

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

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HEARING ON 16 MARCH 2015

CHAIRPERSON: Thank you. Good morning everybody. Advocate Mphaga, Ms Ramagaga, who of you is going to [indistinct]?

ADV MPHAGA: I will. Thank you. Yes. Thank you, Chair and
5 Commissioner Musi. We are calling Mr Klaus Wiercimok, on behalf of ThyssenKrupp Marine Systems. He is represented here, by Advocate MacCallum as Senior Council and he is ready to proceed. He has made two statements.

The one is on the acquisition of the submarines and the other one, on
10 the frigates. Maybe, Chair, just for, to clear the points that the, the submarine's submission will have only one paragraph, on page one and the frigates will have two paragraphs.

We will start with the frigates statement and thereafter proceed with the submarine statement. Thank you, Chair.

15 **KLAUS WIERCIMOK:** (d.s.s.)

ADV MPHAGA: Thank you, Mr Wiercimok. You are the senior in house attorney, employed by ThyssenKrupp and you have been in the employ of ThyssenKrupp, since February 1982. Am I correct?

MR WIERCIMOK: That is correct. Only at that time 1982, there was
20 only Thyssen, not yet ThyssenKrupp. But, overall, yes, that is the, that is so.

ADV MPHAGA: And you have indicated in paragraph 1 of your statement that you may have, you may not have personal knowledge on all the matters, pertaining to the acquisition of the frigates. But, in so far
25 as you do not have personal knowledge, you have considered the

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records, in respect of the whole acquisition. Am I correct?

MR WIERCIMOK: That is correct. I, as I indicated in paragraph 1 of the statement, I was Managing Director of Thyssen Rheinstahl Technik GmbH, which was one of the members of the German Frigate Consortium, between 2003 and 2008. This is the time frame, during which also, the, known to you, investigations by the German District Attorney took place. I was right in the middle of those things and I did look at the records and I have, I have looked at them and what I can say here is what knowledge I gathered from, from this.

10 ADV MPHAGA: And you mentioned that Thyssen Rheinstahl Technik was a member of the German Frigate Consortium, which was signatory to the Corvette agreement with Armscor. Am I correct?

MR WIERCIMOK: That is correct.

15 ADV MPHAGA: Now, in paragraph 2, you are detailing the purpose for the statement. Can you just take us through that?

MR WIERCIMOK: Yes. This document was submitted to the Commission here, which has asked, it has been asked to investigate into allegations of fraud and corruption, against numerous people. Also the German Frigate Consortium, the German Submarine Consortium, which were awarded contract, by the South African government, in December 1999 to supply it four Corvettes and three submarines, respectively. Thus, they are, you are enquiring into possible contraventions of various South African laws. This is a submission by ThyssenKrupp Marine Systems.

25 ADV MPHAGA: Thank you. And in paragraph 3 and 4, you just leave

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the background on the historical information that is relevant for, for the statement. Am I correct?

MR WIERCIMOK: That is correct. As far as we, this is our point of view, yes.

5 ADV MPHAGA: Now, let us proceed then, to paragraph 6 to 11, which clearly describes the relationships between TKMS, GFC and ESACC. Can you take us through those paragraphs?

MR WIERCIMOK: Yes. The ThyssenKrupp Marine Systems, as it exists today, was not in existence in, during the Corvette acquisition
10 period. TKMS took over the activities of the shipyards and trading house activities, which together, as the GFC were contracted to supply patrol Corvettes to South Africa. Those three were Blohm and Voss GmbH, Howaldtswerke Deutsche Werft GmbH, also referred to HDW and Thyssen Rheinstahl Technik, also referred to as TRT. The German
15 Frigate Consortium was formed, to bid for the Naval surface vessel aspect of the South African request for delivery, for the procurement. When the GFC was informed in November 1998 that it was selected as preferred bidder to supply the patrol Corvettes, it was required to identify a partner for the provision of the Corvette combat systems, which was
20 not within the range of the GFC. A consortium was formed to act as prime contractor for the totality of the patrol Corvette offer, together with Altech (later African Defence Systems) as the primary South African company, capable of naval combat system integration and with its part owner at the time, Thomson (later Thales) NCS France. This
25 consortium was eventually named European South African Corvette

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Consortium (ESACC) which became the prime contractor for the Corvette, for the patrol Corvettes, I am sorry.

ADV MPHAGA: So, it appears, when I consulted the statement that was given by Rear Admiral Kamerman that all the short listed entities, or
5 companies or suppliers had enlisted that, in the event of the appointment they would partner with ADS. Am I correct?

MR WIERCIMOK: That is correct, to the best of my knowledge, yes.

ADV MPHAGA: Now, can you then proceed to paragraphs 12 and 13, where you are dealing with the Blohm and Voss and [indistinct] patrol
10 Corvette and give us the historical background.

MR WIERCIMOK: Certainly. It all sounds ...[intervene]

CHAIRPERSON: I am sorry, Advocate Mphaga. Just for my own understanding, in the previous paragraphs, he talks about Thomsons, later Thales in brackets and NCS. What does that stand for?

15 MR WIERCIMOK: I am, I am afraid I cannot answer that. To me, they were also, always known as Thales. In 1993 got, received a request for information for the supply of four patrol Corvette vessels. At the time, there were United States and German government embargoes in place, preventing the supply of defence equipment or related information to
20 South Africa and therefore, Blohm and Voss was prohibited from answering to, answering the request for information. Blohm and Voss thus wrote to Armscor, declining to participate and there was no further contact, with any South African authorities in 1993. This was, in spite of
25 the fact that our European neighbours, the British, the French, Danish, Dutch and Spanish shipyards were intensively lobbying South Africa at

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the time in an effort to win the contract. Following the democratic elections in this country, in April 1994 and the lifting of the embargoes, Blohm and Voss sought and received permission from the German government to enter into the patrol Corvette competition and asked to be provided information. Then, a series of meetings and briefings took place in 1994, in May. In June 1994, the SAN and Armscor project team visited with Blohm and Voss shipyard in Hamburg. As a result of that, in July Blohm and Voss was invited to tender for the provision of the patrol Corvette ship platforms, only, which it did within the tender closing date, in September 1994. On September 1994, Blohm and Voss received a fax from Armscor, thanking the company for having participated ...[intervene]

ADV MPHAGA: Is it December not September?

MR WIERCIMOK: September, I am very ...[intervene]

15 ADV MPHAGA: December?

MR WIERCIMOK: I am sorry, December, you are right. It, anyway, the told them that they would not be considered, as a provider and it was understood, at the time, that the British and the Spanish offers had been short listed. This was obviously a great disappointment for Blohm and Voss and they asked for a meeting with Armscor, with the Chief of Staff of the Naval Plans and other dignitaries of the South African government and the armed forces, in order to be explained, why their bid was not considered. This was, this was a reaction to this disappointment. But, it was also important for GFC to take as much information from this, from this matter, as possible, in order to be more successful, the next time

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around. Also, I, I suppose it was the general feeling, within GFC that a process of re-thinking might occur and there might be further procurement and this knowledge that could be gained from this conversation, would be valuable. It turned out that in May 1995, it was
5 announced, by the South African government that the patrol Corvette project was suspended, until a new defence review had been completed. It was understood that this process would take some years. It was in the experience of Blohm and Voss internationally, quite a normal development, in the course of major defence acquisitions. We
10 had gone through this before.

ADV MPHAGA: Now, then, in the next paragraph you proceed then to tell the Commission about the tender phase that occurred between 1997 and 1999, from paragraph 19, if you can take us through that.

MR WIERCIMOK: I will be glad to. In September 1997, the German
15 government received invitations from the South African government, to offer various major items of defence equipment, including patrol Corvettes. It was understood that several countries had received similar invitations. Now, the German government is not in a position to provide such equipment. So, it passed it down to the equipment and the GFC
20 was, to the industry, I am sorry. The GFC was formed to provide a German surface naval vessel proposal. Later on, a detailed request for offer was received by the GFC from Armscor, for the supply of four Corvette, patrol Corvettes. The GFC responded, by the closing date of November 3rd 1997 and the GFC proposal was then evaluated by the
25 South African authorities and was short listed for the final round of

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competition. The GFC then received the request for final offer from Armscor, dated February 13th 1998, for the patrol Corvettes, with the tender closing date of May 11th 1998. The prime contractor and offer by a prime contractor was required and included comprehensive technical

5 logistical support specifications, project management statements and industrial participation requirements. As with the 1997 RFO, the RFFO made it clear that the process of tendering would be in two stages. For the first stage the ship platform would be selected and the ship platform only. The successful platform tenderer would then be required to offer

10 the supply of the combat systems, within its role as prime contractor for the complete vessel. The generic combat suite was also described in the RFFO in order to guide the shipyards, as to the capabilities available, from the local South African combat system industry, as well as to enable the ship design to include the fitment of the complete scope

15 of the required combat systems. As was already clear from the inclusion of ADS in 1994, intensive discussions were held between GFC and the South African industry. ADS was the primary South African company, capable of Naval combat systems. The GFC therefore, included in its offer that it would, in the event of being chosen, enter

20 into a consortium with ADS to offer the patrol Corvette combat systems. This was obviously also in close co-operation with Thales.

ADV MPHAGA: You will note also that Rear Admiral Vermeulen has, in detail told the Commission about the internal procurement processes that were followed, by Armscor. But, maybe as a matter of confirmation,

25 you can just take us through the tender assessment, briefly, from

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paragraph 24.

MR WIERCIMOK: Yes. I do not wish to bore you with things that you already know. But, just briefly, it was, it was clear that at the time of the tenders that the evaluations would be conducted by four government
5 departments, with specific responsibilities. The Department of Defence, assessing the equipment performance, lifecycle costs, operational suitability, logistical support and training. Armscor assessed defence industry offset to South Africa, the defence industrial participation, also referred to as DIP. Then, the Department of Trade and Industry was
10 involved, assessing non-defence industry offset, including inward investment, domestic and export sales, skills development and technology transfer, the national industrial participation, also referred to as NIP. The Department of Finance assessed the financing packages offered, the affordability to South Africa, over the life of the financing
15 and procurement and also a possible impact on the exchange rates of the Rand. The Department of Public Enterprises assessed contribution of offset to the survival of South African state owned industry, with a specific focus on the defence industry. It was understood, at the time that all four decisions were to be made by an inter-ministerial Cabinet
20 subcommittee, the IMC, including the Ministers of the above departments and the IMC was led by then Deputy President, later President Thabo Mbeki. It was understood that President Mbeki's specific focus was South Africa's international interest and the benefits of otherwise, or otherwise likely to emerge from the long term strategic
25 relationship, which inevitably develop or are strengthened with supplier

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countries. The GFC understood that the evaluation examined every bid from every angle, which is normal, under these circumstances. The departments acted independently of each other and really evaluated the whole project from every angle. It was GFC's observation that the IMC
5 worked against the backdrop of international consensus on major infrastructure, projects. That best value for money is different to lowest price. The cheapest is not always best and look at it as the, to be evaluated the price against the whole package of the equipment, delivery on time, budget, lifecycle cost, offset, financing and strategic
10 international relations. In November 1998 Deputy President Mbeki announced the short list of preferred bidders and GFC was informed that it had been selected as preferred big bidders for the patrol Corvette. Negotiations with the IONT, the International Offers Negotiating Team, commenced later in the month and the GFC was informed that the IMC
15 had appointed the IONT to negotiate best and final offers terms and conditions with the various preferred bidders. This IONT was headed by Mr Naidoo as Chief Negotiator and what follows are then negotiations phase.

ADV MPHAGA: Sorry, the, the short list of the preferred bidders,
20 which included the GFC is the one that was announced by the Deputy President. In Vermeulen, Rear Admiral Vermeulen has indicated that, in so far as the military value, it would appear that the Spanish Bazan led the short list. But, am I correct to say, that, when one looks at the other requirements, in terms of the offsets and the financing part of it, then
25 GFC was shortlisted and, and nominated on the short list, to be the

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preferred bidder.

MR WIERCIMOK: That was our understanding at the time, yes. It is still our understanding now.

ADV MPHAGA: Now, let us proceed then and look at the negotiations, which were held with the IONT. If you can just take us through those paragraphs relating to the negotiations with the IONT.

MR WIERCIMOK: Very well. The negotiations commenced in early 1999 and continued until September 1999. The, as soon as the GFC had received, or was aware that it became the preferred bidder, they solicited offers from various portions of the, of the ship and also from the local industry, but also from international suppliers. Negotiations for the combat suite commenced in January 1999 and the, and this aspect of the patrol Corvette system, GFC and the intended partner, together negotiated with the IONT technical team and formed, and during this phase GFC formalised its relationship with ADS, as the combat system integrator. It was my understanding that later in the year Thales bought a major stake in ADS and the ESACC was formed. Some ...[intervene]

ADV MPHAGA: So, if I, I am sorry, if I understand paragraph 31 well, is that the, the quotations, in respect of the other items that were required, were not only requested from ADS, but other local suppliers were approached to give quotations.

MR WIERCIMOK: Yes. Indeed.

ADV MPHAGA: Then, you may proceed then, from paragraph 32.

MR WIERCIMOK: 33, I believe.

ADV MPHAGA: 33, yes.

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MR WIERCIMOK: Ja. We, we were aware that some of these countries were in, in, what do you call it, in competition with each other and we, we saw to it that, that no bid was compromised and they were fairly evaluated and I, to the best of my knowledge that took place.

5 Parallel negotiations were being held, in terms of, of industrial participation and financing and, and the negotiations were finalised in September 1999. On 15 September 1999 the South African government announced its final procurement decisions, based on the outcome of the negotiations with the IONT. This included details of the number of
10 vessels, aircraft, delivery time frames, associated NIP and DIP terms and conditions and performance guarantees and penalties and also the price, of course. The, and in December 1999, the contracts with the South African government, for the Meko A200 SAN patrol Corvettes were signed and included in an umbrella agreement, the supply terms,
15 the DIP terms, the NIP terms and the financing terms. The Corvette contract came into effect on 28th of April 2000.

ADV MPHAGA: From the evidence of Rear Admiral Vermeulen, it appeared that at some stage that the price, in respect of this, the supply of the frigates was overboard and efforts were made, to reduce that.

20 Was he correct in saying that?

MR WIERCIMOK: I am sure he was. But, I am afraid I cannot shed any more light into this.

ADV MPHAGA: Now, then, let us proceed then to your GFC scope of supply, in terms of the terms, which were negotiated in the umbrella
25 agreement.

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MR WIERCIMOK: Yes. As I said, I am sorry. As I said, the supply terms covered, the supply terms were, were part of the deal for the Meko, with the technical description, the price and so on. The financing terms played a role and the DIP and NIP agreements. It was clear that

5 the patrol Corvette platforms would be built by GFC and two were being built in Hamburg, at Blohm and Voss and two at Howaltswerke Deutsche Werft, HDW in Kiel and they were then accepted, commissioned and sailed to South Africa, by the South African Navy. There were some, some problems. The construction of the first platform

10 was delayed by nine months, because of electrical systems and they also had a bearing the, on two, on the two next Corvettes. The fourth one, I believe, had no such problem, but anyway. This was a big issue and from what, what I have seen and heard, one must understand that there are thousands of kilometres of electrical wiring in such a ship. So,

15 when such a problem is discovered, it takes a long time to identify it and that was also the reason, why it had bearings on the other two ships. Anyway, it was, it was hard, but liquidated damages had to be paid to the South African government. Also, our partners from the combat suite were in delay and had to be compensated accordingly and were so

20 compensated. The combat systems were integrated into the ships in Simon's Town by ADS and Thales. The, the four Corvettes were commissioned into services as follows. SAS Amatola in February 2006. SAS Isandlwana in July 2006. SAS Spioenkop in February 2007 and SAS Mendi in March 2007. These patrol Corvettes or frigates, as they

25 are now referred to by the Navy, are South Africa's front line naval

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surface combatants in terms of their roles, they have replaced three Type 12 frigates and nine Strike Craft while at the same time offering significantly advanced capabilities. The Meko A200 as this type of ship is being referred, which was supplied to South Africa, still forms the cutting edge of Naval technology and is still at the core of TKMS product portfolio today, with slight alternations, of course. But, in fact, two ships, as we speak, of this exact nature are currently under construction for an international customer.

ADV MPHAGA: Thank you [indistinct]. Ja. You may proceed then, to look at the response, in so far as the industrial participation requirements are concerned and whether to say we fulfil it or not.

MR WIERCIMOK: Thank you, very much. As I said, the industrial participation was divided into two categories, the defence industrial participation and the national industrial participations, DIP and NIP. This is by the way, quite a normal set for this kind of transaction. It happens all over the world and we have seen it, also in other countries, such as Portugal, Norway, Greece and others. The interest of the, of the client country is, of course, to have as, you know, as much participations from, from their national industry as possible. This was more complex in the South African DIP, following decades of isolation from most international markets. One aim was to raise the international visibility of the very capable local defence industry and to encourage linkages with established international manufacturers. Who would, as a knock off, knock on of DIP ensure access of ensure access of, for international defence market for South African defence manufacturers.

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If you look at Denel's current order book, you will see that they have contracts to supply surface to air missiles to, and air to surface missiles to a number of Navy's and outside of South Africa. I believe this is at least, one indication of the success of the approach that the South Africans took, at the time. We, we still assist the South African industry in drawing this business and I believe we are being successful here. It was possible to meet the DIP requirements on the patrol Corvettes in full, because of the capabilities of the local industries. 18 local companies supplied elements of the combat suite, particularly ADS, as the combat system integrator. The DIP requirement was that at least 60 per cent of the combat system value and 10 per cent of the ship platform value should be met by South African companies. With the help of very capable local partners, GFC was able to meet this requirement. Shall I turn to NIP then?

15 ADV MPHAGA: Yes.

MR WIERCIMOK: The South African has a statutory applied to all acquisitions of goods or services by the State or State owned enterprises. As I said, this is not unusual. This is also true for other countries. It applies to all values, to all contracts, with the value exceeding 10 million US Dollars. NIP was designed to ensure maximum benefit to the South African civilian industry with particular emphasis on manufacturing and in a number of areas, defined as priorities, by the government. But, besides mobilising further inward investment, NIP was designed to introduce some, some of South Africa's hidden gems, to get them access to global market. Because of the size of global

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reach of many companies offering defence equipment to South Africa, it was felt they could be useful partners in creating linkages, which was severed, during the time of, of the Apartheid period. During the final negotiations of the patrol Corvettes, it became clear to the GFC that the

5 NIP systems require the defence manufacturers to cause benefit through, to the South African industry through inward investment, domestic sales, export and technology and skills transfers. It was equally apparent that the defence bidders were not required to make the full investment themselves, but rather to cause investments, even by

10 other parties. That meant that sometimes they were provided funds, by their own, of their own, sometimes by introductions to companies, also small and family owned and non-listed companies found their way to South Africa. Financial guarantees were provided and off take guarantees were, were, to ensure the viability of a, of an investment, for

15 example ferrochrome smelter, built by the Royal Bafokeng investment company. In that case, ThyssenKrupp guaranteed to purchase for a number of years their production as a part to fulfilment of NIP. Obligations, it is in the nature of NIP policy that some projects might fail. It was for that reason that the GFC took on more projects than were

20 probably necessary to fulfil, because you never know, whether all of them go through. It is, it has become clear to that, as the job creation was a big issue here. It, one has to understand that the South African NIP, the policy did not formally or informally list job creation as one of its criteria. That is sometimes forgotten, but that is the case. Obviously,

25 this was, was looked at. GFC was always mindful of this need. But,

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there were certainly no obligation to, to, you know, to provide jobs. Or nor were there sanctions, if jobs were not provided. The, the NIP projects were submitted to the relevant authorities and they were approved and credits were awarded, based on several criteria. Direct

5 links with the obligor, namely GFC and economic benefit would have to emerge from, form it, causality. It must have been economically beneficial for South Africa. It should be operationally and economically sustainable, after expiration of the NIP discharge period. It must not result in an increase of price. NIP or industrial participation projects

10 could include several forms, investments, joint ventures, sub-contracting, licensee productions, export promotion, research and development, supply partnerships and so on. The, some sectors were described as preferential for NIP activity, automotive, export promotion, electricity and power, engineering, metals processing and forestry. NIP

15 and DIP credits could only be claimed, if substantiated with an auditable paper trail, including shipping waybills, invoices, joint ventures or loan agreements and so on. There were regular review meetings with Armscor and the DTI, to examine the documentation in detail and agree further projects. This took place on a regular basis. I am not sure,

20 whether I should read through all of this. What, what we can say is, we got all of the relevant credits that we have supplied, that we have complied with all of the NIP and DIP, ja.

ADV MPHAGA: So, there was compliance, both in respect of the NIP and the DIP and there was certification that you received, from both

25 Armscor and the DTI?

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MR WIERCIMOK: That is correct.

ADV MPHAGA: Now, if we then, look at the next topic of the GFC advisors and support in South Africa. As you would know that most of the criticism that was levelled against the suppliers was related to the use of advisors, consultants and agents, if you can then take the Commission through that topic, in respect of advise and support in South Africa.

MR WIERCIMOK: Let me say, first of all, that it is by no means unusual to involve advisors in a deal of this size and portion. We must also not forget that, at the beginning of the 90's, Thyssen, it was Thyssen in those days, shall we say, the activities in South Africa were rather limited, due to the United Nations embargo. It certainly did not include any military activities. Therefore, we came, shall we say, to a, to unknown territory. In that case, it is not unusual to require help, knowledge of people, who know how to deal with the law, with finance, banking, media, public affairs and also access to, you know, to the decision makers, who wanted to know, who makes, takes what decision and so and so forth. So, and we were looking for, for people with, with proven track record in South Africa. We, this went on, according to certain guidelines, which are in place today. But, which for intents and purposes were also in, were also true in those days. I have laid them, put them down in Section 67, for you to, to read. It is price worthiness, they need to have played a certain role. It needs to be, they have to bring in a value addition in the customer country and gain political support and this kind of, kind of thing. A key, a few key factors,

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motivated the need. We had no experience in, within GFC of doing business in South Africa. It was imperative that we took advice in terms of appointment opportunities to make presentations, in depth discussions. The size and significance of the industrial participation was to be evaluated. Obviously, such, the people who advised us here, did not do this for free. The remuneration was agreed with them individually on terms of market conditions, level of expertise, uniqueness of skills and that kind of thing and the time that the advisor would be required to devote to GFC matters, including travel. We must not forget that this whole project went from 1993 to 1999, which is a long time. The, obviously, with all these, the advisors, we made it clear that there was no, we would not condone any, any elicit payments of any sort. I cannot divulge here, the, the details of the remuneration, because that is confidential. I think, where the decisive thing and that is also here in the, in, in, and has played a role here, one of the decisive advisors here, was Mr Tony Georgiadis, through his company that was, as far as we know controlled by him, Mallar Inc. He was a person from, to our knowledge, who was well respected in this country, both before the change in 1994 and afterwards. He seemed like the, the ideal person, to help is in this joint venture, in, in this venture. We were happy that he would, he would co-operate with us.

ADV MPHAGA: Thank you. There, there have been allegations, in so far as advisors are concerned, that the, the price of the acquisition of the frigates was inflated, so that commissions would be payable to these advisors and other people. What is your comment about that?

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MR WIERCIMOK: I can say, the main allegation is obviously that payments have been made to, elicited payments have been made, to members of the, of the government, or people, who were linked to the government. As you know, these allegations have been, has been the
5 subject or the object of the State Prosecutor's officers in Dusseldorf, starting in 2006. This was obviously, supported by a lot of interest, here in this country. I can only say that no evidence, supporting the allegations, by South African sources that any sort of corruptive practices had taken place in South Africa were ever found. The
10 investigations were closed, without charges being preferred. In particular, I would like to say that there were, there was testimony before this Commission that there had been admissions of practices or fines imposed, as a consequence of such practices. None of this is true. Nobody admitted to any of such practices and there were no fines
15 or judgments held, by the German authorities, as a consequence of such, of, of such allegations. We have not been, neither the company nor any, anybody, individual was charged or prosecuted with any of such, of any such matter. The one particular allegations that I would like to go into, this was that we had paid the Chief of Acquisition of
20 Department of Defence 3 million US Dollars to influence the procurement process. I can tell you this is not true. The GFC neither made nor authorised such payment. This again, was also the subject of investigations into by, by the German, or by the State Prosecutor's office in Dusseldorf. No evidence of the veracity of this was found. We
25 certainly and this we looked into ourselves, no such payments were ever

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made or authorised. Finally and I think that is where, I need not spend too much time on this, there is the matter of Rear Admiral Kamerman, being employed by TKMS in 2006. We were well aware, at the time that the, that we could not ask somebody from the South African government

5 to join forces with us, without the consent of our client and of the South African government. It was for precisely this reason that this agreement was sought and it was granted. Why did we, why were we interested in Mr Kamerman, we got to know him, during the, the acquisition process, as a very able person, a very knowledgeable, not only from a technical

10 point of view, but a person, who was able to go, take through complicated projects and he had international expertise. We thought he would be an excellent addition to the TKMS team, who was about to expand their international business. We found, we were glad that Mr Kamerman agreed to join. We got the authority of the Chief of the Navy,

15 Vice-Admiral Mudimu and I believe that, that document is in front of, is in the possession of this Commission.

ADV MPHAGA: In actual fact in doing his evidence, Rear Admiral Kamerman did provide the Commission with a letter, dated 8 December 2005, which was signed by Admiral Mudimu on 9 December 2008,

20 giving him permission to accept employment with ThyssenKrupp.

MR WIERCIMOK: I believe that is the document I am talking to, yes.

ADV MPHAGA: Yes.

MR WIERCIMOK: I would like to draw your attention to one matter perhaps and that is the quote, well, no, I am sorry. We will get to that

25 later. It is about Ferrostaal.

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ADV MPHAGA: Yes. Thank you. Then you can just go to the concluding remarks on page 20 of the statement.

MR WIERCIMOK: Thank you very much. We are very proud to have been chosen as the successful bidder for the Corvette agreement and indeed also for the submarines. I, we believe that we sold to you top of the industry equipment and these, this equipment is still considered, is highly regarded internationally. Further international customers ordered these frigates, practically identically to the patrol Corvettes acquired by South African and they are currently under construction in Germany. We are proud to, as I said, we are proud to have been chosen as a partner for the technical transformation of the South African Navy and we will continue to support the Navy in various maintenance and technical support roles. It is also a sort of source of satisfaction that by fulfilling the NIP and DIP obligations TKMS was able to contribute at the expansion and to securing, to a degree that South Africa's economic base as part of the government's ongoing effort to improve the lives of the, of this country's citizens. That concludes my statement on the frigates.

ADV MPHAGA: Thank you very much, Sir. Would this be also that there has been a lot of training that was advanced to the Navy, as a result of the acquisition of the frigates?

MR WIERCIMOK: That is correct, Sir. Yes.

ADV MPHAGA: Thank you, Chairperson and Commissioner Musi. That concludes the first statement, in respect of the frigates. With your permission, may we proceed to the last statement, in respect of

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supplies?

CHAIRPERSON: You can continue to the next statement.

ADV MPHAGA: Thank you, Chairperson. Mr Wiercemok, then, you may then proceed to the statement, in relation to the submarines. I take
5 it then, we can start from paragraph 5, where we deal with the relationship between TKMS and GSC and Ferrostaal. Can you take us through that relationship process?

MR WIERCIMOK: Yes. That is correct. The first four paragraphs are repetitive ...[intervene]

10 ADV MPHAGA: Yes ...[intervene]

MR WIERCIMOK: In comparison with my first submission. I think, five is also the same. That explains who TKMS is. The, it is a little different here, because they took, they took over the activities of the two shipyards, who built the, the submarines, which are the, the object of
15 this investigation, HDW and Thyssen Norseewerke GmbH. Thyssen Nordseewerke GmbH, as a legal entity, does not exist, but their activities were. It does not exist any more, but their activities were taken over by TKMS. The, those were the two shipyards who built the ships. Two ships were built in Emden by NSW and one in Kiel by HDW.
20 Like in, also within GFC there was a commercial partner. In GFC the commercial partner was Thyssen Rheinstahl Technik. In GSC, the submarine consortium the partner was Ferrostaal. They were responsible for marketing, securing financial, financing support for South Africa and for the NIP activities and projects. I must make one thing
25 very clear. Ferrostaal never was and is not a member of ThyssenKrupp

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Group. I understand that the last witness made a, made an elusion to that effect. I believe he may have mixed this up with HDW. HDW was purchased by ThyssenKrupp, I believe in 2000 or 2001. I cannot give you the exact date. It was before that, before that time owned by, by

5 another German Group, which in the meantime has unfortunately gone bankrupt and it was owned then, by an industrial group, from whom ThyssenKrupp purchased the HDW matters. I think, I am saying that in Section 10 of my work. The tender phase was very similar to the, to the GFC matter. I think, this happened pretty much at the same time. I am

10 not sure, whether we need to go through this in great detail. I believe not. The responsibilities of the various part, parts of the South African government were also identical with the GFC submission. Also, we had the, the Inter-Ministerial Cabinet Subcommittee involved here. The evaluation process, to the best of my knowledge was equivalent to the

15 one at GFC and the announcement of the preferred bidders was also done at the same time, as was the case in, with the, the Corvettes. I have already mentioned Mr Naidoo. The negotiation phase took place around the same time, as in the GFC case. Also, the contract was signed on the same date, as the frigate consortium. Also, with the, with

20 the almost identical contract package, namely the umbrella agreement, the supply terms, DIP, NIP and financing terms. The submarine contract came into effect a little later, in June 2000 and I am afraid, I cannot tell you what the reason for this time delay was. We, the submarines were, as I said were built, one in Kiel, the other two in

25 Emden, but under the supervision of HDW, who was the prime

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contractor for these matters. They were, they were handed over in, one in 2005, the Manthatisi. The Charlotte Maxeke, I hope I did, no, I am not going to try a click sound here, in March 2007 and the Queen Modjadji in May 2008. I can say that HDW has so far built 61 Type 209

5 submarines. They continue to serve 30 navies worldwide. This just makes the Type 209 the most widely sought submarine internationally and the most successful submarine type in service in the modern era. I am not a technician, but I believe that this is one of the most advanced submarines on the market. So, we are again, we are at this time

10 building two, almost identical submarines to those delivered to South Africa for an international customer and who has recently exercised the option to be supplied another two. The DIP was rather, went along the same categories as in the GFC type. NIP was, for NIP Ferrostaal was responsible and therefore I am not really able to tell you very much

15 about that. Because the, that was, this company is not within our, is not part within our group. But, in the DIP, I can, I have, from what I have been told and what I have found out in preparing myself, there was very substantial contribution, by the South African, by South African companies. The sensor systems, by Avitronics, now part of SAAB

20 South Africa. The periscopes were built by Denel and software support was, for the combat system was built by C2I2 of Cape Town, or supposed to, unfortunately they were apparently not able to fulfil their contractual requirements and had to, the contract had to be cancelled for that reason. But, these periscopes that I have mentioned, are now

25 being also integrated by HDW, coming from South African and being

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sold to Portugal, South Korea and I am sure in the future other companies. So, there has been an impact to DIP and the DIP, the DIP credits were awarded and the contractual obligation in this respect, were fully discharged. As I said, I cannot tell you anything about the NIP
5 portion. But, it is my understanding that Ferrostaal also got the credits for that, for this portion.

ADV MPHAGA: Thank you then. Maybe, let us proceed then, to the GFC advice and support in South Africa, paragraph 44.

MR WIERCIMOK: I am not able to say very much about this, because
10 this was the responsibility again, of Ferrostaal. But, it is my understanding that they also used Mannar and Mr Georgiadis as their key advisor for this country.

ADV MPHAGA: Thank you. Then, let us deal with the allegations and criticism that were made against the GFC, from paragraph 45.

15 MR WIERCIMOK: Yes. Again, this, it is pretty repetitive to, to what I have already said. The, many have been decisively addressed before this Commission and, I mean, we are especially, we do, especially cannot understand the false accusations with regard to the suitability and quality of the Type 209 submarines delivered here. I mean, this is
20 top of the industry matter and it has been sold in other parts of the world and I can see no, no reason why such an allegations should have been made. About allegations of any wrongdoings, otherwise, I cannot speak for Ferrostaal. But, I can tell you that, from any ThyssenKrupp company, no elicited payments were authorised and indeed made. One
25 thing I could add, I believe that there was also an investigation, by the

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same German Prosecution. It was originally initiated, but against Ferrostaal. But, to the best of my knowledge no, no consequence was made and no charge was ever raised, as a consequence of these investigations.

5 ADV MPHAGA: I think, in fact, Mr Vermeulen, Nico Vermeulen, who was the [indistinct] manager at Armscor, did confirm that from a military value perspective, the Type 209 submarines were the most cost effective of the three submarine [indistinct] systems that were on offer. Can you confirm that?

10 MR WIERCIMOK: I cannot confirm it. But, I have no doubt that this is true.

ADV MPHAGA: Yes. Maybe then, let us go to your conclusion remarks on page 16, paragraph 47.

MR WIERCIMOK: Thank you very much.

15 CHAIRPERSON: Just hold on, Advocate Mphaga. I think I missed a point that the witness was trying to make about the German Prosecutor's investigation of Ferrostaal. Can you just repeat that portion of your evidence?

MR WIERCIMOK: I do not believe I have put that in the, in my
20 submission. But, it is, I wanted to let you know that this is my understanding that no such allegations have, or they, they were, Ferrostaal were, for a very brief period also subject of an investigation. But, that investigation was discontinued and no, no consequences were ever drawn from it. It is our understanding that the Commission has
25 been given detailed information by the Navy of the roles, allotted to the

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submarines. I am not going to venture into giving advice to this country, as to what sort of equipment they need, in order to safeguard their coasts. These submarines apparently are hard at work in doing the jobs that they were designed for. By choosing those, supplied by TKMS, 5 South Africa joined countries in Europe, Latin America, parts of Australasia and Asia, which operate the company's submarines. Again, we are very proud to have been chosen to supply this equipment. We believe it is good and solid equipment and we, we are happy to continue to support the Navy in maintenance and technical support roles. I might 10 say, it is a source of satisfaction, by also fulfilling the DIP obligations. GFC was able to contribute to the expansion and securing off South Africa's defence industrial base. This should, should provide for further activities and for further, for further good development of this years' defence industry.

15 ADV MPHAGA: Thank you, Sir. And, and just lastly, if you can maybe give us your comment. Because part and parcel of the terms of reference of this Commission is to consider whether these contracts with, should be cancelled, in the event that it is found that there were corrupt activities. What would be your comment, in the event that such 20 a decision has to be made?

MR WIERCIMOK: You are referring to Section 19 of the Corvette agreement, for example. There may be others. Now, there is, Section 19 refers to remedies, in case of bribes. In order for these remedies to be drawn, there has to be a conviction of somebody, of a company, or of 25 a member of the company, having committed an offence of the

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Prevention of Corruption Act, or analogous legislation, or have been convicted of fraudulent, illegal or criminal acts, in obtaining the execution of the agreement. The result might be, it is a [indistinct] agreement that the South African government may summarily cancel the
5 agreement and claim damages or claim 10 per cent of the contract price, as liquidated damages. My comment is two fold. First of all, I see no reason why this section should be invoked, because it is my testimony here that no such offence has taken place, with the consent of ThyssenKrupp or any ThyssenKrupp company. Secondly, these ships
10 have been, or ships and boats have been employed and deployed by the South African Navy for almost 10 years. I find it very difficult to imagine what would be the consequence if the, if the, if we thought of going back to, to point zero. You giving us back the ships, us giving you back the money. You would be without a Navy. The money has been
15 spent, has been distributed. We find, we find this clause to be very difficult to exercise, after so, such a long time.

ADV MPHAGA: Thank you, Chairperson and Commissioner Musi. That concludes the evidence of the witness.

CHAIRPERSON: Just a last question from me, before the final, if at
20 all, there is any cross-examination. Are you aware of any person or entity in Germany, which has been prosecuted or successfully prosecuted, as a result of the alleged corruption in the South African procurement process?

MR WIERCIMOK: No Judge, I have not. Indeed, I am confident in
25 saying that no such conviction has taken place.

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CHAIRPERSON: Thank you. Any cross-examination? Thank you. Thank you, Sir, for giving, oh, just hold on. Just hold on.

COMMISSIONER MUSI: Just a few, few points of verification, if I may. Some serious allegations have been made, before this Commission and
5 of, of corruption and bribery and certain names have been mentioned. I just want to hear from you. Do you know a gentleman by the name of Koopman?

MR WIERCIMOK: Yes. I do. He was managing director of Thyssen Rheinstahl Technik and he was responsible for marine activities.

10 COMMISSIONER MUSI: And Mr Hoenings?

MR WIERCIMOK: Yes. I know Mr Hoenings as well, he was on the, at the level immediately below the managing directors, responsible for marine activities at Thyssen Rheinstahl Technik.

COMMISSIONER MUSI: A specific allegation that he, he signed a
15 bribe agreement with Mr Tony Yengeni, as well as another bribe agreement with Mr Shamim Shaik, the Chief of Acquisition. Do you know anything about that?

MR WIERCIMOK: This again, was, was investigated by the German Prosecutor's office and they found no proof of the veracity of these
20 allegations and neither did we.

COMMISSIONER MUSI: I thought you were talking. I thought you wanted to say something.

MR WIERCIMOK: And neither did we.

COMMISSIONER MUSI: I understood you to say that Ferrostaal was
25 investigated, but nothing came out of those investigations.

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MR WIERCIMOK: Yes. I do not have a lot of detail in this. They were not initially in the scope of the investigation. They were later on, for a brief period. But, nothing ever came of it.

COMMISSIONER MUSI: And ThyssenKrupp was it ever investigated
5 itself and what was the outcome?

MR WIERCIMOK: The investigations were discontinued. No charge was claimed, was, there was a thorough investigation, which took for almost two years. At the end of the day, these investigations were discontinued. No charge was preferred against any of the, of the
10 persons originally in the, in the scope of the investigation, for, for matters, which had to do with South Africa. I can say with conviction that nobody was accused of any wrongdoing, in connection with the supply of these two defence packages in this country.

COMMISSIONER MUSI: Just something interesting. You mentioned
15 that one of the advisors that ThyssenKrupp, or the consortium engaged was, was Mallar, a company called Mallar, owned by Mr Georgiadis. Just by way of, for interest sake, what would an advisor be expected to do, in his interactions with decision makers, political decision makers in the country, acquiring the equipment?

MR WIERCIMOK: I would have thought that he knew who the decision
20 makers were. He would know how to get meetings organised with these, with these persons, who the decision makers were and how they, generally how the process of decision making both at a political, at a political level would, would work in this country.

COMMISSIONER MUSI: You see, I am trying to understand how, how
25

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to, would these advisors be able to influence the outcome of, of a process, an acquisition process.

MR WIERCIMOK: They only advised us, as to, who to approach and who to, what to take into consideration, when making our offer. They
5 were not able to direct, in my view, they were not able to directly influence the outcome, no.

COMMISSIONER MUSI: And the advisors would be paid for their services?

MR WIERCIMOK: Yes.

10 COMMISSIONER MUSI: What would, what would your response be that these, these commissions paid to the, to the advisors were in fact bribes?

MR WIERCIMOK: I have no reason to believe that that was the case.

COMMISSIONER MUSI: Was Mallar the only advisor that your
15 company employed? Were there others, if so who?

MR WIERCIMOK: There were some, in Germany, but for, obviously, for legal matters, for financing matters. But, Mallar/Georgiadis was the, was the chief advisor for South Africa.

COMMISSIONER MUSI: Thank you.

20 CHAIRPERSON: Advocate Mphaga?

ADV MPHAGA: I do not know whether [indistinct] has any re-examination or something.

CHAIRPERSON: I am sorry.

UNKOWN: I have nothing, Chair.

25 CHAIRPERSON: This one is expected. Advocate Mphaga?

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ADV MPHAGA: That concludes the witness for today and, Chair, the next witness would be from SAAB and from Agusta. They are scheduled to appear on Friday the 20th of, of March 2015.

CHAIRPERSON: And that will be on the same day?

5 ADV MPHAGA: The same day, Chair. Thanks.

CHAIRPERSON: Can we start at nine?

ADV MPHAGA: Thanks, Chair. We will start at nine.

CHAIRPERSON: Thank you. Mr Wiercimok, thanks a lot for coming to this country and giving evidence. I think the information that you have
10 given us, will help us to a very great deal, to carry out our mandate.

MR WIERCIMOK: Thank you very much. It was a pleasure.

CHAIRPERSON: Thank you. We will now adjourn.

(COMMISSION ADJOURNS)