just turn to Annexure OO, page 511 that shows you what minutes it is, 511. It says it is the minutes of the subcommittee of cabinet ministers on a strategic defence packages, meeting 26 May 1999 held at Tambo House Pretoria.

 It lists those that are present and on page 513 of the
10 minutes item 6 auditor general request page 513, it says:

 "The chief of acquisition informed the ministers of the request by the auditor general to audit strategic defence acquisition program. However the terms of reference for such an audit was not clear to the DOD. It was indicated to the ministers that the auditing of
15 the special defence account by the auditor general has been divided into four parts namely regulatory audit of the annual financial statement in general, the audit of the projects undertaken with SDA funds, the audit of sensitive projects, the audit of government to government acquisition packages. The chief of acquisition indicated to the ministers
20 that the auditor general's act require the auditor general to consult with the president, the minister of finance and the responsible minister in this case, minister of defence, when reporting on the special defence account. After a brief discussion the ministers decided that the department of defence informed the auditor general's office to forward
25 such an audit request to the minister of defence in writing, detailing the

terms of reference required to conduct such an audit.”

If I turn the page over, on page 514 were in between a new cabinet being appointed and a new minister had come in, so I could only locate a draft letter to the auditor general from the late minister Joe
5 Modise which spells out to the auditor general that they have received a request and with regard to the special defence account act, no monies against these strategic packages has been spent.

So we do not have the money, nor have we spent the money. So clarity needed to be, as to what was to be audited. This
10 subsequently resulted in us giving full permission to the auditor general to audit it. We at no point tried to restrict or limit the auditor general’s function. In fact from my recollection both in the department of defence, this was one of the first times ever the auditor general was given full unrestricted access to everything undertaken by Armscor and the
15 department of defence and cabinet.

So for me my understanding this would have been a first.

MRS SELLO: Now this then takes us to two issues you deal with in paragraph 74 and 75. [indistinct] issues your concerns raised in the public domain. Can we deal with that? Let us start with the issue you
20 raise in paragraph 74 on page 29.

MR SHAIK: Yes. So a lot has been mentioned about the deselection or selection of any particular equipment. I would like to make it clear that I at no time selected or deselected any supplier or sub supplier. The project team [indistinct] between the main equipment supplier which
25 they call level 5, and that selection or deselection process as spelt out,

is not correct as reflected in the public media.

A lot has been presented by Mr Frits Nortje from Armscor and admiral [indistinct] on this matter and I do not wish to re-go over the same issues. Unless there is a particular specific point that I need to address on, on the matter on the combat suite.

MRS SELLO: So it is your testimony here today that you did not and you could not make the decision on the selection or deselection of any product whatsoever within this enquiry package?

MR SHAIK: That is correct.

10 MRS SELLO: And is it your further contention that that decision lays solely with the technical teams that were operating that program?

MR SHAIK: That decision laid with the prime supplier of equipment. There is enough documentation proof within the department that says that responsibility was the main equipment supplier responsibility.

15 MRS SELLO: On that score, did you seek to influence in any way the various suppliers as to who to select or deselect?

MR SHAIK: No, I did not.

MRS SELLO: You deal then at paragraph 75 with a failure to recuse yourself from certain decisions, and you raise this in the contest of that as also being an issue raised in the public domain at paragraph 75. Would you like to deal with that?

MR SHAIK: Yes, I would. On page 29 paragraph 75, a lot has been said about my role within these PCB forums. Largely from one supplier of equipment. There must have been more than 500 to 1000 sub
25 suppliers. There is an allegation continuously coming from one. There

11 NOVEMBER 2014

PHASE 2

is letters in the department and has served before this committee that showed that one supplier did not want to issue a performance guarantee.

One supplier felt that the navy or somebody else must
5 carry the risk on his product and that is the benefit that the navy would get. My understanding is that we were dealing at level 5, where we have to buy a complete vessel, and that complete vessel has to come with guarantees that that ship, that air craft, that submarine will work.

We could not fundamentally alter that principle, because
10 coupled with that was the issue of financing. Most of these issues come with a government guarantee. In the case of the corvettes, I think the French government offered a [indistinct] guarantee.

If the guarantee was removed because one country did not want to sign off on the guarantee, that meant the cost of borrowing
15 becomes more expensive. It is with these guarantees whether they are [indistinct] that you can borrow money at a lower interest rate.

So for us to interfere, meant that we would interfere with the overall [indistinct] of level 5 and level 6. I addressed that issue to the cabinet subcommittee and I appended the minute on Annexure OO
20 and it was on the cabinet subcommittee meeting, dated 26 May and it is reflected on page 512 and under the [indistinct] it is recorded the DOD to make final recommendations on the combat suite, the combat suite has a defined cost and time associated risk. The IMS subsystem proposed by the combat suite consortium namely the [indistinct] by the
25 local RSA company, the approach adopted by the negotiating team is to

put full system responsibility with the German frigid consortium.

The DOD and the German frigid consortium considered the local bust to be of high risk. So it was about the only program that was raised to a cabinet subcommittee level, because the local supplier
5 was intimidating everyone in saying that there are issues of improper conduct.

This had more to do with the guarantee that was required. The department did receive letters, and I think it was tabled here where one equipment supplier says that he has only a 30 to 35
10 percent risk and I can recall out of memory. I did not bring the letter with me.

His product only has 30 to 35 percent risk, and if 15 million rand was advanced to his company he would then meet the timelines within nine months. So it is both a time risk and a perceive
15 risk. It was difficult for the department and Armscor to get involved between the main contractor and a subcontractor.

It is stated clearly in the documents that the main contractor is responsible for the entire risk associated with it. So this was an issue of risk. It became a bit messy on the issue or proper
20 recusal, non recusal etcetera, other than to say that I have no conflict of interest. I have no interest or shares in any company.

So I could have no conflict.

CHAIRPERSON: I am sorry, just for my own understanding. Who is this supplier that you are referring to?

25 **MR SHAIK:** There was one supplier I was trying to refer to and it was

11 NOVEMBER 2014

PHASE 2

the supplier from the company called [indistinct] and that is the company that made the allegation of deselection. I cannot recall if there was any other company that made an allegation of deselection.

CHAIRPERSON: That [indistinct] is that the company owned by
5 [indistinct]?

MR SHAIK: Yes sir.

CHAIRPERSON: Thank you.

MR SHAIK: On the issue of the potential buyers which I like to refer to is that on the very first meeting of the project control board, I made a
10 disclosure that one of the foreign companies which is the French company called Tomsin, bought an equity stake into Altech defence system and it is because of that association there is [indistinct].

Now if I can correctly point it out, in my presentation to Softcom we did a very detailed layout of timelines of these potential
15 buyers. What in fact happened was when the RFO went out in early 1998 the German frigid consortium consulted with the local industry and the local industry be it Denel, be it [indistinct], be it Altech defence system, formed a consortium and it was the German frigid consortium that identified Altech defence systems.

20 Not African defence systems. So the tender documents will show that it was Altech defence systems as owned by the Altech group under the chairmanship then of Dr Bill Venter. So the French company acquired a 50 percent stake in Altech defence system. So there was no direct or indirect conflict at all.

25 There was a perception of biasedness and I thought the

11 NOVEMBER 2014

PHASE 2

best way to do it is to disclose it. So I went to the minister, I went to the chief of navy, CEO of Armscor, to the board and raised this potential biasedness that may be perceived.

MRS SELLO: Thank you. Just to understand you speak of Altech
5 defence system and you speak of a perception of biased. Can you explain to the commission what would in your mind have been the basis for such a perception?

MR SHAIK: The basis for the perception was the French company that bought a stake in Altech defence system had a relationship with a
10 company called Nkobi on driver's licence. So they were two different government departments, if I could use that. So Altech defence system had a partner called Thomson France and Nkobi had a partner called Thomson South Africa.

So the perception was the association of business
15 relationships between Nkobi and Thomson France.

MRS SELLO: And that is because Thomson of South Africa is a subsidiary of Thomson France. Is that right?

MR SHAIK: Yes.

MRS SELLO: And Nkobi had a business relationship with Thomson
20 South Africa. Was Nkobi involved in the SDP in any fashion, form or manner?

MR SHAIK: No, they were not. They only became indirectly involved after Thomson France decided to bring its equity from France into Thomson South Africa and they did that and I have submitted evidence
25 to that effect somewhere on the in November 1999. So that was just

before the contracts were signed but long after a preferred bidder was discussed, and long after the conclusion of the combat suite has taken place.

CHAIRPERSON: Sorry. Can we take a 10 minute adjournment then we
5 can come back after 10 minutes. Thank you.

(COMMISSION ADJOURNS)

(COMMISSION RESUMES)

SHAMIN SHAIK: [s.u.o]

EXAMINATION BY ADV SELLO: Chair and Commissioner Musi firstly our
10 apologies for the delay. The witness wanted to tender a document relevant to the discussion that we are currently having about the selection and deselection which, however, does not form part of his bundle. So he wanted to get a copy of this letter to read into the record the relevant parts regarding this local supplier and the issue that he earlier alluded. He has now indicated
15 this letter and we request that it be tendered into evidence. Our annexures currently go up to TT.

MR SHAIK: Sorry Commissioner it was my error it is already part of the tender documents. So it is in the documents already. I was looking for something that was already been in.

20 ADV SELLO: Thank you Mr Shaik. So actually Commissioner Musi that exercise was for nothing. [Laughing] Nonetheless, the letter is there he has located it and possibly now I may invite Mr Shaik to refer to that letter and to read the relevant portions of it into the record and then we may get back to the issue which we were dealing with immediately prior to the break which is

the conflict of interest issue. Mr Shaik?

MR SHAIK: Yes, Commissioners this letter has also been provided in the documentation that I have sent to SCOPA which I will come to a bit later. Other than to say it was a letter submitted to the Chief Executive Officer of
5 ADS and it is at page 589. It is letter from C²I². It is a letter distributed to the Navy Admiral Simpson, Admiral Howal and the whole distribution list at the bottom. The point that I thought was important is that the date of the letter was 29/07/1999. So it is in July before any final decision is claimed to have been made on the Combat Suite. So this is the point where there is major
10 discussions going on between the technical team and the main equipment supplier, the German Frigate Consortium. On page 590 of his letter in the last paragraph it says:

“Furthermore, I am of the opinion that the Navy should be prepared to pay a modest premium for the peace of mind of the IMS being
15 included in Category B.”

You can recall evidence was presented in which category it was placed under. So he says the Navy will have peace of mind if it is included in Category B:

“Where ADS’ carries the risk rather than Category C [that means
20 where he carries the risk], where SA Navy carries the risk. However, I believe this risk factor to be no more than 30% to 35% of the cost of the IMS; in financial terms this should amount to no more than some R15 million. We believe that merely to add the price of our

competitor's product to our own in order to offset a perceived risk is both simplistic and unfair.”

So he gives an indication of his risk. He further gives an indication as we go down on page 591 on point 2, he says:

5 “ADS immediately provide a development contract to C²I² System for
an amount of R15 million for the completion of the IMS 100%
according to the present IMS specification, but modified by agreement
of both ADS and C²I² Systems to reflect the current reality of the
Combat Suite. This would be conditional on ADS receiving the main
10 CS contract. It therefore represents no risk to ADS.”

So he is even acknowledging that no one has a Combat Suite.

“Should C²I² Systems fail to meet the specified requirements within 9
months of the order, then they receive the contract for the supply of the
production of IMS for the corvettes themselves, as well as those for the
15 Integration Testbed (ITB) and IQA Reference Set.”

It goes on further by saying a combination of option A and B. So he
presents option 1, 2 and 3. Now this is a point where we are saying that this
is a discussion better located with main contractors, a Level 5 contractor. He
has to sell their services. We received letters where the South African
20 industry accepted the fact that they will have to go to the main equipment
supplier to get an approval. So I want to refer you to that where right in the
middle of the process we are being told that I have a risk, my risk is only
30/35%. Whether he is right or wrong it is not my responsibility to determine

whether he gets selected or do not get selected. It is something that he has to go as his company and make the best case possible to the main equipment suppliers. We have contracting at Level 5.

It was stated upfront that you have to make that ...; get that approval.

5 So I tender that in on the basis that it gives you some idea about the contractor himself saying where he is in his development of his product and where he is with the risk of the product.

ADV SELLO: Before you leave that letter you have now read certain portions into the record probably for completeness sake it might be worth
10 considering what is set out on page 590 more to the top of that page starting with the sentence “Furthermore” and the issues that are listed there?

MR SHAIK: It reads:

“Furthermore, it is our earnest belief that we have a right to supply the IMS into the CS by virtue of the following:

- 15
- Our product is technically superior to the others that might be offered.
 - It is an indigenous South African product which is attractive from all the perspectives of Direct Defence Industrial Participation (DDIP). Indirect Defence Industrial Participation (IDIP), long term logistical support and retention of domain knowledge.
- 20
- It is very near to completion of development and essentially meets its specified requirement at the present time.
 - It was, in fact, specified and selected by the SA Navy and Armscor, in terms of both scope and price.”

11 NOVEMBER 2014

PHASE 2

ADV SELLO: Now may I ask you to comment on point 3 and 4 if you are able to?

MR SHAIK: Yes, I tendered in ... [incomplete]. Just give me a second.

[Pause] If you can turn to Annexure RR, page 527. It is letter from the Chief

5 of Navy and it reads:

“Allegations contained in an Audit General’s report concerning the non-selection of C²I² notwithstanding the SA Navy’s alleged preference for C²I² refers.

The Combat Suite databus selected for the Patrol Corvette by the
10 Project Control Board was considered the best option. At no stage was the C²I² option the SA Navy’s selected or preferred option.”

This is the Navy saying they at no stage selected it. So he is making a case that was selected. So also in Annexure RR on my interest of conflict I was asked this question at the SCOPA hearing and I was asked to produce
15 documentary proof. So on my point of notifying I have a letter from the ex-Minister of Defence, the late Minister of Defence ... [intervenes]

ADV SELLO: I am sorry before you go to that meeting I just want to find out have you completed the issue of this selection and deselection of C²I²?

MR SHAIK: No, I have not that matter is addressed again in the Auditor
20 General report which is a comprehensive detailed explanation on all matters relating to selection or in his particular case the term he used “deselection.” That matter again is addressed in the Auditor General report and I thought I

11 NOVEMBER 2014

PHASE 2

will come to that point more specifically on technical matters because it is comprehensive detailed explanation the Department of Defence have provided to SCOPA with graphical representations.

ADV SELLO: Can I then find out you commented on one aspect raised in
5 page 590. In fact the other one related to the statement that it is very near to completion of development and essentially meets its specified requirements at the present time. Are you able to comment on what is said?

MR SHAIK: No, I am not. I am not in the electronic sector. This matter would be more adequately addressed by the Project Team with the specific
10 knowledge of the databus in the Combat Suite.

ADV SELLO: Thank you, I heard you now want to get back to the issues of a possible conflict in your testimony or that part of your testimony?

MR SHAIK: Yes I am.

ADV SELLO: Before you go on just before we had a comfort break you
15 spoke about potential conflict and the basis thereof. You made mention of France and [inaudible] in South Africa and the relationships in South Africa had been Altech Defence Systems. You introduced Ngobi. Could you make us understand which of these companies you have a personal relationship with and discuss the nature of the relationship?

20 MR SHAIK: Yes Chair. In Corporate Buildings was a company my brother Shabir had an interest in and his partner in the drivers licence consortium was Thompson South Africa. He was a shareholder in Thompson South

11 NOVEMBER 2014

PHASE 2

Africa. So Ngobi was a shareholder in Thompson South Africa and they formed a consortium, I think with one of the Denel companies that created the drivers licence. So I thought it was best to indicate that potential bias to the committee members.

- 5 ADV SELLO: You are now dealing again with the issue that you have set out in paragraph 75. What would you like to refer the Commissioners to regarding this issue of potential conflict of interest or potential bias?

MR SHAIK: Yes, I subsequently after my presentation at SCOPA got a letter from the Minister of Defence because this matter was discussed at SCOPA
10 as well as the letter from C²I² was discussed in SCOPA. It was part of the SCOPA pack of information we provided. On page 525 is the letter from the Minister Joe Modise who had then left office and it is a letter directly to the Chairman of SCOPA Gavin Woods. Where he state in paragraph 2:

15 “It is hereby also confirmed that Mr Chippy Shaik subsequently informed me about his perceived ‘conflict’ of interest that may arise due to the fact that Thompson C S F of France was in the process of acquiring Altech Defence Systems.”

On the next page, 526, is a letter from Mr Swan who also then left Armscor to the Secretary of Defence where he states that I have disclosed
20 the conflict and it was an agreement in the PCB we will make that note and at a point I will hand over the Chair and he made that note that I did not influence the process. So as the CEO of Armscor who was the main leader in contact negotiations he was made aware of that. On page 526:

“After Cabinet gave the ‘go ahead’ to negotiate with the preferred suppliers Mr Shaik declared, at t he first ‘project control board’ (PCB), that he could have a conflict of interest in the combat suite of the Corvette and submarine due to the shareholding of one of his brothers
5 in Thompson SA. At that time it was agreed between myself and the Chief of the Navy that it would be appropriate that the Chairmanship of the PCB be handed over to the Chief of the Navy whenever any matters pertaining to the combat suites (ADS’s interest in the Corvette and submarine) were to be discussed and that Mr Shaik would not
10 participate in decisions regarding the combat suites.”

This process, to the best of my recollection, was followed throughout the negotiations. The letter is there for record. On the next page, page 527 ... [intervenes]

ADV SELLO: If you could just for the record probably on that letter the last
15 two paragraphs and then state whether you confirm as indeed correct that it happened what Mr Swan seeks to explain to the Secretary of Defence in February 2001as contained in this letter?

MR SHAIK: Okay, the following paragraphs:

“As time progressed it became clear to me that it was inappropriate for
20 Mr Shaik to recluse himself from the discussions entirely as he needed to be aware of the proceedings as he was required to brief the Cabinet Sub-committee from time to time.

During the entire negotiation process I believe that Mr Shaik conducted

11 NOVEMBER 2014

PHASE 2

in a professional manner and was an asset to the negotiating team.”

ADV SELLO: Now do you confirm that what is alleged to have been agreed to and actually transpired as stated in this letter indeed that is what happened?

5 MR SHAIK: Yes, in the PCB minutes you will also notice my recusal is somewhere always recorded. The question then was at which point would it be; would it always have to be right up front. It is stated repeatedly at the relevant sections where a recusal is noted this was an ongoing upfront matter from the first meeting onwards. There were some issues as to whether it was
10 put in the appropriate place. Whether the strike was entered in the appropriate place but nonetheless it was always recorded.

ADV SELLO: Just so that we understand your recusal was not to leave the meeting completely?

MR SHAIK: Yes, that became our common understanding because at that
15 point we were not making decisions.

ADV SELLO: And Mr Swan indicates here that your recusal related to the issue of any decision making but that it was necessary that you remain involved in the discussions to enable you to brief the Cabinet Sub-committee is that what happened, so you recuse yourself from the decisions but the
20 recusal was not extends to the deliberations on the issues?

MR SHAIK: That was my understanding because at some point as well Mr Richard Young formed the consortium to offer an alternative Combat Suite.

11 NOVEMBER 2014

PHASE 2

So he formed the consortium with British Aero Space to offer an alternative competing Combat Suite. So he himself became a competitor in a competitor.

ADV SELLO: So if regard is had to the PCB in the matter and I must state
5 for the record that a number of witnesses have tendered those into evidence already; where the issue of recusal comes up what you are telling the Commissioners is that they can expect to find your participation in discussions but there will be a note that you will not take part in decisions. Is that what the Commissioners should accept?

10 MR SHAIK: Yes, that is correct.

ADV SELLO: Thank you, then you may continue I think you wanted to turn to the next document?

MR SHAIK: Yes, the next document would be a letter from the Chief of Navy address to the Secretary of Defence; then the late January Masilela.
15 Again it is about me disclosing, making that disclosure and that page is on 528. In the second last sentence it says:

“I consider it laudable of Mr Shaik to have voluntarily recused himself early on, despite having no actual ‘conflict of interest’ as defined.”

He goes on by saying:

20 “The Project Team conducted the evaluations independently and then briefed the respective control forums, e.g. Naval Board, Project Control Board, etc, only after the evaluations were completed.”

11 NOVEMBER 2014

PHASE 2

So, again, those that mattered in this case the Minister of Defence, the CEO of Armscor, the Chief of the Navy and then on page 530 ... [intervenes]

ADV SELLO: Before you leave page 529, the letter by the Chief of Navy to the then Secretary of Defence, Mr Masilela, I think you read the last sentence
5 of paragraph 3 you may want to consider the totality of paragraph 3, from the beginning, which I think it is where the issue of recusal is dealt with?

MR SHAIK: Yes, paragraph 3 in its entirety would read:

“Chief of Acquisition. On 4 December 1998, before preferred Main
Contractors were requested to solicit offers for any combat suite
10 equipment, the Chairman, Mr S Shaik, Chief of Acquisition, informed the first Project Control Board meeting of a family member’s business connection with one of the tendering parties for the Corvette and Submarine combat suites, viz ADS. Although he personally had no interest in ADS, he proposed to recuse himself from any decision
15 making related to the Corvette and Submarine combat suites on the grounds that a perception of bias might exist. It was agreed that whenever the combat suites were discussed I would take over the chair and that Mr Shaik would not take part in any discussions, consultations or decisions. This process in the Project Control Board was followed
20 throughout the period leading to final contract signature. I consider it laudable of Mr Shaik to have voluntarily recused himself early on, despite having no actual ‘conflict of interest’ as defined.”

And then the letter from the CEO of Armscor where it emerged that I

11 NOVEMBER 2014

PHASE 2

have made all the disclosures. The real discussion is really with the Project Team and the ultimate decision is with the main equipment supplier. There was no need for me to physically leave the room because we were not actually making any decision we were merely in an oversight position.

5 ADV SELLO: Now at page 529 at paragraph 4, the last line of paragraph 4 and the beginning of paragraph 5, the Chief of Navy introduces a slightly new issue regarding influence or the possibility of any alteration of evaluation results by virtue of your participation in the discussions do you see that and would you like to read that?

10 MR SHAIK: Yes, it is on paragraph 4, page 529:

“No person including Mr Shaik, altered any evaluation results, which were duly forwarded to higher authority, including Cabinet level, unaltered.”

ADV SELLO: The next paragraph?

MR SHAIK: The next paragraph:

15 “I know of no occasion when any attempt was made by any person to influence any member of the Project Teams or of the Project Control Board or any other approval forum in the matters of selecting Corvette or Submarine suite equipment or suppliers, and consider any inference of such an event completely unfounded. It should be noted that the
20 very same evaluation and control process whereby ADS were selected as a supplier of the Corvette combat suite resulted in their losing of the Submarine combat suite contract to their competitors STN Atlas, in a

robust bidding and lobbying environment. At the sub-contracting level, ADS also lost the contract to supply the Corvette Navigation Distribution System to C²I².

I request that this letter be forwarded to Dr G Woods, the Chairman of the
5 Standing Committee on Public Accounts, to assist him in his deliberations.”

ADV SELLO: And do you confirm what the Chief of Navy sets out in these paragraphs that you have read?

MR SHAIK: Yes, I do.

ADV SELLO: You may continue?

10 MR SHAIK: So the next document I attached for your consideration was the document on page 530 from the Project Team members to the Director Naval Acquisition. It comes from the then Captain Johnny Kamerman confirmation of the independence of the Project Team where I had no influence on the Project Team. Under point 3:

15 “External Influence of the Project Team. I can categorically state that there was no occurrence actual or perceived, of a pressure or influence brought to bear on Project Team members to favour or disfavour any particular equipment or supplier during the entire process by any person or organisation. On the contrary the independence of the evaluating
20 and negotiating teams was entirely respected by all authorities. All of the Project Team’s evaluation processes, results and recommendations to higher forums were in fact ratified without change by those forums,

including the Naval Board, Project Control Board, AASC, AASB, AAC, Cabinet Committee and eventually Cabinet.”

ADV SELLO: And there are scribbles at the end of the page?

MR SHAIK: Yes, it was signed by the Project Director of Project Sitron, 5 Captain Kamerman, and underneath it is “I am in complete agreement with this declaration” signed by Fritz Nortje from Armscor Program Manager Sitron.

ADV SELLO: Thank you.

MR SHAIK: So the last page on the matter of conflict of interest, the last two 10 pages, is we also requested an opinion from the State Attorney after the briefing to SCOPA where it is attached for consideration:

“From the aforesaid discussions it is my view that Mr Shaik does not have a conflict of interest in the procurement process.”

Although he had outlined what is that process but an opinion 15 nevertheless was sought and is attached for consideration.

ADV SELLO: And does that opinion appearing on page 532 and 538?

MR SHAIK: Yes Ma’am, 532 and 533 from the State Attorney.

ADV SELLO: And the particular State Attorney who gave you this opinion is C J Dreyer?

20 MR SHAIK: Yes, C J Dreyer at the time.

ADV SELLO: And this opinion you sought only towards the end of 2000,

11 NOVEMBER 2014

PHASE 2

that is after the selection of the Combat Suite had been concluded is that correct?

MR SHAIK: That is correct; after the Combat Suite has been concluded and then allegation started to surface it was then sought when the SCOPA
5 hearing took place.

ADV SELLO: And you sought this legal opinion to test your own understanding that you had at the time during the PCB stage that your conduct did not amount to a conflict of interest in this procurement process. It was to confirm and understanding that you already had?

10 MR SHAIK: Yes, it was against the understanding of the Armscor procedures etcetera.

ADV SELLO: Were you ever ...; was your attention ever drawn to any other legal opinion that based on your conduct in the PCB meetings that arrived at a different conclusion that in fact, yes, you were conflicted and you ought to
15 have left the room completely when these matters were being discussed?

MR SHAIK: No, I was not.

ADV SELLO: If we move on then, can you go to the issue of the Auditor General and the SCOPA period and that start at page 30, from paragraph 76?

20 MR SHAIK: Yes, after the report of the Auditor General was tabled in Parliament we were requested by SCOPA to make a presentation to SCOPA and that presentation took place on 11 October 2000. I have listed the

11 NOVEMBER 2014

PHASE 2

individuals who were present at that briefing. It was the Secretary of Defence, the Director of Air Force Projects, Captain Kamerman representing the Navy Corvette Program, Mr Grundling. That is all listed down on page 30 of my submissions. At that briefing we handed out a presentation and that is

5 under Annexure SS1 starting from page 535. So a very detailed comprehensive briefing was made to the Auditor ...; sorry, to SCOPA outlining issues that were addressed in the Auditor General's report from conflict of interest, to the time lines, to who were the Project Teams, how did the negotiations happened, who was the negotiating team, why was the

10 Hawk selected, what were the time lines. A lot of questions pertaining to conflict of interest and again conflict of interest matters would appear as a separate item and that would be under Annexure SS1, page 573. It will go on into showing what level ...; we are contracting at Level 5 at page 574. It showed on page 575 what is the Combat Suite about and on 576 will give

15 you a time line of what decisions were taken when, when did France buy into Altech Defence System, when did it become 50% owned, when it became 80% owned and when it became 10% owned.

All of that was reflected and on page 577 my conflict or potential conflict of interest issues that could have arose. It is all detailed in the Auditor

20 General's presentation that we have made. At the end of that meeting I was requested to provide further information. I submitted further information a week later and that would be under Annexure SS2 on page 612. So about a week later we submitted further information to SCOPA and it dealt with the costed, non-costed option. It dealt with some of what they perceived to be

11 NOVEMBER 2014

PHASE 2

deviations. So we gave a written response to SCOPA. I also attached those letters from the auditors and the letters from the Minister etcetera, etcetera.

So we then made that available and on the last ...; towards the end of that second document on page 642 we showed SCOPA that if you read
5 under point 1.5.1 and that is taken straight from German Figured Consortiums tender documents and it reads the following:

“General.

The Patrol Corvette Programme comprises designs and production in Germany as well as in South Africa and furthermore logistic support and
10 technology transfer

It is proposed that the companies:

- Blomm & Voss as the lead shipyard.”

The other HG company as a partner and Altech Defence Systems as the Combat Suite contractor. So here it was the German Figured Consortium
15 nominating Altech Defence System as owned by the Altech Group registered in South Africa to be that main system contractor. It goes down further to say:

“ADS will undertake development, design and production of the Combat Suite and its integration in South Africa.”

20 The acronym “ADS” here is referring to Altech Defence Systems and not African Defence Systems.

ADV SELLO: It would appear this is an extract from the actual tender by

11 NOVEMBER 2014

PHASE 2

GFC?

MR SHAIK: Yes, that is.

ADV SELLO: And what relationship did your brother at the time have with Altech Defence Systems (Pty) Limited referred here as the nominated
5 Combat Suite contractor?

MR SHAIK: I cannot recall him having any business relationship with Altech at that time.

ADV SELLO: You can then proceed to paragraph 79, at 78 you deal with provision of further documents I think to the Chairman of SCOPA?

10 MR SHAIK: Yes, after us providing the second lot of notes that I just went through, SS2, to the Chairman of SCOPA we were instructed in writing to provide all documentation dealing with entire Defence packages. I was advised that the fact that I made the presentation or the Department of Defence made the presentation and the request was forwarded to us that we
15 should comply with SCOPA's request and provide all documentation to SCOPA. That meant all the Cabinet minutes, that meant all the decision making forums AASB, AAC, SOFCOM so we compiled a box full of documents amounting to thousands of pages of secret restricted all various classifications.

20 I got the Secretary of Defence's, at that time January Masilela, who authorised permission to fly down to Cape Town to hand over the documents. The initial arrangement was made that myself and Johnny

11 NOVEMBER 2014

PHASE 2

Kammerman will hand the documents over to both the Chairman of SCOPA and the deputy Chairman of SCOPA. At that time the Chairman of SCOPA had been Dr Gavin Woods and the deputy Chairman had been Dr Feinstein. When we arrived there Dr Feinstein did not want to be part of the receiving of
5 the documents. He subsequently left although the time was predetermined when we will come to hand over the documents. Nonetheless, myself and Captain Kamerman handed over the documents under receipt to the Chairman of SCOPA indicating the classification and ensuring that he will comply and we left the matter as is.

10 After the documents were provided to SCOPA we subsequently heard that SCOPA has tabled a motion in Parliament for a full joined investigation. So that would have transpired somewhere in November/December. In early January after the investigation was called for we sought to receive the documents back because they were classified documents and we would now
15 need to make it available to the investigator team. So we wrote a letter to the Chairman of SCOPA requesting that we have erred in giving him all the documents and because the documents ...; some of them were not ...; approvals were not sought from Cabinet it would be appropriate if he handed back the documents now that his department has completed its
20 recommendation on the defence packages.

That letter is attached as Annexure TT, page 644 and it is address to the Chairman of SCOPA requesting the documents to be returned and it was signed on my behalf by Admiral Dewey, by then he became an Admiral. The date the letter was sent 22 January 2001. That is after the tabling in

11 NOVEMBER 2014

PHASE 2

Parliament by SCOPA of their recommendation for an investigation. What followed ... [incomplete]. I may want to read it into the record, it says:

“The SCOPA letter on documentation requirements dd 22 October 2000 and the SCOPA hearing of 11 October 2000 refer.

5 Documentation was provided as requested via both abovementioned communications against the signature of receipt on 18 October. The security classification of the documentation was included on the two receipt notes referenced DAPD/SCOPA/10/99; and the commercial sensitivity, safekeeping and handling of the documents was discussed
10 upon delivery of the documents on 18 October 2000 between yourself and Mr Shaik. A return date for the documents was however not established.

Written notification that the Cabinet and Ministers sub-committee records were unlawfully forwarded by this Department in the interest of
15 meeting the time frame set by SCOPA, was given; as were the various agreements and terms comprising the contracts with the main contractors. Perpetration of this situation is regretted; however, expedient return of all the documents listed in the receipt notes referred to above, will alleviate this uncomfortable situation.

20 It is consequently requested that the date, time and place for direct expedient handover of all the documents listed in the above receipt notes be advised.”

So we then received a letter back from the Chairman of SCOPA

address to myself and the document said:

“I acknowledge receipt dated 22 January 2001 concerning the return of documentation provided to the Public Accounts Committee (SCOPA) against signature of receipt on 18 and 23 October 2000.

5 The documentation is officially before the Committee and as such it is now part of the field of reference of the Committee in its ongoing investigation.

The Committee is of course fully conscious of the sensitive nature of the documents, and accordingly has declared them as confidential in
10 accordance with Assembly Rule 157. The implication of their status in the Committee as confidential, as provided for in the Rule, is that they ‘may not be published, and their contents may not be disclosed, except with the permission of the Committee ..., or by order of the Speaker, or by resolution of the Assembly.’ Furthermore, ‘the permission, order or
15 resolution authorising the publication, or the disclosure of the contents, of (such confidential) documents may provide that specific parts of, or names mentioned in the documents may not be published or disclosed.’

By virtue of the security status of the documents, I can confirm that they will in due course be returned to you subject to such recommendations
20 as the Committee may make in regard to them as the investigation progresses. In the meantime I can assure you that, while in the possession of Parliament, the documents will be treated with the utmost circumspection and access to them will be strictly controlled.”

Signed by Dr Gavin Woods.

ADV SELLO: From the communication that you have read, between yourself and Dr Woods is the Commission to understand that you disclosed ...; did you disclose all documents pertaining to this transaction, the SDP, to
5 Dr Woods as part of complying with the instruction to discover documents?

MR SHAIK: Yes, I was of the view that the department complied with the requirements of Parliament and SCOPA.

ADV SELLO: And specifically were there any documents that were withheld or in your view as the person who handed over these documents do you
10 believe that you handed over all the documents requested by SCOPA?

MR SHAIK: I handed all the documents that the Chairperson and SCOPA requested. I cannot say we in handed all the documents. It was the documents he requested, that is the documents that we handed in. It had mainly to do with forum decision, the evaluations and Cabinet decisions that
15 were made.

ADV SELLO: And you confirm that in the context of the request by SCOPA or the Chairperson of SCOPA you are not aware of any document falling within such a request being withheld either by yourself or by the Department?

MR SHAIK: The Chairman of SCOPA did not come back to say that we did
20 not provide a document that was requested. There could very well be many documents but he never requested a particular document.

ADV SELLO: Are you personally aware of any attempt to deliberately

11 NOVEMBER 2014

PHASE 2

withhold documents falling within the scope of the request?

MR SHAIK: No, I am not.

ADV SELLO: You may continue on the issue of SCOPA, is there other issues that you would like to address?

5 MR SHAIK: No Chair other than after SCOPA calling for the investigation and Parliament approving the investigation I stayed in the Department up until the investigation was completed and the report was compiled. Then when the report was compiled the issues addressed by the joint investigation Team were addressed. We have tried to make corrections in procedures
10 within the Department and at that point I then resigned. There were no issues of my wrongdoing that came up and I voluntarily resigned from the Department round about April 2000. There has been lots of allegations surrounding the reasons why I left and I was hoping to tender in a submission a copy from the South African Soldier magazine dated July 2002 which have
15 a description and an explanation and a story on my leaving the Department in amicable terms and it is headed "Man of Distinction Leaves the Department. There have been lots of allegations in the media I left or was forced to leave. There was no such issue I left in excellent terms. I ensured that through the Auditor General's process and through the SCOPA process
20 and through the Joint Investigation process I stayed in the Department to ensure that all explanations that needed to be provided to Parliament were provided to ensure that the Department of Defence comply with the rules of Parliament to ensure that we make corrective changes in my department on future acquisitions before I left. Thank you.

11 NOVEMBER 2014

PHASE 2

So I would like to tender that in as a submission.

ADV SELLO: Commissioner Musi our annexures go up to TT, if the article that the witness proposes to tender into evidence is accepted I will recommend that it be marked Annexure UU.

5 COMMISSIONER MUSI: UU.

ADV SELLO: UU.

CHAIRPERSON: Okay, I suppose you have heard what I am saying I am sure whether it is UU or VV... [intervenues]

ADV SELLO: [Laughing]

10 CHAIRPERSON: It seems that we are nearer to the [inaudible].

MR SHAIK: Mr Chairman I only has one copy. Can we rather arrange for more copies to be made and hand it up in due course.

CHAIRPERSON: Yes, once I have allowed ...; I think give it to us and tell us ... [inaudible]

15 MR SHAIK: Thank you Chair.

ADV SELLO: And Chair if I may correct myself for record purposes we already has UU that would be VV. Thank you Chair. That would bring us to the end the witness' statement. As we mentioned yesterday there were a few issues we still had to clarify with the witness and due to time constraint
20 we were not able to include them in the statement. There are basically three minor issues and one of them arises from the evidence of Mr De Beer on

different evaluations. If the Commissioners recall Mr De Beer in his statement and subsequent evidence referred to a policy on the evaluation of the IP. It is a specific policy that he has tendered and in that policy at page 230 the following is recorded and for record purposes the quotation I am
5 about to refer to appears in the transcript at page 4 638 from line 23 and this is during the testimony of Mr De Beer:

“The size of the contract warrants a two team management process in terms of which Mr Johan Van Dyk, head of Armscor [inaudible] Division will be the DIG team leader with Mr Chippy Shaik Chief of Acquisition
10 acting as auditor and moderator for the DIP results.”

He then proceed to state who will be appointed. A question arose during the evidence of Mr De Beer on what is anticipated or is meant in the policy that the result will be or that Mr Shaik would act as auditor and moderator for the DIP results. The witness was not able to take the matter
15 further and we did say the best he could do was to give his own personal understanding. We want to take this opportunity to possibly request of Mr Shaik to try and clarify that issue for the Commissioners based on his understanding at the time. Now Mr Shaik let us deal with the general issues first. Please explain what auditing and moderating the DIP results meant in
20 the context of the policy and if you can try and distinguish between the two functions?

MR SHAIK: I will try to the best of my ability. Moderating in this particular case would have referred to you have DIP offset NIP offset and somebody had to make sure that there is no overlap that the DIP team is not counting

11 NOVEMBER 2014

PHASE 2

the same thing as the NIP team. Now this policy or this document was written before you receive the result. So no one was sure how would the bidders submit the document. Would it be a clear distinct demarcation that would not result in confusion or will there be confusion. So this was a high
5 level, what we call, moderation between Department of Trade and Industry and Department of Defence to ensure that there was no double counting.

Now what transpired is that when the documents were given to the Procurement Secretariat of Armscor the Procurement Secretariat was able to separate the documents neatly what needed to be going to DTI and what
10 needed to be going Armscor Counter Trade Department. So there was very little moderation work that was required. The auditing work from my understanding is something where someone is counting the points and counting the scores. Which means 500 different points all add up to a certain number. That is auditing to make sure that those numbers are all add
15 up.

I can categorically say I cannot remember sitting in any committee where that number counting exercise took place where we classically will say that is an auditing function. I did not sit in that level. There was issues of what I would call where Johan Van Dyk may have written to me asking me
20 for guidance and I would have at that point have checked with DTI. That is more the moderation that I can understand that happen. I also want to show you on the document tendered by Barry De Beer on page 231 that draws a graph that shows a schematic representation that says "Results Audited by DTI and Chief of Acquisition" but at the words "Chief of Acquisition" he uses

11 NOVEMBER 2014

PHASE 2

“Musli” because on the next page he talks of who are in the value teams or valuation teams and then he uses the words “Chief of Acquisition representative.” Now no one represents a person you represents a department. So I also think there is a confusion on the words “Chief of
5 Acquisition.” What it should have read was Department of Acquisition and Procurement rather than the individual.

Nonetheless I was asked many questions by the Joint Investigative Team on issues of overlap and issues of where I could have had some sort of role. Now one of the issues that did come up in the many questions that I
10 was asked by the Joint Investigative Team and it is part of the various documentation was there was a case where the DIP team were penalising the German Submarine Consortium because they did not get sufficient DIP scores but the NIP team had abundance of DIP scores and we had to moderate, myself and DTI, to say that the overall tender document that
15 regulated industrial participation - not regulated DIP but regulated the entire thing both NIP and DIP - made provision for any supplier to offer more DIP and less NIP or more NIP and less DIP and you could not penalise someone on either side if they offered more DIP and less NIP. What was happening there was a power play between the NIP management team and the DIP
20 management team and we were saying that the tender document submitted to the bidders made provision for excess NIP or excess DP and no one can be penalised. The question is whether they met the minimum percentage number and if they met the overall percentage number then they cannot be disqualified. So that was a high lever moderating result.

11 NOVEMBER 2014

PHASE 2

I think one other one is where Johan wrote to me and it had to do with regard to some issue on the Corvette and we said go back to the suppliers under camera ask them what was it that they were providing. Again this was a sort of a dispute between the technical team and the DIP team. The

5 technical team stipulated in their main contract that the main contractor should not specify what parties they are going to use in the Combat Suite. That will be in the negotiating phase. Whereas in the DIP domain the DIP team wanted specific business plans. So there was a clear contradiction where the technical team wrote in their document do not give us a clear

10 indication of who you are using in the Combat Suite that will be part of the negotiating phase whereas the DIP team were saying you have to give it to us. So we were saying read the documents, the tender documents say that will be complied with in the negotiating phase. All they had to do was give a commitment. So that we advised them to do it under camera to ensure that

15 no one can then claim irregularity and then anyone that wanted to audit that process could go back and audit that process.

Now, again, that was done with the DIP team leading that process. The issue was a difference in interpretation between the technical team what they understood about the Combat Suite to be discussed in the negotiating phase

20 and the DIP team wanted a commitment upfront. So that is the high level moderating but there was not moderating in terms of playing around with results and playing around with numbers. That is not the moderation that we did.

ADV SELLO: And on that point as the last point whether it would be

11 NOVEMBER 2014

PHASE 2

moderating or auditing did you personally or did you cause for the results of the DIP or NIP to be altered such that it effected the overall winner in any of these programs?

MR SHAIK: No, I have not other than to add. There was one other program
5 that had a peculiar anomaly in it and that was addressed by the Joint Investigative Team to SCOPA and it was not presented to me as an individual. It was presented to SCOPA ... [incomplete]. Sorry, not SCOPA. It was presented to SOFCOM and that was the French Consortium decided to offer a basket approach. A basket approach means you Armscor pick
10 what you want and do not want and that was not the prerogative of any employee of Armscor or Department of Defence to do. The tender document was very specific that each project had to be in its individual [inaudible]. So that dilemma was brought to SOFCOM and the best decision that SOFCOM did was to say divide the overall offer of the offset by two, 50% will go to the
15 submarine and 50% will go to the Corvette. That is without knowing who will win and who will lose. It was a clear divide. The opposite of that would have been to have been ...; what is the word; kicked out of the tender, disqualified is the appropriate word I am looking for. To disqualify because they did not comply with the basic rules of treating it as a [inaudible].

20 ADV SELLO: Is there no questions from the Commissioners on the moderating and auditing issue? I propose to move to our next issue. Now Mr Shaik a number of books have been tendered to the Commission I will deal with that first and the authors of these books are Messrs Coden, Van Vuuren and Feinstein. At some point both Mr Coden and Mr Feinstein made

11 NOVEMBER 2014

PHASE 2

joint submissions and they tendered these books as evidence. They subsequently have taken the view that they would not give evidence before this Commission. In these books a number of allegations pertaining to alleged wrongdoing on your part are made.

5 In the light of the fact that these authors or the authors of these allegations have refused before the Commission to have these allegations tested. Would you like to deal with these allegations before this Commission?

MR SHAIK: No, I would not. None of these allegations have been proven in front of this Commission. None of these authors have come to the
10 Commission proof their allegations. They tend to make these allegations in the public domain. They have requested a Commission but they have not come to present their allegations.

ADV SELLO: I will then move onto other allegations. Another witness, Mr Terry Crawford-Browne, also wrote a book and in his book “Eye on the
15 Money” and I must say Mr Crawford-Brown did appear before this Commission and he stated that he stand by what he stated in his books. So that would include allegations made against you. We have considered the books and we were seeking to establish specific allegations made against you personally and to seek clarification from him. What we could locate
20 appears on page 130 of the book “Eye on the Money.” In the penultimate paragraph on that page is a short paragraph I propose to read it into the record and I am asking you for your comment. That paragraph reads and I quote:

11 NOVEMBER 2014

PHASE 2

“Early in 1998 when I monitored a committee meeting of the Joint Standing Committee of the Defence I was briefly delighted to hear Chippy Shaik apologise that Parliament has spent so much time, effort and public money on the arms acquisition program. He said that the Defence Department now realise that South Africa simply could not afford the equipment and that he was coming to Parliament [inaudible] instructions.”

I would like your comment on that statement?

MR SHAIK: Could you repeat the date and the time that comment was made?

ADV SELLO: It starts with “Early in 1998 when I monitored a committee meeting of the Joint Standing Committee on Defence.”

MR SHAIK: That is not possible because early in 1998 I do not even think we issued the RFO’s ...; RFP’s yet. So no decision to acquire, no idea of what the cost would be could have come out in early 1998. It is not possible at all for me to make a comment. I was not even the Chief of Acquisition at that time. So if my memory serves me correctly the RFO’s would have only gone out maybe in April 1998. So I could not have made that comment.

ADV SELLO: Just to round up he refers to early 1998 and basically the issue here is your apology that Parliament has spent so much time, effort and public money on the arms acquisition program. I accept your response that you could not have made the statement in early 1998 because as you say the RFO’s might not even have gone out. Do you recall making such an

11 NOVEMBER 2014

PHASE 2

apology to the Joint Standing Committee on Defence at any time?

MR SHAIK: It would be bizarre to make an apology in advance for something that not have happened. So, no, I have not made an apology.

ADV SELLO: By any time Mr Shaik I am including 1999 and post ...

5 [intervenes]

MR SHAIK: No, I have made no such apology. It is not my decision to acquire it is a decision of state. These are not equipment that I acquire for myself. These are equipment for the Department of Defence so I cannot apologise for the requirement the Department of Defence. So, no, I did not
10 make an apology.

ADV SELLO: And lastly and this issue I raise because [inaudible] raised quite often and to give you an opportunity to deal with it if you are able to. There is an allegation that you solicited or caused to be paid to yourself from one of the bidders an amount of 3 million dollars for efforts allegedly made by
15 you in ensuring that such bidder is successful in this SDP. What is your comment to that?

MR SHAIK: I solicited no such offer nor did I receive no such money as described in these various allegations.

ADV SELLO: And was any money associated with the SDP's received by
20 any company that you own or have a share in or any interest in?

MR SHAIK: No, I have no such interest in any company.

ADV SELLO: And the question is ...; is your answer that no company in

11 NOVEMBER 2014

PHASE 2

which you have an interest has received or solicited a payment of such ...
[intervenes]

MR SHAIK: That is correct.

ADV SELLO: Chair and Commission Musi that is the evidence of Mr Shamin
5 Shaik.

CHAIRPERSON: Mr Shaik besides what Advocate Sello has dealt with is
there any out of the bidders that you asked money from because if I am not
wrong there is an allegation that one bidder's [inaudible] was requested to
pay a bribe and when he failed to pay the bride then they ended up losing the
10 bid and if I recall it was Bell Helicopter. Did you at any stage asked for any
money from Bell Helicopter?

MR SHAIK: No sir at no stage I requested money from any other bidder
including Bell Helicopter. On the Bell Helicopter matter that was a matter
relating to the involvement of the Canadians and the United States. My
15 understanding at that time was that Bell Helicopter from the US, Chicago,
could not tender directly they had to go via Bell Helicopter Canada and
allegations were made. The Joint Investigative Team did an investigation on
that and it was found not to be true because the ultimate decision not to
select Bell Helicopter was an Air Force decision and had nothing to do with
20 me.

CHAIRPERSON: Yes, I just thought let me put this submission to you so that
you can respond. You know we are aware of the fact that Bell Helicopter
went right through the whole process.

11 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes sir.

CHAIRPERSON: They were evaluated like all the others and unfortunately they could not make it at the end.

MR SHAIK: That is correct sir.

5 CHAIRPERSON: I just thought that you know because we are aware of this allegation maybe we should give you an opportunity to respond to that. Then the next question is any other person who wants to cross-examine Mr Shaik?

Thank you, any re-examination?

MR CASSIM: Just one aspect that I want to explore?

10 CHAIRPERSON: Oh, only one aspect?

MR CASSIM: Yes.

CHAIRPERSON: Okay, thank you.

CROSS-EXAMINATION BY MR CASSIM: Mr Shaik you have travelled from Australia particularly for purposes of coming to testify before this
15 Commission?

MR SHAIK: Yes, I have made myself available to the Commission to work with the evidence and to assist.

MR CASSIM: And obviously the allegations that have been made against you implicating you in corrupt practices must have weighed heavily on you in
20 taking a decision to come to this enquiry and to face the issues that have been raised by a number of people?

11 NOVEMBER 2014

PHASE 2

MR SHAIK: Yes, it has and I decided to come here to clear up that perception.

MR CASSIM: And as I understand it you have clarified with this Commission that you have not engaged in any corrupt practices insofar as this matter is
5 concerned?

MR SHAIK: Yes, I have.

MR CASSIM: Thank you Mr Commissioner.

COMMISSIONER MUSI: I just want to make a comment maybe you might change your mind about responding to allegations made by the authors who
10 refused to come and testify. I remember their counsel when this matter ...; Mr Van Vuuren was here their counsel when asked that these people have made allegations and they wanted those allegations to be tested, if they do not come to testify how are those allegations contained in their books to be tested. His response was that the witnesses against whom the allegations
15 are made can come and testify and deny it. I just thought that if these allegations are put to you and you give your response to those allegations it might be a better scenario in the sense that your evidence will be conclusive on those allegation. Whereas if you have not responded on those allegations they still remain. They have not been challenged and they may
20 be repeated in the future.

Do you not think it might be advisable that you deal with those allegations and respond to them so as to put them to bed so to speak?

MR SHAIK: Commissioners I have moved on it is now 15 years from the

11 NOVEMBER 2014

PHASE 2

time this has started. It is now 12 years plus from the time I have left the Department. I reside in Australia. I have tried my best during the time I was in the Department to work with the various investigative units. My understanding is that these authors will continue writing books. I have
5 moved on with my life and it is difficult to deal with all the negative issues because it is not one or two. There is almost every single issue. There is an issue about the Navy do not need boats. The Navy needs patrol ... [incomplete]. So the level of the negativity or the level of the disagreement is so wide and varied and it encompasses so many different people that it is
10 almost an impossibility to sit down and have some rational discussions at times. So I have decided that I have made myself available. Those that wanted to present evidence and proof the evidence have the same right that I have but they chose not to do so.

COMMISSIONER MUSI: Is it perhaps your view that you do not have to
15 respond to allegations whose authors are not brave enough to substantiate them?

MR SHAIK: Yes sir.

COMMISSIONER MUSI: Thank you that is all.

CHAIRPERSON: Lastly from me there are various allegations [inaudible]
20 which are levelled against you do you think that any of those allegations which are incorrect in any of those books [inaudible]?

MR SHAIK: Sir most of those allegations, I have not read all the books so I cannot comment on all of books but the allegations are untrue.

11 NOVEMBER 2014

PHASE 2

CHAIRPERSON: So the allegations are untrue. Thank you. Then lastly I you are from Australia, you came here and you were prepared to come and testify in spite the fact that this Commission has got no [inaudible] jurisdiction.

MR SHAIK: That is true sir.

5 CHAIRPERSON: Can one read from that that you had a very strong desire to come and testify before the Commission and deal with any allegations that might have be levelled against you?

MR SHAIK: Yes, that is exactly why I came to the Commission to make myself available.

10 CHAIRPERSON: Thank you.

COMMISSIONER MUSI: Yes, maybe we should thank you for coming Mr Shaik it does appear that you believe in your course and that you have done nothing wrong. I believe you live in Australia and this Commission has got no jurisdiction over you. You came here voluntarily and it means that you
15 [inaudible] that you have a good case to make or that you have got nothing to fear. We must thank you because I think your evidence will go a long way to assist this Commission you know whatever conclusion we may reach. We must thank you for your effort.

MR SHAIK: Thank you Commissioner.

20 ADV CASSIM: Chairman and Commissioner we are indebted that you have sat in this late hour to accommodate us and let me assure you that I discussed it with my learned friend Ms Cane who appears for the Department

11 NOVEMBER 2014

PHASE 2

of Defence whether she require time to clarify any aspect in cross-examination and she indicated that she was not going to cross-examine. We also took a conscious decision to ask you to complete it today with the knowledge that there would not be any cross-examination. In short if there
5 were people who wanted to cross-examine then Mr Shaik made it very clear to me that he would rearrange his affairs to be available tomorrow because he took this opportunity, a conscious decisions, to come here to bear his soul and to deal with the matter.

So we are really indebted to you that you sat until this hour to
10 accommodate our request.

CHAIRPERSON: Thank you.

ADV SELLO: Thank you Chair. I assume the Commissioner want to know what ... [incomplete]. Mr Shaik can go he has finished his testimony and I think Advocate Sibeko would be in the best position to address the
15 Commission.

ADV SIBEKO: Thank you Chair, Commissioner Musi I am advised that the Commission will adjourn today until the 24th of November 2014 at which time Advocate Hlongwane is expected to appear at the Commission to give evidence. You will recall, however, that there was the arrangement for
20 Admiral Green and Mr Masimela from DTI to come and present supplementary evidence relating to their testimony previously. It has been arranged with them and their legal representatives that on the morning of 24 November they will start before Mr Hlongwane proceeds with his testimony.

I might just say also that the adjournment does appear to be a very long one Mr Shaik it will be recalled was expected to ...; his evidence was set down from the 10th to the 14th. We were able to complete his evidence and as it can be seen there is no one who is in a position to or has a desire to
5 cross-examine him which has resulted in the proceedings being adjourned today till the 24th of November.

CHAIRPERSON: Thank you. In that case then we will adjourn until 24 November and we will start at the usual time. Maybe because we are going to start with those two witnesses let us start at 09:30. Thank you.

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(COMMISSION ADJOURNS)

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