

ARMS PROCUREMENT COMMISSION

Transparency, Accountability and the Rule of Law

PUBLIC HEARINGS

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HEARING ON 26 MARCH 2015**RICHARD MICHAEL MOBERLY YOUNG:** (s.u.o.)

ADV KUPER: Thank you, Chairman. Please forgive the delay, it was due, on our part, to a need to copy documents and put them in order. I
5 want, this morning to commence with a discussion, Dr Young, a discussion of the SMS and your complaints, regarding the SMS.

DR YOUNG: Okay.

ADV KUPER: The complaint starts, as I understand it, with the fact that the date for submission of bids and that would be your bid and the
10 competitive bid of ADS, which had been the nominated supplier, I think, was to have been received by the 15th of April, according to you. Is that right?

DR YOUNG: Well, not only according to me, according to the documents. Not my documents that I have submitted.

15 ADV KUPER: So, it is right, as you understand it and as you say, from the documents, the two competitive bids, were to be filed by the 15th of April and by whom were they to be filed?

DR YOUNG: Well, I think, it is fair to say it is a two part process that the interested bidders or the two bidders would have to file to the GFC,
20 who were administering this and they, and then they would submit their bids to the JPT.

ADV KUPER: And what you know is that you were required to file with GFC, by the 15th of April. Is that right?

DR YOUNG: I know a bit more than that. I mean, at that stage, I
25 knew that. But, now I know, I know far more of the process now.

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ADV KUPER: I am just asking you to confirm that you were required to file your bid with GFC on the 15th of April. Yes or no?

DR YOUNG: No. That is not what you asked me. You asked me what I know. That is what I answered.

5 ADV KUPER: Dr Young, I am sure we will both survive this cross-examination, which will shortly end.

DR YOUNG: I am very pleased to hear that I will survive.

ADV KUPER: But, it will be much easier if you do not spar with me, but you try and assist.

10 DR YOUNG: Sorry, I am not sparring with you. I listen to your questions carefully and I answered that question. Possibly, you think that there are two, there are two parts of the question. One is what I know and I answered that. The other one and I think I had already answered is the, regarding the submission to who and by when and I
15 answered them both.

ADV KUPER: Now, the next question is, did you know then, the date on which GFC had to file both bids with the Navy?

DR YOUNG: Working from memory, I cannot say that I knew when, I can go to the documents and see there. But as I said, I was overseas. I
20 just knew what time we had to submit our bid. Well, that is what I can definitely remember. There might have been more. But, at least, I knew that.

ADV KUPER: Do you know now, when GFC was required to file the two bids?

25 DR YOUNG: Yes. Again, I cannot remember the exactitude, but it

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was, what I can remember, it was something like nine o'clock or 10 o'clock on the, I would say, it would be at five o'clock on the 15th and the GFC had to file their, our two bids the next morning, as far as I can remember.

5 ADV KUPER: Let us now look at the documentation. Would you go to your RMY 90, which your file, your file five and we are just looking for the page number. It is page number 1603. Do think you have it, Dr Young?

DR YOUNG: I have an easier to read for me, version in front of me, in
10 my computer and it is a Blohm and Voss telefax, dated the 13th of April.

ADV KUPER: That is correct. You will see there, the request, please submit your quote to us by not later than Thursday the 15th of April 1999 at 17h00.

DR YOUNG: That is correct. Yes.

15 ADV KUPER: I want to show you documentary confirmation for your memory that the GFC was required to file the bids the next day, at nine o'clock. With your permission, Chairman, if we can just hand around a copy of that document, and may we suggest it be filed, at the end of cross-examination, file five.

20 CHAIRPERSON: Advocate Kuper, where should this document come in?

ADV KUPER: We suggest, at the end of file five, cross-examination file. You will see, Dr Young, in fact, from paragraph 2C of this letter, from, a letter to the GFC, from then Captain Kamerman, there is the
25 requirement that the closing date to be Friday, the 16th, at 09h00.

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DR YOUNG: Yes. I think, that is what I said.

ADV KUPER: As I understand the position, the bids were indeed filed with the department, within that time limit. Is that your understanding, as well?

5 DR YOUNG: It certainly, nothing to the contrary has ever crossed my mind. So, I would agree with that.

ADV KUPER: Is it correct that both C Square I Square and ADS had been asked to eliminate certain items from the SMS, about which they were both bidding, in order to reduce the price?

10 DR YOUNG: Well, clearly, from this document, underneath 2C is 2G and it says SMS to exclude the VSS portion. Of course, we had not been involved in the SMS before. So, we worked, the, the point of departure, the base line for the, our offer was the statement of work, which came with the request for offer. That is what I can remember.

15 ADV KUPER: You are referring, as you say, to paragraph 2G of this letter, which reads:

"The SMS is to exclude the VSS portion."

And I understand you to say that that was not a problem for you, because it had never been included in your bid. Is that right?

20 DR YOUNG: Well, a little bit differently, we never had a bid before. So, it could not, it is [indistinct] so it could not have been included, because we did not have a bid.

ADV KUPER: Whereas, ADS had had a bid.

DR YOUNG: That is correct. Yes.

25 ADV KUPER: Now, what Admiral Kamerman has testified to is that

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when the ADS bid was received, it had not eliminated the VSS portion.

Are you in a position to comment on that?

DR YOUNG: Yes. That is not true.

ADV KUPER: Why do you say it is not true?

5 DR YOUNG: Because it did exclude the VSS portion.

ADV KUPER: Can you show us anything that supports that?

DR YOUNG: I think so, but it might take me a couple of seconds or minutes to find the relevant stuff.

ADV KUPER: I think you should please.

10 DR YOUNG: Yes. I have something in front of me. Let me just try and, I think, I think, well certainly this is a discovered document. As far as I know, it was a document included in the bundles. But, it takes me a little bit of time to check on the, or the correct indexing and the reference numbers that you people have.

15 ADV KUPER: Yes. Please, please, take your time. We want to get to the document, you are looking to.

DR YOUNG: Well, if, well I take my time, to try and save time. It is Pierre Moynot of ADS's response, dated the, the 16th of, if I remember, it is dated the 16th of April.

20 ADV KUPER: Are you referring to RMY 89?

DR YOUNG: That is correct. Yes.

ADV KUPER: Chairman, it is file five, of Dr Young's bundling and is to be found at page 1597. Now, you were going to point to this document, to demonstrate that Admiral Kamerman had told a lie, do that.

25 DR YOUNG: You are wrong. I do not think that was the question at

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all. I think the question was, whether or not ADS removed the VSS or not. That was the question. You are not suggesting that Admiral Kamerman has lied, in any way in this regard.

DR YOUNG: Well, that was not the question and I do not think that
5 certainly, it is certainly not that something, that your previous questions have, have prepared my mind for it on. But, I cannot think right now of where he has lied.

ADV KUPER: Good. Now, in page 1597, RMY 89, what do you want to draw the attention of the Commission to?

10 DR YOUNG: Well, my understanding of the question is that the instruction was to remove the VSS. You asked me whether or not that had been done. I said, no, it had not been done, sorry, yes, it had been done.

CHAIRPERSON: I am sorry. Advocate Kuper, can you repeat the
15 question again? Let us get the witness to answer the question please.

ADV KUPER: I would like you to point at page 1597 to whatever it was that you were relying on, in your earlier evidence, when you said, yes, there is a document, I must find it. Now, we found it. Just point out in the document, what you want to refer to.

20 DR YOUNG: Ja. But, there was a specific reason for that and that is, as the point one says:

"In removing the VSS from the SMS as per the RFP."

That is what I wanted, because it was done.

ADV KUPER: And of course, the sentence goes on to say:

25 *"We neglected to mot the VSS ILS costs."*

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Do you see that?

DR YOUNG: I do indeed. I would have come to that. But, the point is that the VSS was excluded.

ADV KUPER: Are you prepared to accept as true that in the quote,
5 there had been a failure to omit the VSS ILS costs, when they should have been omitted?

DR YOUNG: I will not just accept that, because that is an easy thing to do post facto to use that, as a reason to bring one's cost down. I have got no visibility, as to these ILS costs, at all. All I can see is what
10 is written in these letters. But, certainly, that is a critical omission in a competitive bidding situation.

ADV KUPER: Are you suggesting to the Commission that a letter, written by ADS, dated the 16th of April and dealing with an omission, to have removed something from the bid price is not a genuine letter that
15 page 1597, RM 80, or RMY 89 is not genuine?

DR YOUNG: I am certainly not suggesting that the letter is not genuine. What I am suggesting is that it is an irregular and an unfair bidding process, where, where there is a clear base line. There are clearly mechanisms for once one party has submitted bona fide, their
20 price for another one, the other ones, singular or plural, to find that out and then use some means to bring down their price. That is what I am suggesting.

ADV KUPER: I am not, at the moment, asking you, whether the procedure was regular or irregular. I am just trying to get to the facts of
25 the matter. It appears and I am putting it to you as a fact of the matter

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that on the 16th of April ADS wrote, to say that they had neglected to admit, to omit the VVS ILS costs. I am asking you, whether you accept that, or whether you do not accept it.

DR YOUNG: I do accept it, but it is important that this was long before
5 the closing date of nine o'clock. This letter was written at three minutes, or the fax was sent at three minutes past four in the afternoon.

ADV KUPER: Again, let us just deal with the questions and the answers. Do you accept that the ADS quote should not have included VVS ILS costs?

10 DR YOUNG: Yes. I can accept that.

ADV KUPER: Therefore, the quote, as received, included a cost item, which it should not have included. Is that right?

DR YOUNG: No. That I would not know.

ADV KUPER: Well, you have accepted that the ADS bid contained an
15 item for the VVS ILS costs. You have accepted it should not have done so. So that I do not understand why should have any difficulty, in accepting that therefore, the bid contained an item, which it should not have contained.

DR YOUNG: No. The logic is different. What you ask me, what I
20 reply to is whether it should or should not have included the VVS ILS and that I agreed to. But, what I do not know is whether it did or not.

ADV KUPER: Are you in a position to deny it?

DR YOUNG: I am not. Because that information is not clear, or it has been hidden from us, or it has been hidden from me there. In fact, what
25 I am pretty sure is that there was more, far more detailed information

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available, about the make up of this bid. That is pretty clear. But, that is not, has been exposed to me. So, I would not know the answer to that, it is very easy to say, look, I know, I mean, I put many bids together. Okay. So, here is our integrated logistics support. You do not
5 necessarily need to break it down, into the main SMS part and the VSS part. Then, post facto, just produce and say, well, that was actually for the VSS. The logic is clear. I do not know the details, because that is not exposed to me. So, I cannot, I cannot say yay or nay, with 100 per cent certainty, based on what I can see in front of me and on black and
10 white.

ADV KUPER: Now, on the assumption and I am putting an assumption to you that the letter is honest and it is genuine and it is referring to an item in a bid, which it should not have been contained in the bid. Then the effect of that mistake would have been to increase the price of the
15 bid. Would it not?

DR YOUNG: Yes.

ADV KUPER: And that if one deducted that erroneously increased price, one would have the genuine price for the bid.

DR YOUNG: Yes.

20 ADV KUPER: And that is what happened.

DR YOUNG: You said that was an assumption. In the same vein the assumption is, yes. But, that does not mean to say that is the absolute fact.

ADV KUPER: Yes. I can accept that, that what you are saying to the
25 Commission is you are not prepared to admit that, in fact, the costs of

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the VSS ILS had been omitted.

DR YOUNG: Yes. And that is not based on just a fly away thought in my mind. This is [indistinct] with what Captain Nick Marais, who was involved in this process, maybe not absolutely, directly involved, but he
5 was certainly involved in this process. He testified that, that the process was designed to, well, what he said was that, he used to be, at one stage, a member of a, in fact, he was a director of a private company and the responsibility of the marketing departments of such companies, is to find out the price of their competition. But, in this particular
10 instance, the SMS one, the process was designed, in order to expose the SMS price, the C Square I Square SMS price to its competitor. So, I am not saying that, so I am not making my assumption purely baldly. It is assisted with that statement, as well.

ADV KUPER: Dr Young, throughout your evidence, the Commission
15 has heard you, at various times, relying on other people's allegations and so on. I just want to press on with the questions and answers directed to you. I will come back to Captain Marais if you wish. But, for the moment, the clear conclusion that we, I think, have agreed upon, is that if you assume the costs of VSS ILS had been wrongly included in
20 the ADS bid. If you assume that it wrote, asking that those costs be ignored and if that request was granted and the bid was reviewed on the basis, of ignoring the erroneous increase, then that would have been fine.

DR YOUNG: It certainly would not have been fine. Normally, in my
25 own experience or view, is in a competitive bid like this, if one makes

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mistakes, they either just get ignored and one has to bear the brunt of one's consequences. Or at least, they go out to a second round of tendering and keep the playing fields level.

ADV KUPER: Now, in order to keep playing fields level, I would have
5 thought that, if there was a possibility that your bid had erroneously included VVS ILS costs and you were not given an opportunity to correct that, then there might be a ground of complaint. But, did your bid ever include VVS ILS costs?

DR YOUNG: Not that I can remember.

10 ADV KUPER: That is the first matter, of which you were complaining about this bid, as I understand it. The second aspect, of which you complained, was that your bid price was made known, you think or say, to ADS. Is that right?

DR YOUNG: Yes.

15 ADV KUPER: By whom?

DR YOUNG: Well, somebody involved in the process, who got access to the competitive bids.

ADV KUPER: And you have no idea, who that was?

DR YOUNG: Or one can, from what the black and white in front of us,
20 there are the DoD parties and there is the GFC. I certainly would not know which individual it was. But, it is not only just my contingency, you know, I did not just bring this up myself.

ADV KUPER: Or, if that is correct that someone unknown got hold of it, it could have been one of these marketing agencies, who were
25 employed by one or other bidder, for the purpose of getting information,

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just like this. Is that possible?

DR YOUNG: It is possible, theoretically. But, if one is aware of the time scales of submitting a bid by five o'clock on the Thursday and a response coming in, 23 hours later. I know marketing departments, they
5 are not that fast.

ADV KUPER: I certainly do not want to encourage you to speculate further. But, you have no basis, in fact, to point a finger at DoD and say, you DoD, were guilty of some improper act, to wit, making my bid price known to my competitor.

10 DR YOUNG: No. I have never stated that.

ADV KUPER: Then, the third complaint, I think, you have made, was that, perhaps I am confused, as I generally am, but was there not an increase on your bid, of some 12 per cent?

DR YOUNG: Yes. That is correct.

15 ADV KUPER: By whom was that increase of 12 per cent done?

DR YOUNG: As far as I can work out, it was added on, by the Joint Project Team.

ADV KUPER: In respect of what?

DR YOUNG: It was in respect of three, three different elements. It is
20 not a mark up. It is a margin. So, one does a dividing, rather than a multiplying. But, it was made up of, from what I can remember the smaller amount, which I certainly did not take issue with, was the amount of 1.85 per cent, or whatever for extended warranty. Then, there was a seven per cent for an integration fee, for ADS's integration
25 fee. Then, there was another three per cent handling fee, from what I

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can remember. So, they add up to 12.05, if you add them up arithmetically. But, to get the new price, you divide the price, by one, minus 12.05 per cent. That, there was confusion there and that is what makes a difference. There is quite a big difference between mark up
5 and margin and it was significant and that is why I am elaborating on it. But, that is where that additional price increase came from.

ADV KUPER: In other words, the project team was saying to itself, I see the C Square I Square bid price. But, I had better understand what ultimately, it is going to cost me, if I accept this bid and I had better
10 make provision for these particular add on's or margins.

DR YOUNG: That is correct. Yes.

ADV KUPER: So, what is the complaint?

DR YOUNG: We should have been told, in advance that that would happen. That is part of a fair bidding process. Anybody involved in
15 bidding, for anything in this country, these days, involving government bids, specifically military Armscor stuff, know that there are those kinds of issues, involving specifically, what they call PDI, previously disadvantaged individuals. But, the request for bid states that. That is a factor. It states what the amount is. If one knows that one's own bid is
20 going to have that, subjected to it, you at least, have got a chance of dealing with it. We did not know that in advance and that is why I am saying that is an unfair, maybe even an unlawful practice, unlawful business practice, because it is our prerogative, if we are quoting fairly in a competitive basis. If we know that, we could, of course, object to
25 that. Of course, we could decide to cut our profit margin from 15 per

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cent to three per cent, or from 20 per cent to eight per cent or whatever it is. But, you cannot take that in, you expect that your prices will be treated equally, unless you know. That is my complaint. That was unfair, an unfair business practice.

5 ADV KUPER: Why do you say that the project team did not subject the ADS bid to the same consideration of what it would cost? The DoD, ultimately, if the ADS bid was accepted.

DR YOUNG: Yes. They did not add that margin on, because my understanding is now, it certainly was not then is that, if it was ADS
10 supplied, they would not invoke the integration fee and the handling fee.

ADV KUPER: No. My question is not, whether the team should have applied the same, as it were evaluation margin to both. My question was, surely, the team would look at the ADS bid in the same light, namely to see what margins it should allow, in respect of that bid. Are
15 you saying that did not happen?

DR YOUNG: I am saying that did not happen.

ADV KUPER: And was this really the first time that you were taking part in a bidding process, in which the main contractor was no longer Armscor, but was a commercially driven main contractor?

20 DR YOUNG: No. We had been involved in, well, I certainly cannot remember, competitive bidding situations, of the same nature as this. But, we certainly had not only been involved in, in bidding to Armscor.

ADV KUPER: And I am just curious, are you suggesting, you were not aware that this is what happens in competitive international bids that the
25 ultimate party, who is paying for the goods, exercises its rights, to

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assess the various bids, in order to calculate what the cost, it is going to be. Were you unaware of that practice?

DR YOUNG: What I am unaware of is that, if there are factors like that, in a competitive bidding situation that they are not made known a priori to the bidders.

ADV KUPER: But, were you aware of the practice?

DR YOUNG: No.

ADV KUPER: Well, I can then understand that you had a learning process. No. That is also not true. I cannot find it right now, but I do know that substantially after this period in time, the Corvette combat suite programme manager Lewis Matheson, actually wrote a letter a couple of months later, to ADS, in the name, I remember the name Daniel Klein, specifically asking about these margins and mark ups. So, if Armscor, who was involved in this process and I can tell you that Lewis Matheson reported directly to Fritz Nortjè and they reported, effectively to then, Captain Kamerman. If he did not know, then how should I know?

ADV KUPER: There may well have been others, who shared your ignorance. But, I am just dealing with the fact of your ignorance.

DR YOUNG: No. It is not that, there certainly may have been others, who shared my ignorance. But, if this bidding situation was precipitated, by the, the Joint Project Team and one of the most senior members in that team, being Lewis Matheson. That is a completely different scenario to the general term of others. That is somebody very, very specific, in this particular instance. I am not going to get involved with

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your regurgitation of what you think other people said and what the significance was. I want to ask you about the NDS. You won that bid.

Did you not?

DR YOUNG: That is correct. Yes.

5 ADV KUPER: Was the same process followed of evaluation and of adding to your bid, what it was thought would rightly be added, in order to get a real idea of the cost?

DR YOUNG: As far as I know, it was. But, in the NDS case, our price was low enough that that margin did not swing it back to ADS.

10 ADV KUPER: Did you know that practice was being followed?

DR YOUNG: No.

ADV KUPER: When did you come to learn that in regard to the NDS, in which you were successful, the same process had been followed, the same amounts had been added on?

15 DR YOUNG: Several years later, when that documentation came to my attention.

ADV KUPER: I want to deal with your references to Captain Marais, as you call him. What was his employment, at this time?

DR YOUNG: Well, he had been in private industry. Well, he had
20 been in the Navy and he had gone to private industry and then he came
back, from what I understand is known as a short term, a short term
contract for, I am not sure whether it is three years or five years or
whatever. He was a member of the Naval Engineering Bureau, fairly
senior, in terms of rank, at least. He assisted the Joint Project Team, or
25 the project team, with many relevant aspects of this part of the selection,

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selection process.

ADV KUPER: What was his involvement in this bid evaluation?

DR YOUNG: I do not think it was direct. I think, he was just part of the greater joint project team.

5 ADV KUPER: So, it would be correct to say that the man, who you wish to rely on, was not involved in the very situation you are complaining about.

DR YOUNG: Well, I would not, I would not put it like that at all, because, in fact, I was reading Captain Kamerman's evidence to the, I think, the JIT. I can certainly find it. But, he states there, under oath that the members, it was it an open, sort of democratic process, in which all member of the JPT and all were, let us see, if not necessarily involved in the decision making, but were involved in this process. So, whether or not he was directly involved in this SMS issue, I would not know. But, 10 he was certainly a member of the greater project team that were communication with each other every day and could, not could well, surely would have known something like this, especially to state it under oath. 15

ADV KUPER: Are you prepared to accept that he was not involved in this bid and this bid evaluation? Or are you going to speculate that 20 somehow, he had some participatory role, directly or indirectly? Where are we ever going to stop with your, your suspicions, Dr Young?

DR YOUNG: Again, this is not a court, where I have an onus of proof. This, my only burden here, is to bring the relevant information, to the 25 attention of the Commission. That is evidence under oath. I have got

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no reason, whatsoever, to suspect that Captain Marais is lying. I am no friend of his. He is no supporter of mine. I can assure you. He was, at least, part of the greater team. If he says that under oath, under questioning from the members of the Joint Investigation Team, it has to
5 be relevant, at least, in my book.

ADV KUPER: Did he ever say, the process was irregular, because a practice of evaluation, which involved putting margins on the bids was irregular or improper?

DR YOUNG: No. Not as far as I know. His one was far more pointed
10 to unlawful competition, which is the divulgence of competitor's price from one to the other. It is my contention that if it was fair to add on a margin, that should have been ad hoc and not post facto.

ADV KUPER: I want to go on, to a different topic now. Chair, just bear with me a moment. I want to deal with the R300 million bribe that, I
15 think, you say, the Commission should investigate, upon the basis that the price paid, for the combat suite had been artificially inflated by R300 million. That the effect was that the bidder was overpaid and was overpaid on the basis that it would then use the R300 million to reward politicians or officials, who had been corrupt. That is the conspiracy
20 theory, is it?

DR YOUNG: Yes.

ADV KUPER: And that conspiracy theory, involves, as its basic contention that the price for the combat suite was artificially inflated, i.e. there was a genuine price, which could have been accepted, at R300
25 million less.

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DR YOUNG: That is my contention, after review of the, you call it, Navy, the Department of Defence documentation.

ADV KUPER: And you know, I want to, I want to get to the root of that. You are then postulating that there was a genuine price offer for the
5 combat suite, at what price?

DR YOUNG: Well, it is your own words. You say there was a genuine offer. But, from what I can remember, working from memory now, is at the Project Control Board of the 24th of April 1999 and it is attached copy, as an annexure to the minutes, it is reported that the current price
10 for the combat suite is now R2.3 billion and with a potential of reducing, fairly substantially, by a couple of hundred million less. But, at least, it is clear, to say that the current price on the table is R2.3 billion.

ADV KUPER: Yes. We are going to look at that document in detail, in just in a minute. But, I first want the, you know, the allegation and the
15 case, you are asking the Commission to investigate, to be stated quite clearly. You are saying, there is the factual basis, upon which I can say that there was a price, R300 million less, than the final price and that the final price was therefore inflated in that amount.

DR YOUNG: Well, that, well, in the absence of any documentary
20 evidence, to the contrary, that would seem to be the logical conclusion of that distillation of that information.

ADV KUPER: Leave aside documentary information to the contrary, is there any documentary indication, any documentary evidence you have been able to find that the reference, to what you call the current price of
25 2.3 was in fact, a current price?

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DR YOUNG: Well, just in those, in that, the minutes of that project control board meeting, the presentation attached to it and I believe the same presentation was also given to the, to the Naval board.

ADV KUPER: So, in all the millions of pages of document, that you
5 have got, and that you have for years examined, you have not found a single indication, other than that one, that there was ever a genuine price of 2.3.

DR YOUNG: Well, it certainly would be congruent, with the fact that the expected price was 1.9. So, you know, when you add lots of small
10 things together it certainly seems to make sense to me.

ADV KUPER: I will ask you the question one more time and then, I promise you I will leave it. You have never found a document, which indicates that there was a genuine offer at 2.3.

DR YOUNG: You mean, you are asking me to work from memory. I
15 think now that of one the many pricing spreadsheets that existed at that time, also indicates a price of very close to 2.3.

ADV KUPER: Well, would you like to take a moment and look it up and tell us, where you are finding a price, which if not 2.3, is very close to it?

DR YOUNG: Well, I am still looking, but there, what I am finding here,
20 as well, is of course, there are more than one indication from the French documentation seized and regarding the Schabir Shaik trial that there, they had also written down their expectation of a price of 2.3.

ADV KUPER: I think, you mentioned that in your evidence before the
25 Commission ...[intervene]

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DR YOUNG: I did. But, you asked me if there is any other single reference to a price of 2.3 and you asked me ...[intervene]

ADV KUPER: I am not complaining, Dr Young.

DR YOUNG: You know, now, it, I going to have to search terms like spreadsheet or 2.3 and then open each one. Lotus 123 has got a very pathetic search capability, because it always takes you back to the beginning and I am certainly prepared to look for this in a break. I now even believe that there is going to be something else happening this afternoon. I am prepared to use that time as well, not just to waste the Commission's time, for me, searching through documents.

ADV KUPER: Very well. Let me refer you to some documents that I think, we need to discuss. The first document is to your RMY 80, which is to be found in Dr Young's bundles or the evidence leader's bundles, file four, at it starts at 1445, but I am interested in the annexure at 1452. Have you been able to find 1452 of your RMY 80?

DR YOUNG: Sorry, I am just writing down things, while they are in front of me, not to waste time further. I think, what you have asked me to open is the Project Control Board minutes.

ADV KUPER: Yes. And in particular, the briefing to the Naval Board, of the 26th of March 1999, which is found at page 1452.

DR YOUNG: I need to know. I do not have those pages. If you can just tell me what annexure it is or.

ADV KUPER: Well, it is an annexure to the minutes of the Project Control Board, it is an annexure A minute, annexure, to the Project Control Board meeting of the 20, I do not know what this date is, 28th

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April 1999.

DR YOUNG: Okay. I have that.

ADV KUPER: Turn to annexure A.

DR YOUNG: I have got something written in the top right hand corner
5 that says appendix A.

ADV KUPER: Well, what you should have is Project Sitron combat
suite cost reduction briefing to the Naval Board, 26 March 1999.

DR YOUNG: Okay. I cannot see the word annexure there.

ADV KUPER: But, have you got the document.

10 DR YOUNG: Yes. But, you are referring me to annexure. I could not
find annexure, so I found appendix. Now, you are chasing me around, a
though, you know, I am an idiot. I do not see the word annexure. I have
got that page now.

CHAIRPERSON: I am sorry. Dr Young, can you just control your
15 emotions.

DR YOUNG: No. There is no emotional here. But, if there is a
reference to the word annexure, that is what I look for. If the word
annexure is not there, then I do not immediately get upset. I go and
look for a close word it, it is appendix and that is on a different page. I
20 do not see the word annexure. That is quite, quite reasonable to state,
and I am not upset. I am not emotional about it. It is just, it is just
relevant.

ADV KUPER: Dr Young, you have ...[intervene]

CHAIRPERSON: Thank you. I am happy to hear that you are not
25 upset. I am sure we will make a bit of progress then.

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ADV KUPER: Dr Young, you have chosen, throughout these proceedings not to have before you and not to follow the proceedings, on the basis of the files, handed out to everyone else. You have chosen rather, to proceed, by what is on your computer. Now, as I understand
5 it, your lack of emotion is directed to the fact that you are having difficulty in following the proceedings, by reason of looking at the computer, instead of looking at the files, which are open to you. It is your choice, Dr Young.

DR YOUNG: No. Not at all. Right from the beginning, I said it is
10 difficult for me to read paper documents, especially when they are not that great photocopies, especially in this light. I can normally find things. In this particular instance, I, there has been no other problem, well, a few other problems in this regard, so far, in now my 10th day. But, it only that you referred me to annexure A and I could not find that,
15 whereas, I have just been taken to appendix A, because that it is the only, that is the only issues. No need to, to raise the temperature of something, regarding the use of my computer.

ADV KUPER: Do you now have, what everyone else has, at page 1452, which is the briefing to the Naval Board?

20 DR YOUNG: Yes. I do.

ADV KUPER: Will you please look at the third bullet point, which reads:

*“GFC obtained proposal for combat suite of same functionality and scope of supply in February 1999 3300 (that is a R3.3 billion) (65 per
25 cent increase).”*

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Do you see that?

DR YOUNG: Yes. I can see that.

ADV KUPER: And 3.3 is not 2.3.

DR YOUNG: I never said it was. The answer is, no.

5 ADV KUPER: And there then follows, in this briefing an explanation as to why there has been an increase in the combat suite costs. It is due apparently, to the contracting model. It is due apparently, to much more stringent contracting environment, which is new to the SA arms industry. It is due apparently, to the SA arms industry's inexperience in estimating
10 for a major complex acquisition product. There is an underestimation of complexity, an underestimation of risk provision, commissions, miscalculations and errors. There is an increasing cost of integration, due to significant participation of overseas engineering management. There is an increase in cost of combat management system, from
15 rudimentary, high risk local system to capable low risk Tavitac based system, more complex, more expensive architecture, due to the new CMS. There is an increase in man hour costs, due to local personnel market conditions in certain sectors, electronic and software engineering. There is over budgeting, due to misinterpretation of the
20 URS. Now, I am not asking you to comment on whether you agree or whether you disagree with these justifications for the higher price and which may well, in fact, emanate from the party, who has just quoted, in what is in effect, an amount of R3.3 billion. I am not interested in that at the moment. What I am interested in this, the next bullet point talks of
25 extraneous costs, due to unnecessary terms and conditions. You see,

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the next one talks of unacceptable, inexplicable entry increases in certain items. So, here, you are seeing a response or a reaction to this cost increase and to all the reasons, trying to justify the cost increase. What I wanted to ask you is, can you understand and have you anything
5 to say about an attitude, on the part of the DoD, which was saying, but this price at 3.3 contains extraneous costs, which are due to unnecessary terms and conditions and it contains increases, which to us, are unacceptable or inexplicable?

DR YOUNG: I can accept that.

10 ADV KUPER: And if you will turn the page. The, it goes on that reduction in prices of foreign supplied items switch to alternative local suppliers for certain items that were totally overpriced. Do you go along with that as well?

DR YOUNG: Yes. Indeed.

15 ADV KUPER: And then, you get a reference to technical and operation recommendation, require Naval Board approval. Then, you get in the bullet price, in the bullet point combat suite price, now approximately R2.3 billion. Is that right?

DR YOUNG: That is correct.

20 ADV KUPER: And it is that bullet point, on which you build your [indistinct] in which you say, ah, there was a price at 2.3.

DR YOUNG: That is not correct.

ADV KUPER: Do you not rely on this?

DR YOUNG: No.

25 ADV KUPER: You are not suggesting that this demonstrates that there

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was a genuine price of 2.3.

DR YOUNG: I do. But, it is not that easy. You asked me specifically.

This time I made, you said whether I rely on that bullet point. I do not rely on that bullet point. I rely on something else.

5 ADV KUPER: Well, can we then go on? Do you accept, in regard to this bullet point, that what is being talked about is where the price can be brought down, through negotiation? If one takes into account all the points that the DoD could raise about extraneous costs, about unnecessary terms, about inexplicable increases and about the way of
10 reducing, through making it local, rather than foreign.

DR YOUNG: No.

ADV KUPER: Very well. Now, you want to take this, no, I will not take this further. You then get a programme cost summary today. You get the ship platform at 3.7. You get the combat suite at 2.3. Is this what
15 you rely on?

DR YOUNG: Partly.

ADV KUPER: Well, do you rely on it or not, to build your [indistinct] that there was a genuine price at 2.3?

DR YOUNG: I said, partly.

20 ADV KUPER: That means, you are suggesting that this is a reference to a price that has been offered, as opposed to it being an objective, to which the author of this report believes that the offer can be brought down to.

DR YOUNG: Partly.

25 ADV KUPER: You understand the difference?

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DR YOUNG: Yes.

ADV KUPER: And of course, it is in regard to that contention of ours, that the Commission should interpret this document, not as containing an objective, a ceiling, a price to which they wish to, to get, through hard bargaining. But, should rather interpreted it, as meaning they have got
5 a firm bid, or they could get a firm bid at 2.3, a genuine price, at 2.3.

DR YOUNG: Well, again, it is partly. It is all of those things and more, you know. When I get a chance to explain, I will certainly do so and I hope that chance comes soon.

10 ADV KUPER: For the moment, can we just finish this document? You see, it actually talks then, that final price negotiations commence on the third of May. Estimate, can negotiate another three to five per cent, off the ship platform price and can reduce the combat suite, an estimated another R100 million, after negotiation with GFC commencing the 3rd of
15 May. It then talks about R60 million off the current ADS price, because of, especially, inflated programme management. Then, another R40 million estimate of cost savings, if the state provides programmed management, programme management assistance. Therefore, I can report that Corvette is within the goal of Cabinet approval of R6.001
20 billion. Do you see that?

DR YOUNG: Yes. I see that.

ADV KUPER: Is this then the document, which, in part, you ask the Commission to infer, was actually reflecting a genuine price, received at 2.3?

25 DR YOUNG: I do not think I ever said, in that many words that a

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binding commercial offer had been received for 2.3. What I am saying is the price indications were, at this stage, as is clear, in front of me, as hopefully it is for all of us, is this does not just indicate that this 2.3 is a goal for the future. It says there, clearly in bold capitals, programme
5 cost summary today, not in the future. It says 2.3 for the combat suite. That is what it says. But, more, what you have just gone through, it says the future actions are going to bring that down, by a substantial amount, by, down by another R100 million, from the R6.1 billion, to the 6.0, did I say, yes, R100 million. So, that is the future. There is no other
10 logical interpretation, is that is what the price was today, at that time. Well, at least, to somebody else reading it, in the sober light of today, 16 years later, that is what it says. So, that is, I think, the minutes also have something on this, as well. But, certainly, this is clear enough to me. When I [indistinct] that with the prices of R2.3 billion that are
15 indicated that the French were expecting, then it all makes logical sense, is that was the price. The Navy was expecting 2.3 at, well, at that date, with the expectation of even lower. The French were recording that that was their expectation. So, it is fairly reasonable, at least, to conclude as that was a price that could have been achieved.

20 ADV KUPER: You said, a minute ago that you were hoping and waiting for an opportunity to add anything, you wanted to say. Have you now said it? Or is there more you would like to say?

DR YOUNG: I think, that is probably sufficient, until I find the spreadsheet, regarding the 2.3.

25 ADV KUPER: So, now, in the context of all of this, the entire evidential

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basis, as I understand it, rests on this document and then rests on a handwritten emendation in an ADS or GFC document, which you say, supposed that a price had been offered, or is on the table of 2.3 and had now fortunately been increased to 2.6. That is, as yet, the documentary
5 evidential basis for a massive bribe of R300 million, payable to who knows who.

DR YOUNG: Well again, you are incorrect. I have already traversed this before, where you say merely the supporting evidence, but this is merely some handwritten thing. I did find, when I was looking for the
10 2.3, I found one of the two documents. There certainly is a handwritten one, written by Pierre Moynot. But, the one that I, I cannot remember adducing into evidence earlier, is a encrypted fax, a French one, from Alain Thetard and that is not, it is a table of the opportunities for main programmes, expected in the next 10 years. That is, in South Africa the
15 Naval combat systems, Corvette and the amount is 2.3 Giga Franks. Remember the Giga Frank and a Giga Rand was very, very close to each other. That is written, not, sorry, written, that is typed as 2.3. It is then changed, by hand to 2.6, which would accord with the change, between what was recorded here, on the 24th of April and what finally
20 transpired, at the price of 2.6. As I also said is, I think, this matter is referred to in the minutes of this meeting. Well, it is this meeting or the next one, where the Chief of Acquisitions does become involved in the discussions of the Corvette combat suite price and says, well, at least, for me the first time and it would seem to even to the participants of the
25 Project Control Board, for the first time that the affordability studies,

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study indicates a price for 2.6. So, that the price seemed to be settled at 2.6. There never seemed to be any further negotiation downwards, or upwards, or whatever, from the 2.6. It was just accepted at 2.6. So, that is my, the information, which I wish to put to the Commission.

5 ADV KUPER: Thank you, Dr Young. Could you just give us a reference to the second French document that you were dealing with? I think, you dealt with it, in your statement. But, just give us the reference.

DR YOUNG: No. I do not have those references immediately. I can
10 find them. But, I, well, okay, let me first say, the, what I can say is it is the discovered document, index DT 1-0433.

ADV KUPER: I am sure the evidence leaders will assist us in correlating that. Dr Young, can I bring you back, as it were, to page 1451, that is to say the annexure and remind you that the reference
15 there, under the combat suite status is to price discussions, negotiations, commenced February 1999, with combat suite price at R3.9 billion. Do you see that?

DR YOUNG: Yes.

ADV KUPER: Do you suggest that is false?

20 DR YOUNG: No. That was, I think, from what I can see here, this was the background.

ADV KUPER: If the negotiations then resulted in a price drop to 3.6 then the negotiations had been successful. Were they not?

DR YOUNG: Well, partially. I mean, one of the things to [indistinct]
25 which is from 3.9 to 3.6 was the whole issue of, well, there were two

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things. The issue of risk, which I can remember, I think, it counted, the management were handling of, addressing of risk, accounted for R600 million. That is the one aspect of it and the R3.9 billion. I am sure, even in the DoD's own view, was vastly, vastly inflated.

5 ADV KUPER: I want, in this context to take you to what was your, your document, RMY 81, which will be found, Chairman, at 1464 in this same file. Do you have it Dr Young? It is the minutes of the Project Control Board meeting, held on the 27th of May 1999.

DR YOUNG: Yes. I have that.

10 ADV KUPER: I want you to turn there, to page 292 and to look at item 16, at page 1466, Chairman. Item 16 which is headed financial.

DR YOUNG: Yes. I have that.

ADV KUPER: Do you see that it says:

15 *"The best and final offer was received on the 24th of May, from GFC, incorporating the price reductions, arising from functional and scope reductions of both platform and combat suite. The German Frigate Consortium has stated they cannot reduce the offered price any further. The chairman then explained the contractors' concern, with respect to their negotiations with the Department of Trade and Industry and the*
20 *Department of Finance. POP Sitron said he believes the combat suite price could be reduced to less than R2.6 billion. The PMP Sitron then stated that the project team would not be able to reduce the price any further, unless a different suite configuration and contracting model is used. The chairperson indicated that a total of R2.6 billion was set*
25 *aside, by the Department of Finance in the affordability study*

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documents, presented to the Cabinet Subcommittee. A combat suite price of R2.6 billion was indicated in the affordability documents.”

Now, do you suggest that a best and final offer had been, or do you contest that the best and final offer had been received on the 24th May

5 in the terms reported?

DR YOUNG: Yes.

ADV KUPER: Yes, you do contest it?

DR YOUNG: Sorry. No. I agree, it had been, a best and final offer had been submitted.

10 ADV KUPER: And that that price indicated that in the interim and since the Naval Board report of the 26th of March, there had, in fact, been negotiations, which had in fact, reduced the original price.

DR YOUNG: Yes.

15 ADV KUPER: Chairman, just bear with me. We are looking for a document. Will you turn, in the same file to page 296? It is page, I am sorry, 1470, 1470.

DR YOUNG: Could you refer me to a RMY number?

ADV KUPER: RMY 81. It is the Project Control Board meeting of the 27th of May.

20 DR YOUNG: I think, that is what is in front of us already.

ADV KUPER: I am referring to page 1470, which is annexure, or you would say appendix A. Do you have it?

DR YOUNG: It is not that I say it is appendix A. The document says that it is appendix A.

25 ADV KUPER: Do you have it, Dr Young?

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DR YOUNG: Well I do not have annexure A. I have got an appendix A.

ADV KUPER: And you will see that, at that page, the report is dealing with the present position, in regard to price. You will see that, under the
5 heading Vessel Bafo it is:

“Vessel best and final offer, requested from GFC, 6th of May 1999. Bafo received 24th of May 1999.

Offered for the ship platform R3.7 billion, that represents a four per cent reduction from the GFC offer of the 11th of May.

10 *One per cent due to GFC’s effort (mainly from the propulsion system sub-suppliers.*

Three per cent reduction, due to SA Navy reduction of scope of supply performance.”

And you will remember, in the earlier document, we were looking at,
15 there had already been that suggestion that the Navy do reduce the scope of supply or performance. Do you remember?

DR YOUNG: Yes. I am well aware of that.

ADV KUPER: And there has been a certain other matter, relating to the platform, we need not bother about further. Then, in regard to the
20 offered combat suite, do you see the price there, it is R2.9 billion.

DR YOUNG: Yes. I do.

ADV KUPER:

*“Our expectation was R2.6 billion, derived from the quote of the 7th of April 1999, of 2.775, reduced by at least R1.75 billion, due to lower
25 prices for the FPI radar sonar and missile segments, as a valuated and*

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selected late April.”

DR YOUNG: It does not say that.

ADV KUPER: I am sorry, what does not say that?

DR YOUNG: What you have just, what you have just read into the
5 record was not an accurate reflection of what is written there.

ADV KUPER: Please correct me.

DR YOUNG: Very good. It says:

“Our expectation was less than R2.6 billion.”

You said our expectation was R2.6 billion.

10 ADV KUPER: You are quite right. I did. I overlooked the, these
arrow. Thank you so ...[intervene]

DR YOUNG: That is not an arrow that is a less than sign.

ADV KUPER: Thank you so much for that, Dr Young. And having
corrected me, in that way is there anything else you would like to
15 correct?

DR YOUNG: No. There is nothing else, I would like you to correct.

ADV KUPER: Thank you. So, what we have here, is a
contemporaneous history of what the price offers had been, to how they
had been reduced, both in regard to the platform and in regard to the
20 combat suite. Is it your contention that this is false?

DR YOUNG: No. It is not my contention that it was false. My
contention is that the higher prices of, whether it is 2.6 or 2.775 or 2.964
were substantially overpriced.

ADV KUPER: Then, if you will turn to page 1471, you will see a
25 heading, which is current status. Do you have that?

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DR YOUNG: Yes. I do.

ADV KUPER:

“Ship platform commercial.

*GFC has stated that their offer of 11 May 1998 was their best effort,
5 after a long competition and a reduced price for the A200 that they
cannot go down more than the one per cent offered to date.*

Combat suite.

*ADS’s response yesterday R2.6 billion. Offer reduced by R330 million.
Large amounts still outstanding, e.g. errors in calculating ADS selling
10 price, to use for Aerospatiale missile and Thomson Marconi Sonar
exceeds R80 million. We will discuss this issue today.*

*Dassault databus now offered in place of the C Square I Square bus.
Project team is awaiting full specification and system architecture
implications, before this can be deemed to be acceptable. Contractual
15 responsibility viz-a-viz the subsystems not precisely defined or
acceptable, awaiting further input from GFC/ADS.”*

Do you suggest that any part of what I have read to you, under the combat suite, I hope correctly, is false?

DR YOUNG: I am not sure, whether false is the term that I prefer to
20 use. What I would say, for at least for a purposes of the Commission on
an information gathering exercise, the very fact that it refers to the
reduction in price, obviously, down from about 2.9 down to 2.634, by
reduction of R330 millions and juxtaposing that with the issue of the
prices of the, especially the Aerospatiale missile, certainly in the context
25 of the least/purchase option, it was previously referred to. It think that

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that is of specific interest and possibly specific significance.

ADV KUPER: Yes. I think, you are quite right to bring into prominence the question of the missile. Let me just confirm it with you. It is your suspicion that the R300 million was made up, as it were, by missiles that
5 were not purchased.

DR YOUNG: It is my suspicion, it is my theory that a different mechanism, other than outright cash purchase was used, to acquire the missiles.

ADV KUPER: And that would account for either the full R300 million,
10 or a significant part of it.

DR YOUNG: Yes. I would guess, if the R330 million is due to the missile and the sonar. Then, the sonar would have possibly taken something like R30 million and then the missiles would have contributed the line share of that.

15 ADV KUPER: Yes. So, in order to see your theory in its full blown glory, the Commission must understand, there was the manipulation of price, which you have been dealing with and that you go further and connect that, with the missile story, which is why you are now saying we should pay attention to it, when it is mentioned at page 1471. But, I will
20 deal with that later, Dr Young. I wanted, the moment, to stay with the information that is being reflected, at page 1471. So, we have, if we trace it, a reduction in the offer, as it was, at page 1470, to what it is now, at page 1471, a reduction from R2.9 billion to R2.6 billion. Is that right?

25 DR YOUNG: That is correct. Yes.

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ADV KUPER: And indeed, the deal was concluded and contracted out at 2.599. Is that right?

DR YOUNG: That is correct. Yes.

ADV KUPER: That would then take us to this second aspect, to which
5 you have been pointing, namely the missile aspect. I want to just try and capture, if I can, all the various theories that you have put up, from time to time, in regard to the missiles and then, having identified all the possibilities, get you to comment further. Dr Young, my understanding is that, in your testimony to the JIT, in 2001, the proposition that you put
10 up was that the Navy had bought no missiles and had concealed the fact that it had bought no missiles. That the R300 million, set aside for the missile ammunition was probably used, as a cover for bribes. Is that right?

DR YOUNG: Well, not exactly like that. I cannot remember testifying
15 that the Navy bought no missiles whatsoever. My, the, my theory is, and this is, I said this right at the outset, this is based on the tiny snippets of information that appear in all of the series of documents. But, when I have asked for the source documents, for this Commission, they have always been declined, or refused, or ignored. I think,
20 probably, ignored is the best. Okay. So, I can only work from what fairly substantial indications are, in this series of documents. But, I think, it is not as though I said that no missiles were bought at all. I mean, it is common cause that the original acquired amount, budgeted in the R1.4 billion, or the escalated amount of 1.9, included 32 missiles.
25 But, it is common cause that that was reduced to 17. It was reduced by

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half. So, that again, is a fairly fundamental aspect. But, the 17 consists of one, for the purposes of testing qualification and 16 for what is called, not so much war stock, but on board rounds. It is my theory, from what I can see, in some of the stuff, as I can see is also redacted, tip-exed out, 5 redacted out or severed. So, it is difficult, in the face of that, to come with bullet proof, court quality proof, beyond all reasonable doubt. But, that is my obligation here. But, it certainly seems as though one missile was purchased, in the amount that was paid of R182 million. Well, that seems to be, seems to be there. What we also do know, as a fact is 10 whether we term, talk about the term purchase or acquired, is that Admiral Kamerman testified that 17 MM 40 block two missiles had been acquired. It was, it only came to light many years later, I think, in 2005 or even 2007, that in fact, that was not correct. That six block ones had been acquired and nine block two. So, certainly, my thesis or my theory 15 or conspiracy, or whatever one wants to call it, has some basis of facts. Because that is, you know, that is not my version. So, that leads into it. But, also, I think, it is the previous Project Control Board documentation, specifically refers to the lease/purchase option. As does ADS's relevant documentation, regarding their best and final offer. It specifically refers 20 to removal of the ammunition and a reduction there, of something like R300 million. So, if you put all of that together, it certainly leads to the possibility that something, like I am theorising about, could have happened.

ADV KUPER: Dr Young, the question I had asked, was simply 25 whether you had put to the JIT the proposition that the Navy had bought

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no missiles, had concealed that fact and that there was the R300 million. That was the question. What is the answer?

DR YOUNG: So, I cannot remember saying they bought no missiles whatsoever. I might have said they had bought one. But, what I think, I
5 certainly think that they, what I could have testified is that they never bought 17 MM 40 block two missiles.

ADV KUPER: The next possible theory, I think, you have put up is the one you are talking about now that the Navy bought no missiles, but instead leased 17 missiles, had concealed the fact of the lease and had
10 used the money for bribes.

DR YOUNG: No. I did not say that. In fact, again, you know, after me clearly stating something, now you are still getting it wrong. I said the purchase price for the missile system would, it seems to me, from some of the documents is R182 million and that, as clearly as can be
15 seen, which is not all that clear, contains one missile, the missile for system qualification. So, it is not they did not buy zero or 17. It could be according to my theory that they purchased the system, which is onboard system, which includes the two launchers per ship, plus the missile control console, within the combat suite, in the operations room
20 and the system integration and all of that qualification, plus one missile to test. Then, another 16 missiles were handled differently.

ADV KUPER: I see. So, there was a purchase of one missile and a lease of 16.

DR YOUNG: That certainly could be a possibility, according to the
25 information that I can see, in the documents.

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ADV KUPER: And is that the possibility that you are presently putting before the Commission? Or are you putting before the Commission a smorgasbord of options, in which you are not actually championing one, rather than the other?

5 DR YOUNG: They all point in the same direction and what the, the main point I am trying to make is, to contradict your point of that missile money, being the bribe money that is not necessarily, that is not my, it is certainly not my direct contention. My direct contention is that that was the way of which a acceptable price, at least, according to the
10 affordability report of 2.6 was achieved, whereas, in fact, as we can see in front of us, the price then was at 2.9, which I would think, included the outright purchase of those 16 onboard missiles. I think, the documentation, the contents of the documentation indicate that, a strong possibility that the price was reduced from the 2.9 to the 2.6 was that
15 the acquisition of the missiles was handled differently and therefore, was able to exclude that R300 million.

ADV KUPER: That is in bringing it down from 2.9 to 2.6.

DR YOUNG: Yes. R300 million is the difference between 2.9 and 2.6.

ADV KUPER: Not the way it was brought down, according to you and
20 the way it was brought up, according to you, from 2.3 to 2.6.

DR YOUNG: No. I did not say that.

ADV KUPER: The missile theory, as I understand it, is trying to explain where the R300 million came from, where the briber found the R300 million, found it in an inflated purchase price. And what inflated
25 the purchase price were the missiles. I thought that was the theory.

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DR YOUNG: No. You are wrong. You obviously have not been listening to me or reading my documents properly.

ADV KUPER: So, forgive me. Dear me, forgive me, yes, and just explain then, what the R300 million, in regard to the missiles, how it
5 features?

DR YOUNG: You know, just it is possibly unfortunate that the, the amount of R300 million crops up twice, in possibly related circumstances but not directly, directly relevant, according to my theory. Now, I have got, or let us say, two sub-theories. I have got one sub-
10 theory, regarding the increase of price from 2.3 to 2.6, which remains for me, at least, unexplained. That is one, that is one. The other one is now the price was managed to be reduced from 2.9 to 2.6.

ADV KUPER: And in which of those two do the missiles feature?

DR YOUNG: The latter one.

15 ADV KUPER: So, it has got nothing to do with inflating the price upwards from 2.3 to 2.6.

DR YOUNG: I say, when you say, with great loud emphasis, they has got nothing to do, whatsoever. I said they might be related, but they might not be directly relevant. I think, all of the stuff, you know, nothing
20 not one single item of this whole process of the price going from 2.47 to 3.9 to 2.3, back to 2.9, to 2.6, whatever it was. I do not think anything is completely unrelated, not completely unrelated. It is what we can see in front of us.

ADV KUPER: Dr Young, there does come a point, when you just
25 cannot go on talking in these, in this fashion. I want to know from you,

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whether you say that the missile R300 million belongs to your theory of inflating the price from 2.3 to 2.6?

DR YOUNG: No. It does not.

ADV KUPER: You now say it belongs to your theory of how 2.9 was
5 brought down to 2.6.

DR YOUNG: That is correct.

ADV KUPER: And any previous evidence, you might have given, which put the missile R300 million firmly in the bringing it up from 2.3 to 2.6, any such suggestion would have been an error on your part?

10 DR YOUNG: No. It would not have been an error on my part. I think, that was done in 2001. By that stage, I had not even received the buyer documentation, which I only received in, between, I think, 2003 and 2006. So, that would have been to the best of my ability of what, first of all, I knew. But, I probably need to state that, although my theory,
15 especially as it stands out today, is backed up, by some kind of arithmetic plausibility, at least. But, I have to say and I am not prepared to divulge their names, is I have been told by two senior naval officers that my theory is actually correct.

CHAIRPERSON: I am sorry. Now, Dr Young, how does it help the
20 Commission, if at all, your theory is backed up by other people, whose names you are not prepared to disclose. How are we going to follow that up, in order to determine, whether is there anybody, who supports your theory?

DR YOUNG: Well of course, you should actually subpoena everybody
25 in the Navy.

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CHAIRPERSON: Just hold on, maybe it might be good advice. Let me just understand it. You are saying we must subpoena everybody, who is in the Navy. Do you mean, those who are currently in the Navy, or that includes even those who were, who have already left the Navy?

5 We must subpoena all of them.

DR YOUNG: Not all of them, since, the Navy is now nearly 100 years old, not all of them. Just the people, who were involved in the relevant, you see, you are not going to get out of me, the names of the people, who confirmed my theory. You are not going to get that out, I will
10 protect those, not with my life, because I do not need to die, but, well, the reason why I made that, this is not just a simple, malicious, retribution against who ever. This, where something comes to my attention and I do have some kind of experience and background and analytical capability from what went on, both the arithmetic as well as
15 the logic that is borne out in the documents. But, if there are people, who were in a reasonable position to have some independent idea of that, it is a responsible thing to ask them, is this plausibly true. In both instances and one, I can say, goes back to the 2000 era and one was much, much more recent than that, you know, three or four years ago
20 and I will say, it is, and I am not going to divulge their names. But, I am just showing there is an ability of my follow up, is that in the latter instance, after explaining, the response was, Richard, you are 100 per cent correct.

CHAIRPERSON: Just hold on, Dr Young, up to now, I do not
25 understand you. I was just simply trying to find out, where should we

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start? You said to us that we must subpoena everybody in the army. I am just trying to find out, should we start with those who came into the army from 1994. Or should we even go before 1994, in order to try and see, whether we can find those two people, who confirmed your theory.

5 DR YOUNG: I do not think it is even fair, for me, to start ventilating time scales. I mean, the next thing is, it will be ranks. The next thing, you know, you talk about the army. It is not the army. It is the Navy. But, I am just saying, these are two senior people in the Navy. They are not, they are commissioned officers. So, that is about as far as I am
10 prepared to say.

CHAIRPERSON: I do not think we can take this point any further. Maybe this might be the right time to [indistinct].

ADV KUPER: Sorry. As you please.

CHAIRPERSON: Okay. Maybe we should come back after 15
15 minutes or so. Thank you.

ADV KUPER: Thank you Chair. I just want you to think about something for a moment and I want you to come back to it. You told the Commission the story of speaking to two admirals whom you would not identify of having put your theories to them and how in effect they said
20 to you 'Richard you know you are probably right'.

It is just that I have some involvement with the Navy sense of humour. Do you think that they might be pulling your leg?

DR YOUNG: Not in the slightest and I do not want to reduce the pool of possible suspects but I did not say that they were admirals.

25 ADV KUPER: Let us press on where we were going. That is the

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question of the missiles. Now I am not any longer interested whether you package it as your theory that R2.9 down to R2.6 or where you want to package it. Your theory 2.3 up to 2.6. What I am interested in is the alternatives that you are offering the Commissioners for them to
5 investigate. As I understand it the question of the missiles or almost all of them having been leased rather than purchased is at the heart of your present allegation.

DR YOUNG: Not only it is an aspect, another aspect directly related is that the missiles that were required not all of them the approved the
10 Naval Board approved MM40 Block 2 Missile but some of them were actually required with the MM40 Block 1. That is the part of the theory or information.

ADV KUPER: You know perfectly well that this purchase of not being exclusively block 2 but including block 1, you know that as a fact. Do
15 you not?

DR YOUNG: I only know that now.

ADV KUPER: Knowing it now, what is your point?

DR YOUNG: Well the point is I think that Admiral Kamerman testified in the JIT Hearing that he... well what he did not testify about was that
20 some of the well not all of the ones that were required were actually block 2's. Only much later possibly probably for these hearings he acknowledge for the first time that some of them were block 1's and the others were block 2's.

ADV KUPER: I am asking you what point are you making? Are you
25 saying that by buying some block 1's they were able to reduce the

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purchase price by R300 million or a significant part of R300 million. Is that your point?

DR YOUNG: I do not know the exact price but I am pretty sure that the price of the block 1's is less I would guess substantially less than the
5 block 2's.

ADV KUPER: So would that reduction mean that they paid for block 2's but got a mix a cheaper mix and therefore overpaid?

DR YOUNG: No, I never said that.

ADV KUPER: I am asking you as to where you are going with this
10 theory?

DR YOUNG: That was not your question. You asked me whether they paid for block 2's and got 1's. That is what you asked me, I am sorry. I answered that question. It is actually very, very wrong of you what you are doing to me right now. Asking me a question and then saying you
15 were telling me something else. Okay it is not my theory that they paid for block 2's and got block 1's. What I am saying is, is that they were able to reduce the total cost of the missiles by acquiring some of them as block 1's and not as block 2's. That is what I am trying to say.

ADV KUPER: Did it ever occur to you that the question of the missiles
20 which the South African Navy has in fact acquired is a matter of some security sensitivity to the country?

DR YOUNG: Certainly there are some aspects that could be sensitive but is one looks at the available information then whether they are... well it certainly be sensitive if it was commonly known that the frigates
25 were meant to be fitted with block 2's but only had block 1's. That might

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be sensitive.

ADV KUPER: Do you think that there might be a reason why Admiral Kamerman would never have revealed that in a public inquiry Dr Young?

5 DR YOUNG: No.

ADV KUPER: Let us go on now. This entire theory this theoretical castle that you are building emanates from the fact that you have never seen the actual supply contract, is that right?

DR YOUNG: Well that is a complaint that I have. If I had been supplied
10 with that as I had been asking then either it would have confirmed my theory or it would have put it to bed. That is a two angled issue is why has it been hidden from me and if it been hidden from me you know what is the actual details?

ADV KUPER: I note the way in which you put it, that it would be hidden
15 from you. The terms of the contract of supply, do you know whether they have confidentiality clauses which preclude the publication of information unless both parties agree?

DR YOUNG: Yes I would image that, that apply to many different
20 sensitive commercial information regarding not so much the actual price paid, maybe but the pricing methodologies are remained commercially sensitive. The vast, vast majority of the information can be declassified in my view at least in the year 2014 or 2015.

ADV KUPER: Frankly Dr Young I do not think that we are interested in
25 your interpretation of a clause in the contract which requires mutual

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consent before publication. Let us just move on. I am going to show you a copy of the supply for the combat suite in regard to missiles because you evidence and because your statement and because the publicity which you have given to this feature has now meant that it has
5 gone into the public realm.

I am going to show you a document which deals with the actual position of the purchase of missiles and the spread of the purchase of missiles and we can deal with it. However difficult it is now in the light of the impact strategically on South Africa with your permission Chair I will
10 circulate the document? Chairman may I suggest that this goes at the end of file 5 of the cross-examination file?

Dr Young will you turn to the page that I marked 11/06?

CHAIRPERSON: Advocate Kuper can you just give us a moment please?

15 ADV KUPER: Will you go to page 11/06 Mr Chair. Dr Young will you look at that please. I am looking at the paragraph 1.2 document outlined. Do you have that?

DR YOUNG: Sorry can you just confirm which document, the document that you have just handed to me, is that correct?

20 ADV KUPER: That is correct.

DR YOUNG: I have that.

ADV KUPER: You will see the second sentence in paragraph 1.2:

*"It must be noted that the listings presented in this document comprise one ship set and the total quantity of four ship sets are to be delivered
25 where ammunition or stock are to be delivered the total delivery has*

been divided by the four as to clearly indentify the provision per ship.”

On that basis will you turn to 11/07?

DR YOUNG: Sorry could you just give it, just point it out to me and let me, where was it that you just read out?

5 ADV KUPER: I have read out what you will find marked at the middle of page 11/06.

DR YOUNG: Okay, quite honestly I think despite the sensitivity of this document nationally speaking of course it is sensitive to my own evidence I would like to be given a reasonable chance to study this
10 document in detail?

ADV KUPER: That is a request not directed to me but to the Chair?

DR YOUNG: That is correct, yes.

CHAIRPERSON: What do you mean by a reasonable time?

DR YOUNG: 15 to 30 minutes?

15 CHAIRPERSON: Can you make it 15 minutes?

DR YOUNG: Yes we can.

CHAIRPERSON: Advocate Kuper besides this point is there any other points that you want to deal with?

ADV KUPER: There are other points that are not related to this topic
20 though.

CHAIRPERSON: Let us adjourn for 15 minutes to give Dr Young a chance to go through this.

ADV KUPER: As you please Chair.

COMMISSION ADJOURNS

COMMISSION RESUMES

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RICHARD MICHAEL MOBERLY YOUNG: (s.u.o.)

ADV KUPER: Thank you Chair. Dr Young I was pointing you to paragraph 1.2 at page 11/06. I read to you what was said there. I am sorry you are obviously looking at something else. I read to you to what
5 was said there was really that the figures that were going to be shown were per ship and not the total. If you look at 11/07 you will see under description that per ship there were two block 1 and two block 2 which would give you, eight block 1's and 8 block 2's to which you would add the one additional block 2 supplied for the purpose of a firing trial.

10 So that you would get nine block 2 and 8 block... sorry. You would get nine of block 2 and you would get seven of block 1?

DR YOUNG: Okay I accept that but I just like to get my head around the figure of eight units for the launcher cradle. Is that per ship?

ADV KUPER: I am sorry. I just wanted to correct myself first. It is nine
15 and eight. What were you saying doctor?

DR YOUNG: I am saying just to get my head around everything here. In respect of the launcher cradle is has a figure of eight there, eight units. Is that eight per ship or is that eight in total?

ADV KUPER: It is eight per ship.

20 DR YOUNG: Okay.

ADV KUPER: Very well what I wanted to put to you was that if this document is authentic then I want to put it you that it is clear that there was a sale and not a lease of the missiles. Are you now prepared to accept that?

25 DR YOUNG: No, what in this document shows that there was a sale.

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There is nothing in this document whatsoever that indicate that it is a sale, a purchase.

ADV KUPER: This is part of the Combat Suite Contract which was a sale contract?

5 DR YOUNG: I do not see that this is part of a contract. In fact it would indicate that it is not part of the contract because it is dated 16 July 1999. The contract was signed on 3 December 1999. It might be but it is not indicated to.

ADV KUPER: Yes, I am not prepared to take it further. I just want to
10 record that having seen the document you reject it as demonstrating there was a sale and you ask the Commission to persist in investigating your theories that there was a lease. Am I right?

DR YOUNG: All that I am saying is and also being frank. This document is what I would view a little...too little and too late. This is a document
15 that if this issue was going to be addressed in the context of this theme of mine it is pretty late in the day to be issuing it to me as well. I think I can say having a fair amount of experience is that there is nothing sensitive in this document whatsoever. Except for the fact possibly that there are block 1 missiles as well as block 2. This is just an ADS
20 document. There is no indication to show that it is part of a contract. I m not 100% a fey with ADS's document numbering system but certainly the one that I do remember, this is just a RFD, revision D that is no indication to me that is a final. There are only two initials on this.

I can remember that at least most of these the parts of the umbrella
25 agreement had many more initials on than this. There is no prices here.

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This could easily as easily indicate that this was going to be acquired but the measure of acquisitions not indicated here. So unfortunately it does not give me sufficient just to accept what you have just asked me to accept. There is more that I wish to say as well on the matter.

5 ADV KUPER: Please say more.

DR YOUNG: You see I also developed this theory not only from tiny snippets of information and this I could being slightly charitable add it to the baskets of snippets of information. It is not a self contained document which proves that point.

10 It also does not indicate how these 17 missiles were at a certain price were contracted out of a total combat suite price of R2.6 billion. What I would have hoped to have seen and being frank. This is my theory in order just to get a response. I would have hoped that if I got something adequate it would have shown or a clear link between the acquisition of
15 the missiles at a certain price to an actual purchase and out of the total Corvette Combat Suite price this does not do that in the slightest.

One thing that it does do is that it goes to the other leg of my theory complex or otherwise. That was that block 2 missiles were not acquired or were only 50% acquired. I need to traverse and I would not take
20 more than five minutes over this of what has been stated into the record of at least previous similar things such as this Commission.

ADV KUPER: Dr Young so long as the Commission does not loose it's patience please go ahead.

DR YOUNG: Unfortunately when a witness is giving evidence it should
25 be allowed to complete his evidence adequately and I certainly do not

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think it would be adequate just to leave it at that point. So regarding the acquisition of the MM40 Block 1 I mean it is common cause that, that took 15 years to surface despite that I brought up this issue before.

I just want to refer to what is actually in my own witness statement.

5 To a document. It is my RMY55 which is I think it is. Sorry I have the words in front of me, which I will traverse. It is my discovered document DT1/0827. In any case however Admiral Kamerman... it is my paragraph 455 in my witness statement and I have a number of quotations there. I am not going to traverse all of them. I think that
10 remains just for the context and the record.

I will start of by saying that Admiral Kamerman testify saying:

*"I want however to emphasise that the extra set MM40 Block 2 is the leading European missile and is supplied to dozens of nations as in fact the frontline anti-ship missile right now for many NATO nations as we
15 speak. It is a suburb missile.*

*So the missiles that were on the table in front of us is the MM40 Block 2 and the RBS15 Mark 3 represented and still represent the front edge of missile technology, anti-ship missile technology. The MM40 Block 1 was used in the Gulf War and the MM40 Block 2 is a completely
20 different missile.*

It is brand new state of the art missile. It is the leading edge of missile technology today. As I said the Naval Board were not prepared to compromise on our primary weapons"

Now that is fairly fundamental and in this conclusion I can say it
25 obviously did compromise on its primary weapons by buying half of

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them as block 1's and not block 2's.

ADV KUPER: Is there anything more that you want to say Dr Young?

DR YOUNG: Other than case closed.

ADV KUPER: Yes it think it is probably case closed. None the less you
5 are persisting in asking the Commission to go and investigate whether
there were possible leases of these missiles?

DR YOUNG: Yes you have not proven to me. The document does not
prove that the acquisition was not under some kind of purchase lease
scheme and as a direct purchase out of the R2.6 or R2.599 billion.

10 I am not going to direct the Commission, I am just a messenger here.
I am just bringing the information which has come to my attention. This
is not meant to be flipened but is can actually choose what it wants to
do.

ADV KUPER: Then finally you have referred in the course of your
15 evidence relating to these topics to the documents emanating from
either Mr Maynot or the French documents and there you had been
asked to give us the references and we were just a little unsure from
what we have heard (thank you from the evidence leaders) whether you
are in fact referring to two documents or to one document?

20 DR YOUNG: I can remember one specific document where it refers to
the exclusion of the ammunition. I think specifically with an amount of
R300 million. That is what I can remember. I can certainly find it. It is
certainly not the only reference in all the documents that I have seen to
that possibility of reducing the price by means of in some manner at
25 least of excluding the ammunition rounds.

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ADV KUPER: Dr Young let me help you. I am particularly interested in what you had said about the R2.3 billion price. You said that there were French documents that should be looked at. In that regard you had referred to two documents. As we understand the evidence leaders in fact the reference to the second one was an error and the single document which you were referring to is the document which is RMY82. Am I right, I am just trying to clear this up?

DR YOUNG: Okay, I scribbled down a DT10433. I actually made a mistake it was 0432. I need to state is that I never undertook to respond to that until lunch time. I just made a break regarding the missile issue. I certainly did not address that particular issue in that break. That is something that I am still coming too.

ADV KUPER: Well there is the question of trying to finish the cross-examination. All that I have to go on is that you did identify a document which is to be found in your bundle file 4 at page 1490. It is your reference DT10432.

DR YOUNG: Yes well unfortunately I either did not explain myself or you misunderstood me. This was just a document relating to the price. Remember that I was looking for a price of R2.3 and I was doing searches on the R2.3 as well as the search term, Spreadsheet. This is what I found regarding the price of R2.3 billion whereas you said the only other reference was something handwritten. I actually said that actually it was not this was written in or printed in text.

That is what I found and I just jotted it down. This is not the reference to the exclusion of ammunition. That is a different document and I

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specifically undertook to be able to do it in the tea break or a lunch break or I believe there is something happening this afternoon regarding another witness, I have not come to that yet.

ADV KUPER: Dr Young I am talking about the price I am not talking
5 about the missiles.

DR YOUNG: Okay, very good then I misunderstood you.

ADV KUPER: Am I right that in regard to the price to finding some other reference to R2.3 you were refereeing the Commissioners to page 1490 of file 4?

10 DR YOUNG: If that is the correct page out of my RMY82 then you are correct.

ADV KUPER: Do you have that page in front of you?

DR YOUNG: I have that page on my computer in front of me.

ADV KUPER: Is starts of annexed 3, Country South Africa. Is that
15 right?

DR YOUNG: That is correct.

ADV KUPER: Now it seems to be a standard form of some sort within the group of French companies and it is looking at the main programs expected in the next 10 years together to what is called K Priorities
20 proposed to the group. Is that right?

DR YOUNG: That is correct, yes.

ADV KUPER: Are you familiar and able to speak to the internal documentation used in this group?

DR YOUNG: No.

25 ADV KUPER: Do you know anything about the main programs and the

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expectations regarding it and the strategies of the group and regard thereto?

DR YOUNG: I have some idea I am not fully aware of it but I do have some idea of their expectations.

5 ADV KUPER: Were you present when this particular document was presented within the company if it ever was?

DR YOUNG: No, I was not.

ADV KUPER: Are you an outsider to this document?

DR YOUNG: Yes, I can read the document as an outsider.

10 ADV KUPER: Do you see in the column immediately above South Africa in the 3rd column it says: 'Amount total assessable to the group.' Do you see that?

DR YOUNG: Yes.

ADV KUPER: Are you able from your own knowledge to say to what
15 that relates?

DR YOUNG: Not a 100%.

ADV KUPER: Well you have no personal knowledge at all regarding the indication here of the amounts total assessable to the group.

DR YOUNG: No I do not.

20 ADV KUPER: All that, that comes to is that you want to point the Commissioners to the fact that when it came to South Africa and the Naval System Corvettes under the amount total acceptable to the group assessable the amount had been put in at R2.3 but that somebody had corrected it to R2.6?

25 DR YOUNG: That is correct and of course the date of this document is

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also relevant.

ADV KUPER: The date of this document as you understand is, is what?

DR YOUNG: 17 May 1999 and the significance of that is right in the middle in fact nearly the end of the Corvette Price Negotiating Process.

ADV KUPER: Yes, I understand that 17 May is in the course of negotiating. That was the facts inclosing this document. Am I right?

DR YOUNG: That is correct, yes.

ADV KUPER: It is from this document that you wish the Commissioners to infer that there was a readiness to offer R2.3 as the bid price?

DR YOUNG: Well the R2.3 is part of it and of course the other important part given credence to that is the increase to R2.6.

ADV KUPER: Do you know or were you present when that correction was made?

DR YOUNG: No, I was not.

ADV KUPER: Chair please bear with me. I do not want to invite you to speculate I just, you have no idea whether the R2.3 or any price mentioned in these documents include or do not include the amounts chargeable by Aerospatiale?

DR YOUNG: No, clearly not because there is no reference to Aerospatiale there as far as I can see.

ADV KUPER: They were supplying the missiles were they?

DR YOUNG: Yes.

ADV KUPER: At R300 million.

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DR YOUNG: Well at whatever it was. Whether it was R182 million or R300... the answer is yes. I do not know what prices were spoke of because I have not been given that document to show the purchase agreement. So I would not know what the final purchase price was.

5 ADV KUPER: Yes I would not go into that. As you sit there now seeing the documents and seeing the explanation I am just suggesting to you in regard to this particular document. Are you prepared to conceive that your complex theories may be mistaken?

DR YOUNG: Well right from the beginning I said based on the
10 [indistinct] of information and the finality of information that I could be mistaken. However to be frank what I have heard being presented with and answered with and re-addressed in terms of my own talking to the documents it is certainly possible that there is something that I am missing. It is possible but it has not been proven to me. What I can say
15 for certainty there is certainly something amiss regarding the actual amounts and the type of missiles.

ADV KUPER: Fortunately it does not have to be proven to your Dr Young. I want to move on because I do want to conclude this cross-examination. When and where did you meet Pat Kamerman?

20 DR YOUNG: I have met him once but it was not in the context of what I when I mentioned his name.

ADV KUPER: The context in which you mentioned his name was the context of hearsay upon hearsay in regard to President Mbeki or Deputy President Mbeki allegedly giving an instruction to Admiral Kamerman
25 and to the Chief of the Navy as to the outcome of the bids. Is that right?

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DR YOUNG: That is correct yes.

ADV KUPER: There you were able and willing to disclose the name of Admiral Kamerman's brother as one of your hearsay informants, were you not?

5 DR YOUNG: Well I actually said that it was hearsay. I said that I did not hear it directly from him. In fact I said it might be double hearsay. I do know that at a commission of inquiry in fact... certain legislation that if hearsay is the best evidence then it at least ...[intervenes].

CHAIRPERSON: I am sorry Dr Young. For the purpose of progress
10 leave the question of legal interpretation to us. Just answer the question it has got nothing to do with your understanding of the law. Your understanding of the law might even be incorrect. Just answer the question. Did you disclose the name of Mr Kamerman and listen to the question that Advocate Kuper is asking you and leave the legal
15 implication thereof.

ADV KUPER: The question is. Why were you prepared to disclose his name when you have steadfastly refused to disclose to the Commission the names of any of your sources who you say you will protect if not till death then at least very vigorously?

20 DR YOUNG: It is simple because I never spoke to him directly. You are correct when you say that I heard that through another party. Also there was no indication from him to me direct or otherwise verbal or body language that he was either a source for me or a source that had to protect. He is in a different category to the other sources whom I wish
25 to protect.

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ADV KUPER: He is in a different category for this reason doctor. His name is Kamerman. He is a brother to Admiral Kamerman and your wish is to be as malicious and to take revenge on Admiral Kamerman if you can and therefore you were quick to release his name purely out of malice?
5

DR YOUNG: It is completely correct, incorrect that it is out of malice. It is only in regarding of giving my evidence and it certainly... that is the first part. It has nothing... it is only to do with supporting my evidence which is a complex thing to do. It is not an easy, it is only a matter as information it is not a matter of proving anything. That is the first part.
10

Secondly, you said that I was quite to do so. I certainly was not quick to do so because otherwise I would have written it in my witness statement that would have been quicker. It was only it was not said in my evidence in chief. It was only said in cross-examination so there are two reasons why I can prove that it was not quick..
15

ADV KUPER: I am moving to another topic and I hope that I do not have to deal with it at all. You do not claim to be an expert in constitutional law, do you?

DR YOUNG: No.

20 ADV KUPER: You do not claim to be an expert in administrative law, do you?

DR YOUNG: No.

ADV KUPER: Therefore there is nothing that I wish to ask you concerning your allegations of irregularities either in regard to the constitution or in regard to the way in which you say the practices of the
25

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Procurement was irregular. I think we can leave that to the Commission. Do you agree?

DR YOUNG: I do not think we can put it quite as simple as that. One does not have to be a legal expert with a LLB Degree and whatever
5 else. As a lay person one can still have sight of small parts of the constitution. I just want to use one relevant example. That is as far as I remember the constitutional imperatives in terms of acquisition or procurement regards one very short section. I think it might be section
10 217. It just regards competitiveness. I want to say that in the context of the BAeSEMA Acquisition.

Admiral Kamerman's angry evidence regarding the BAE was not only incorrect in 90% or the vast majority of it but it certainly came across that what we were interested in doing in providing a competitive bid was just so wrong it would have put South African's out of business. It would
15 have bankrupted companies. It would have taken work overseas and all of that kind of stuff.

The point that I want to make is that there is a right to compete, there is a right of competition. It is a constitutional imperative one does not have to be an expert in law, certainly administrative and constitutional
20 law for that. What I am saying is that Admiral Kamerman's position that he took on that is an indication of (I am not sure if he is representing himself or Department of Defence) he is representing the Department of Defence which is responsible for acquisition and that Department of Defence took the position of not allowing competition and that is highly
25 wrong.

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ADV KUPER: You do not seem to leave Admiral Kamerman alone?

DR YOUNG: Well you see, it is not that I want to. I genuinely unfortunately have to involve him. It is far more my style I think that I have proven that. It is far more my style other than what I write on my website maybe and half or not all of that is 100% serious.

Whatever it is more my style and certainly in giving evidence under oath is to play the ball and not the man. If you look at Admiral Kamerman's evidence witness statement and his testimony the opposite applies. He is far more inclined to play the man, being me than the ball. That (what is the right word) inclination goes right back at least the Public Protector Hearings that I can remember. So unfortunately again it is not that I want to play the man but it becomes part of this very unfortunate process which I can repeat, I am taking no satisfaction whatsoever.

ADV KUPER: Do you trust the Commissioners to know what the constitution says without your assistance?

DR YOUNG: I would certainly hope so.

ADV KUPER: The last comment that I have to make to you Dr Young is simply a remark that you made. It is of little consequence but you made it. I just do not want a wrong impression to be left. You said in the course of your evidence at some point that nobody had challenged what you say Colonel du Plooy would say and therefore it could be accepted as a fact.

I just wanted to point out to you that Colonel de Plooy is not the DoD's client nor part of the DoD. That we have no access and you

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certainly must not believe that what you say about Colonel du Plooy is regarded as having been established as such. Thank you Chair I have no further questions.

ADV SIBEKO: I beg your pardon Chair. I think perhaps before we
5 adjourn for lunch or the next cross-examiner proceeds with the cross-examination there are certain documents that Dr Young was invited to produce during the course of cross-examination, I think yesterday.

He apparently has the documents which he wants to provide to the Commission pursuant to the invitation made to him during cross-
10 examination. I think the copies will be made as soon as he furnish them to the Commission Administrative Staff.

ADV KUPER: May I say Chairman that I was not an invitation to Dr Young to come and give further evidence on documents. It was an invitation to Dr Young to produce the documents so that we the cross-
15 examining team could see them and whether we would then wish to take them further. I had not realised that Dr Young had produced these documents and I would invite the team leaders to let us see a copy?

ADV SIBEKO: Chair the point that we are making is that Dr Young has the documents and he wants to have the opportunity to collate them and
20 deliver them.

DR YOUNG: Sorry, may I say something at this point? Okay, I have just three sets of document. Every one of them has been asked for by Advocate Kuper in the last few days. None of the documents are anything over and above what I have already adduced into evidence. It
25 is only with response to what was requested. It was advised to me that

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this should at least be put on record that I actually am or have provided these documents.

More so, unfortunately Advocate Kuper is wrong yet again. Not only did he request these documents but he has used these documents in
5 two instances. Anyway the only three categories, I am going to put on the record what they are. Originally the original request was to include the ASM Minutes which was done. I provided them. I do have those documents but I provided it to Advocate Ndumbi. I sent a copy to the Chairperson in the Admin Email and to my evidence leaders. That was
10 done on 18 March. That is nearly a week ago. I am just recording that I have done that.

The second request that I had from Advocate Kuper was to provide the correspondence with German Prosecutors in Dusseldorf, Hergotte and there was a number of them. As far as I remember is that the
15 copied them because they were given to them not by me but Advocate Ndumbi. It did not happen on the record. It needs to be for the record for the transcript which is an endearing thing, unlike my oral evidence. That was done on the 24th which is just a couple of days ago.

I know that they actually copied those documents and actually used
20 them. The third one, my understanding was and I took a quite note is that Advocate Kuper ask me for whether my company or I had a original copy as received by fax of the German facsimile, entitled NOTIZ. He specifically referred me to the matter of whether a fax has a record of it being sent by fax. Like that one I provided that to Advocate Ndumbi on
25 the 24th. That issue has not come back again.

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It is important to put on the record if I get asked for documents in cross-examination that I have actually done so. I am not sure, that document has not been used again but my understanding, I think I did discuss it with Advocate Ndumbi this morning is that he is certainly in
5 possession of it. Whether it had been provided. There is nothing more and there is nothing untoward as Advocate Kuper seems to be suggesting of the this particular point.

ADV KUPER: Yes Chairman I would really hate to suggest that Dr Young is wrong in anything or has misunderstood anything when it
10 comes to my requests of him. All these documents as he rightly says except for the last he had provided before cross-examination began. Indeed in cross-examination of course I mentioned those documents and used them.

During cross-examination questions were raised as to further
15 documents. Now if there were no further minutes therefore there are no further documents other than the ones I already gave you at the time when you were cross-examining. Or if he is saying in respect of the other documents that there is nothing more. Then we are in happy agreement with him and there is certainly no need to keep him waiting
20 for an analysis of further documents. There is that one document that I do not think we have seen which is the fax transmission.

That would be the only document. If it is already in Advocate Ndumbi's possession we could see it in a minute. I do not even have to ask for that minute Chair I understand it has been shown to a member of
25 the team. There is nothing more that I need to do about it.

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CHAIRPERSON: Thank you. You we see that it is already 13:00. Can I just get an indication from legal representatives who are keen to cross-examine Dr Young more or less how long are they each going to take. Just a rough indication because that will help us to plan our next move.

5 ADV CILLIERS: Chair I am suppose to be next but my colleague on behalf of Armscor requested that he starts before me. In any event on your question I do not intend to develop theories for an hour or two. I intend to spend no more than 20 to 30 minutes on cross-examination.

ADV TSATSAWANE: Thank you Mr Commissioner. We also do not
10 think that we are going to develop long theories and I do not think that we would be more than 20 minutes in cross-examination.

ADV MOERANE: Chair in the light of the evidence that we have been listening to over the past 10 or more days I do not think that we shall be more than about half an hour. I would also ask for an indulgence Chair
15 because I have a commitment in Johannesburg at 17:00 if I perhaps I could go before my colleagues, that would be useful?

CHAIRPERSON: I will come back to you on that. So basically we are looking at just one and half hours. Maybe to be safer we are looking at two hours. If we are going to be busy for two hours I think maybe it
20 might just be safe to adjourn the cross-examination of Dr Young until tomorrow morning. I will tell you why. Our difficulty is that there is a witness from overseas. This witness needs to be out of the country by tomorrow morning.

That witness was not subpoenaed, she came on her own here. So I
25 thought maybe we should give her first preference and get her evidence

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on record and then from tomorrow morning then we can start with Dr Young's cross-examination. Unless there are any objection, if there are none we are going to adjourn the cross-examination of Dr Young until tomorrow morning and we will come back at 14:00 to here the evidence
5 from a lady from France who was made to understand that she needs to go to New York either tomorrow or sometime tonight. So intend taking down her evidence at 14:00.

ADV TSATSAWANE: Chair we certainly have no objection to that.

ADV MOERANE: Thank you Chair. We not have an objection we will
10 also take instructions if it is still going to be necessary for us to cross-examine this witness.

CHAIRPERSON: Take instructions.

ADV MOERANE: Thank you Mr Chair. We will communicate that to the evidence leaders. We do not think that, that should delay the
15 adjournment.

CHAIRPERSON: Thank you. Dr Young do you understand our difficulty?

DR YOUNG: Yes I appreciate that.

CHAIRPERSON: So we are going to adjourn your further cross-
20 examination until tomorrow morning and we will start tomorrow morning at 09:00.

DR YOUNG: Sir, may I ask a question? I believe that the witness is actually representing Thales. It is certainly possible certainly that I am here and of course I would be accused of not using an opportunity while
25 I am here of cross-examining her because I am pretty sure that her

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evidence could relate to mine. I will be asking... it only became known to me this morning. Secondly I have no view of the witness statement at this stage.

CHAIRPERSON: We are going to lead evidence in public again. So anybody who wants to attend is welcome to attend. I do not have a copy of the statement as yet. I have not seen it. I am sure that we will be given a copy and if you intend cross-examining and the witness you can make the application to cross-examine at the right time.

DR YOUNG: Okay that is understood.

10 CHAIRPERSON: In that case we are going to adjourn the cross-examination of Dr Young until tomorrow morning at 09:00. We will come back at 14:00 to lead the evidence of another witness. Advocate Sibeko do you want to say something?

15 ADV SIBEKO: Indeed Chair. Is it possible that we can perhaps start at 09:30 tomorrow. There is some small matter that I need to attend to during the course of tomorrow morning. It does appear that of the three candidates for cross one might just fall by the way side and there would be only cross-examination coming from two counsel.

CHAIRPERSON: I agree with you. We will start at 09:30.

20 **COMMISSION ADJOURNS**

COMMISSION RESUMES

CHAIRPERSON: Yes, Adv Ramagaga?

ADV RAMAGAGA: Thank you, Chair. The witness that we are going to present before the Commission today is Ms Christine Guerrier. She will be testifying on behalf of Thales, and she is ready to proceed.

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CHRISTINE GUERRIER: (d.s.s.)

ADV RAMAGAGA: Thank you, Chair. May I proceed? Ms Guerrier, you have been authorised to make a presentation before the Commission on behalf of Thales.

5 MS GUERRIER: Yes, I am.

ADV RAMAGAGA: In preparation for the evidence that you are going to give, you have drawn a statement.

MS GUERRIER: Yes, I did.

ADV RAMAGAGA: You have that statement before you, it appears on
10 pages 1 to 12 of the Bundle.

MS GUERRIER: Yes.

ADV RAMAGAGA: Now, please look at page 12 of the statement.

MS GUERRIER: Yes.

ADV RAMAGAGA: A signature towards the bottom of that page, do you
15 recognise that signature?

MS GUERRIER: Yes, it is my signature.

ADV RAMAGAGA: In terms of this document, the statement was signed on the 3rd day of March.

MS GUERRIER: Yes.

20 ADV RAMAGAGA: When you signed the statement, had you satisfied yourself about the content of the statement? And if so, do you confirm the contents as what you have, or you would like to present to the Commission?

MS GUERRIER: Yes, I can confirm that I am satisfied with that
25 statement.

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ADV RAMAGAGA: Right, thank you. I would like to turn your attention to page 1 of the paginated bundle. Now, firstly, I like to invite you to introduce yourself to the Commission, with specific reference to your relationship with Thales.

5 MS GUERRIER: I first started working with Thales in April 1980. I was just graduated from law school, and I started within a small company of the Thales Group as a lawyer. Then, I moved from position from time to time, until I came as Head of Litigation for the Group in 1997. I must say that for a period of four years I left the company, I was in private
10 practice working as an attorney at law with a French law firm.

ADV RAMAGAGA: Now, at the time when you were operating your private practise, did you to any extent continued to keep the relationship with Thales?

MS GUERRIER: Yes, because my main client was Thales.

15 ADV RAMAGAGA: So, it would be fair to say that you have spent almost 35 years with Thales?

MS GUERRIER: Yes.

ADV RAMAGAGA: Now, it is correct, madam, that you are legally represented, and even when you drafted this statement it was still with
20 some sort of assistance, notwithstanding the fact that you are a qualified lawyer.

MS GUERRIER: Yes, I have some assistance. I am not a qualified lawyer in South Africa.

ADV RAMAGAGA: Yes. Now, will you please tell the Commission as to
25 what your present position within the Thales Group is?

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MS GUERRIER: I am Vice President in Dispute Resolution and Litigation for the Thales Group.

ADV RAMAGAGA: Now, one sees from the statement that you are describing the Thales Group as Thales SA, or that you are here to
5 testify in relation to Thales SA. Can you just clarify the Commission as to what the SA stands for?

MS GUERRIER: SA stands for Société Anonyme, which is the form of company in France, meaning it has shares which are in the public.

ADV RAMAGAGA: Thank you. Will you then please inform the
10 Commission as to what your work with Thales SA currently involves?

MS GUERRIER: So, as being in charge of Dispute Resolution and Litigation, my focus is on commercial dispute between companies. But, in addition to that, I am in charge of all kind of disputes and even regulatory investigation, if there are, or criminal investigation, if there
15 are. Or, if any of the Thales companies or Thales employees, or officers are charged with some criminal offence, I will be in charge of taking the position of Thales, defending Thales.

ADV RAMAGAGA: Right. Now, you are here to testify about the acquisition process in South Africa, and the participation of Thales
20 therein. Now, can you just indicate to this Commission as to what your experience was at the time, or is, and whether you are able to assist the Commission, and if so, to what extent you can assist the Commission with its work.

MS GUERRIER: I was not involved in the negotiation of the contract
25 with the South African authority to buy the Corvette, but of course,

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because it was an important contract for Thales I knew about its signature at the time it was signed. Later on I was a little bit more involved in that deal, in the way that we inside of, there was a construction which was a contractor to the South African authority, and we had a dispute between the member on construction and specifically Thales had suffered some delays, and they wanted to get from the German company some compensation for the delay that they were responsible for. So, there was an arbitration in Switzerland about those technical problems which arose from caballing, and things like that. So, I was supervising that arbitration. One of the lawyers of my team was more involved than I was, but since she was a junior, I had to advise her on many things, and I followed that arbitration. So, I have more information about the way the contract was structured. Later on, in 2003, I became in charge of the investigation which were going on in South Africa. Previously there was another person who was in charge, but he left his position to another one, so I took over his duties in that, and so from March 2003 I became more involved in that matter.

ADV RAMAGAGA: Right. In 2003 you became involved in the investigation that was taking place in South Africa in regards to the arms acquisition. Now, we will revert to that later. In paragraph 6 at page 2 of the statement, you elude to the fact that some of the events that took place around the arms acquisition in South Africa, you do not bear personal knowledge thereof, however, you are competent and authorised to testify about that. Can you just indicate to the Commission as to what your source of information is, and regarding the

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bases, I think you have already laid the bases, because you are in the legal department of Thales. Please proceed.

MS GUERRIER: Yes. So, when we started, when I was not involved before [indistinct] 2002, when we started the dispute with the German
5 Frigate Consortium. But, of course I talked with the people who were involved in the disposition. I talked to the people who were involved in the [indistinct] in South Africa as well as in France, and everyone who had some knowledge, I think I talked to all of them at some point in time. I was given documents of course, contracts and correspondence
10 between parties. So, there were people from Thales Naval Combat Systems in France, there were people from ADS. I think that some of the names are well known here, like Mr Monyot, like Mr Tsetage, there were a lot of other people, I cannot recall exactly. But, I talked to the lawyer who were in charge of the negotiations as well. So, there were a
15 lot of people involved in France as well as in South Africa.

ADV RAMAGAGA: Thank you. On the same page, in paragraph 7, you are just informing the Commission that you are not a South African qualified lawyer, and you would not be waving any privileges that you are entitled to, or your company is entitled to. Now, on the following
20 page, page 3 at paragraph 8, you are actually explaining as to why it is that you are the person that is competent to give evidence, and why so many other people that perhaps were involved, cannot testify.

MS GUERRIER: Yes. It was a long time ago, so most of the people have now left the company, mostly for retirement. Most of them are no
25 longer into the Thales radar, I would say. So, from what I know, there is

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no one in the company with such an extensive knowledge as I am, which explains why I am here.

ADV RAMAGAGA: In paragraphs 9 to 15, which appears on page 3 to 4 of your statement, you are outlining the business as well as the history
5 of the company. Now, will you please inform the Commission as to what the business of the company is?

MS GUERRIER: Excuse me. Thales is involved in many different activities, and defence is one of them where our turnover is about 50%. Not only defence, but otherwise we are doing and are present in
10 aerospace, we are manufacturing satellites and sending satellites into space. We are doing a lot of things in the cockpit of aircrafts, Airbus for example. We are doing air traffic management, I think in South Africa we did a lot on that. We are doing transportation, signalling transportation, that means the railway signalling. Hotels, and a lot of
15 security as well, meaning secured communication. I think 80% of the banks are using our encrypted connection, just to prevent hackers to enter into the bank system.

ADV RAMAGAGA: You mention, amongst others, that Thales has done air traffic management for South Africa, or in South Africa a lot. Can
20 you just indicate to the Commission as to whether this service was only rendered after the advent of the arms acquisition process, or is it a service that had been rendered to the Republic of South Africa over time, by this company?

MS GUERRIER: I believe that Thales, its former name was Thomson-
25 CSF, was well known from South Africa. We had been present in the

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early 60's, of course during the period where [indistinct] we did not so much dealings. But, we have been present over years and well known to the South African country.

ADV RAMAGAGA: Now, I would like to take you to paragraphs 13 to 15
5 of your statement, where you are outlining the history of the Thales Group. Will you please proceed to present that evidence to the Commission?

MS GUERRIER: Yes. Thomson-CSF is known, but in fact it started by the end of the 19th century by a company which was called Compagnie
10 Francaise Thomson-Houston was created in France. It was originally created in the United States, they decided to move to France. Then, it acquired quite a lot of other companies, in particular a company which was called Compagnie San Fil CSF. These companies were mainly dealing with radar, military as well as civilian, and communication. So,
15 the history of Thales is communication.

ADV RAMAGAGA: Right. You mention in paragraph 15 of your statement that in 1998 the company was privatised. Now, can you just shed light to the Commission as to whether at the time when the invitation to send information, or show interest in participating in the
20 acquisition, when that was done, whether by that time the company was already privatised, or it had not as yet been privatised.

MS GUERRIER: It is not yet been privatised. The privatisation process started in 1998, and before that Thomson-CSF was 100% owned by the French Government.

25 ADV RAMAGAGA: Right, thank you. Then, let us turn our attention to

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the following paragraphs, dealing with the Thales Group in South Africa. Now, will you please just outline the relationship between the Republic of South Africa and Thales, over the period prior to the sanctions, around the 70's, and then you take us through to later on and up to the
5 time when Thales started participating in the arms acquisition.

MS GUERRIER: So, I know that in the early 60's Thales, Thomson-CSF at the time, had entered into contract with South Africa for providing South Africa with weapon systems. That was developed with funding from South Africa. That was the early 60's. Then, later on they
10 continued to provide services in air traffic management and radar. And of course, when the change occurred in South Africa, [indistinct] United Nations embargo was lifted, we were ready to continue services and procure South Africa with modern systems.

ADV RAMAGAGA: Right. You mention in paragraph 18, right towards
15 the bottom of that paragraph, that your company was one of the relatively small pool of international manufacturers with the capacity and capability to assist the countries, specifically in the context of this statement, with the combat ships and so forth. What is the bases on which you made the statement?

MS GUERRIER: You know, since I have been with Thales such a long
20 time, I know rather well the Thales market, as well as the completion in that market, because we are facing that competition all the time. So, we know that there are companies in the US which have experience and can provide modern systems. But, in Europe we do have competitors
25 like the British with BAE systems, we do have in Germany some other

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company who have the ability to address international markets. Then, between Europe, US you have Russia of course who have the capacity. But, during the period of 1989 to maybe today, Russia has been struggling with its own problems, and is not as much a competitor as it was in the early 80's. So, we all know who our competitors in the military market are, it is a very small market that could have that ability. We know that we can deliver internationally the systems.

ADV RAMAGAGA: Now, in paragraph 19 you are talking about resuming the relationship, especially with regard to armament acquisitions with South Africa, and that is when you mentioned the acquisition of shares with ADS. Now, other than ADS which was then known as Altech Defence System, are there any other companies that were approached by Thales for the purpose of establishing a commercial relationship with, in particular with relation to arms?

MS GUERRIER: I know at least that Thales was at some point interested in Denel. I am not sure that it was all Denel company, but I think that Denel has many businesses and at least there is one business that is in the military.

ADV RAMAGAGA: Right. In the following paragraph you are just reiterating that because of the relationship that had been in existence with South Africa, there was no need to get an introduction to the South African market.

MS GUERRIER: No. I think that Thales was well known from the South African people, and of course since Thales was also a French Government owned company, it was easy to access through the

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diplomatic channels as well.

ADV RAMAGAGA: Now, please turn over to page 6. Now, in paragraph 23, which appears on page 6, you are dealing with the shareholding acquisition and the focus of ADS, as well as the capabilities of ADS.

5 Now, could you please just place this evidence before the Commission, and also dealing with the question as to whether C²I², do you know whether it also had such capabilities or not, as ADS?

MS GUERRIER: So, ADS was compared to Thales a rather small company, but it was very well implanted in South Africa in the defence
10 market. I have been working with Armscor over the years, so it was a company who had already proven its ability to deliver a system to the South African military. I cannot recall the name of the company, I know it but it is difficult for me to pronounce, but the other company as far as I understand was smaller with not such extensive experience than ADS,
15 but could have been a subcontractor also.

ADV RAMAGAGA: Right. In paragraph 25 you are talking about the defence review, and what it sought to do, and your company saw opportunity in the exercise, an opportunity to also conclude transactions or participate in the conclusion of transactions with the Republic of
20 South Africa. Then, in paragraph 26 you are alluding to the fact which is also well known in the Commission, that you were invited to furnish information, or show interest into the arms acquisition by South Africa. Do you know as to whether this invitation was solicited through any other improper means?

25 MS GUERRIER: I am not aware of any other channels that could have

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asked Thales to participate in that request for proposal.

ADV RAMAGAGA: Now, you mentioned that Thales, in paragraph 27 page 7, you mentioned that Thales was well familiar with the acquisition processes, and because it had been exposed to different contracting
5 models and processes. Now, is there anything that you would like to add to that, or in order to illustrate to the Commission?

MS GUERRIER: Thales has been involved in a lot of international procurement processes. We had delivered a lot of equipment to the French military, but not only the French but to the Indian, Iraq, US, of
10 course in Europe to Italy, Spain, Germany and Saudi Arabia, UAE. I do not know, there are a lot of opportunities that we are quite experienced in large contracts, large procurement contracts.

ADV RAMAGAGA: In paragraph 28 you are dealing with the issues of liability. It is common knowledge that the prime contractors would be
15 held liable for any malperformance or under performance, or defective performance, in relation to the contracts. What measures, or cautionary measures, did you take in order to mitigate exposure to the risk of that type of liability?

MS GUERRIER: Of course, South Africa wanted to have only one
20 contractor [indistinct], but if it is such a large program, it is quite usual to form consortiums, and doing inside the consortiums, we are jointly and [indistinct] labelled to the government, we have special consortium agreements where we divide the liability between the consortium members. So, it was quite usual for Thales to work in that way. So, we
25 do not want to be responsible for the bad works made by one of the

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members of the construction, so we can go after him if we are not satisfied. That is what we did, for example, against the German companies. We were not satisfied. There was of course a delay, which meant that there will be large penalties to pay to the South African
5 Government, and we do not want to have to pay those penalties if we were not responsible for the delays. So, there is always a mechanism where you can go after the other if you think that they are the one who are at fault. But, of course, it does not involve the government of the country, it is between ourselves, it is commercially contracted between
10 ourselves.

ADV RAMAGAGA: Now, will you inform the Commission as to how it came about that you then established this consortium, which came to be known as the German Frigate Consortium, GFC?

MS GUERRIER: Yes. You know, there are various models of
15 acquisition in the world, and most of the time the government would want to have only one person in front of him. It could be that there is a prime contractor, and the prime contractor subcontract to others. Of course Thales does not manufacture ships, so it could have been a way to deal with that, that Thales would provide the ship and subcontract the
20 manufacturing of the ship to others. But, it has been some negotiations to find out what the best model will be, the best way to promote this equipment, because of course one of the main subject matters with that kind of procurement is the price. So, you have to find the best way to minimise the risk, and to have the best price because there is
25 competition. So, if you want to win the contract, you have to try to find

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the best solution that you can have the best price, the price that meets the government requirements and of course the budgets. Most of the time there is limited budgets in the country, so you try to figure out what the best way will be to meet the expectation of the government, as well
5 as your own risk and liabilities, because you want to be on time, because otherwise you can face penalties or even termination of contract. So, it is weighing the balance and see what is the best solution for the company who are interested in the deal.

ADV RAMAGAGA: And what prime role did you see yourself, or expect
10 yourself to play in this acquisition program?

MS GUERRIER: Thales expertise is in electronics and combat systems. So, it would have been obvious that what we could procure was the combat system. We have been dealing with that kind of system for a long time. We have provided the French Government and other
15 governments with that kind of systems, so it is our part of the job. We are not as good with ships, and it would not have make sense for us to take the responsibility of the ships which could have been manufactured by someone else. So, it became, I think, quickly evident that it would be easier for us to bring an offer where it is for a consortium, where we
20 would have all the military equipment and the other would have the ships.

ADV RAMAGAGA: There is a suggestion that there was a possibility, or opportunity, to pad the pricing when Thales had to prepare its quotations. Now, in paragraph 31 which appears on pages 8 and 9 of
25 your statement, you are actually addressing that perception, or

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allegation. Can you please deal with that?

MS GUERRIER: So, I think that I understood [indistinct] I was not there by the time at the time of that [indistinct], but that negotiation process was pretty transparent. That means that of course the South African authority wanted to have the best equipment for the cheapest price. So, there were a lot of discussions, and of course during those discussions, there were variations in price. The way you have variation in price, usually in that kind of large contract, is that you are looking at what risk and responsibility you are taking on the technical side, because if you are in complete control of the system you are delivering, meaning it is something that you have already done and you know what your supplier is going to do, you have a way to produce a price. If you do not, if you look at other companies that you have never worked with, you are taking a risk. If you are taking a risk, that means that you are going to build into your price a contingency to allow some margin for the risk that you are taking. It is specifically true in that kind of system where you have to make sure that, and it is a very complex system from what I understand, I am not an engineer but I understand it is very difficult, that all those components, you have different components on your system, and at some point they have to talk to each other and work together to provide the service they are supposed to provide. So, that means that if there is something that does not work, the whole system will not work.

ADV RAMAGAGA: Now, there is criticism to the fact that which is stated as a fact, that you company presented a quotation at a certain price, but it later then marked down the price. The suggestion is that

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this was improper, and it must be tainted with an element of corruption. Can you explain that, in particular focusing on paragraph 32 of your statement?

MS GUERRIER: *Ja*. So, I think as I have said, during the negotiations
5 there are a lot of things which are changing. But, first of all, I have never heard that a price would be reduced by way of corruption, usually it is the opposite. But, anyway. I think what allowed the price to be reduced, is that the amount of risk has been reduced, and for example I know that there was various possibilities to various components to
10 integrate. Of course, if part of those components were coming from Thales Group, or another company of the Thales Group, that would reduce your price, because of course Thales has an understanding how its own product works, and knows that he could provide a company for example like ADS who is in South Africa, to help if at any time it is
15 necessary. Or, even if that company knows and already has experience in such system, here we are talking about a very complex system, so when you chose your own products you minimise the risk, and if you minimise the risk, that means that you minimise the price, or you reduce the price substantially.

20 ADV RAMAGAGA: Would you see, bearing in mind the experience that this company had in arms acquisitions, would you see the reduction of price as being something out of the ordinary, or is it something that one can see it does happen from time to time in transactions of that nature?

MS GUERRIER: You know, I have never seen a discussion where you
25 do not have to reduce the price. It is always of course a lot of pressure

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from government to have the price reduced, because they are bound by their budgets, and if they do not abide by their budget they would be in trouble. And they do not always tell the contractor what their real budget is, but they will always tell you to please reduce your price. I have heard that from customers everywhere in the world.

ADV RAMAGAGA: Right. Thank you. Now, in paragraphs 33, 34 and 35 of your statement, you are just dealing with the logistics that you would follow, the acquisition process, the conclusion of the agreement, delivery. Now, it is correct that in the agreements that were concluded, there were also provisions for the offset obligations. Is that correct?

MS GUERRIER: Yes. That is correct.

ADV RAMAGAGA: In paragraph 36, 37 and 38 you are alluding to this fact, and also you have attached a document marked GC1, which appears on page 13 of your statement. Do you see that document?

MS GUERRIER: Yes, I do.

ADV RAMAGAGA: Will you please inform the Commission as to what the purpose of this letter was?

MS GUERRIER: This is a letter from the Department of Trade and Industry, which confirms that Thales is informing Armscor that Thales has performed its obligation, NIP obligation arising from the supply of the Corvette Combat Suites.

ADV RAMAGAGA: Right. I notice that this letter is dated the 15th of May 2009. At that time, were you already in the office that would ordinarily received this type of communication, or not?

MS GUERRIER: I am sorry, I did not understand.

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ADV RAMAGAGA: Okay. Reading from your statement, you indicated the position that you are currently occupying, you occupied in 2003, and you have been continuously engaged in that position.

MS GUERRIER: Yes.

5 ADV RAMAGAGA: Now, bearing that in mind, are you able to say as to whether this letter from the DTI, page 13, was received by your office, or is it a document that came to you through just ordinary corporate practice?

MS GUERRIER: This document came to me through our, we do have a
10 [indistinct] which business is to deal with offset, because offset obligation is something that we are familiar with, that we have been taking in many countries. So, that means that offset obligations were performed through that subsidiary, and the CEO of the subsidiary just gave me that letter.

15 ADV RAMAGAGA: Okay. Thank you. Now, I would like to turn your attention to page 14 of the bundle. On that page is a letter dated 23rd of June 2009, written by Armscor. Can you just record as to what this letter is?

MS GUERRIER: This letter is a letter from Armscor to TNF. I just have
20 to mention, I think I stated that in my affidavit as well, that TNF which was previously Thales Naval Force, is no longer a part of the Thales Group, it is now part of DCNS, which is another French company where Thales owns 33% shares. So, TNF is receiving that letter from Armscor, which confirms that it has successfully completed the TNF DIP NIP
25 commitment, which [indistinct] supplier of the four Frigate Combat

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Suites to Armscor, and that the guarantee are now automatically expired.

ADV RAMAGAGA: Right. Now, just in summary, these letters served to show that Thales had discharged its responsibilities in relation to the
5 DIPs and the NIPs. Now, are you able to give this Commission information with regard to compliance and level of compliance, that is just to indicate as to whether there were instances where there were short performance, and what was done in order to make up for that.

MS GUERRIER: Yes. I have a little bit more of detail. So, the total
10 amount of the commitment that Thales had, was for a \$652 million, and we managed for our NIP investment to perform \$191 million and our NIP sales \$461 million, and 60% of export sales.

ADV RAMAGAGA: Chairperson and Commissioner Musi, this information is not contained in the bundle that you have, because the
15 challenges that the witness has, or the company has, relates to the disclosure of companies with which they actually participated in order to discharge their obligations. We are informed they need to get consent from the parties, or the companies that participated. However, with regard to the figures that the witness is now giving, the arrangement will
20 be made for those figures to be actually put on paper and delivered to the Commission. If that suffices, I will then beg leave to allow the witness then to continue to give these figures to the Commission. Should I proceed, Chair? Thank you. Then you may proceed.

MS GUERRIER: Okay, just as a summary, I can say that we performed
25 110% of our NIP obligations, that means that we exceeded the

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obligation that we had with the [indistinct] business and we do have extra credits. We focused on small medium amount enterprises. More than 80 companies benefitted from Thales support, through credit lines. We [indistinct] an annual turnover around \$300 million, and which
5 represents more than 65% of exports. Jobs, I think we can say we created more than 3 400 jobs directly, and indirectly around 6 800 jobs. So, maybe I can give you some example of what the company [indistinct].

ADV RAMAGAGA: Yes. Please go ahead and give the examples.

10 MS GUERRIER: So, for example we acquired 20% equity in a company which is manufacturing solar panels. This company is having a turnover of \$120 million, and has 99% exports. It employed 219 persons. There is another company which is doing products like silicon metal and silicon fume. Thales helped them with a loan to finance a furnace of
15 [indistinct], and their turnover is \$30 million and 90% to exports. The people, the employees are 337 persons. Another company which is dealing with medical waste. So, we up front grant to that company and helped them to continue their business [indistinct]... [intervene].

ADV RAMAGAGA: Just before you proceed further, you mentioned that
20 there is this company where you did this, and this and that, and it has already been indicated to the Commissioner that the names of the companies cannot be disclosed, because of the fact that there has not been consent obtained from the respective companies, or the affected companies. With that in mind, would you be able to produce
25 documentary evidence, for the attention of the Commissioners, so that

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they can be able to discharge their mandate properly? And this may be a difficult question to answer on your own, without getting instructions or advise from your legal adviser, but if you are able to respond immediately please do so. If not, please indicate.

5 MS GUERRIER: Yes, I think I will get the Commissioner the information they need to have a complete understanding of what we did as an offset obligation.

ADV RAMAGAGA: Thank you, then. Can we then proceed in the light of the undertaking by the witness? Thank you, Chair.

10 MS GUERRIER: Now, still on the offset arrangements, it is actually common knowledge to the Commission that in terms of the agreements, generally, there would also be those six monthly review meetings that would be held in order to monitor progress and review ways of making sure that the responsibilities that the respective companies have
15 discharged them, and discharged them timeously. Do you know as to whether your company participated in those meetings, and if it did, whether there was full attendance and participation, or not?

MS GUERRIER: From what I have been told, Thales participated in all those meetings, and I can show you some of the minutes of those
20 meetings where you might see that there were about 18 meetings in total. I gave you the 17th meeting's minutes, the 19th was only a draft because we moved office by the end of the year, and the last signed minutes of meeting appeared to have been lost. But, the previous one is there for you to look at. So, I understand that we had attended all
25 those meetings.

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ADV RAMAGAGA: Right. Thank you. Now, when you were dealing with your statement right at the beginning, in particular in paragraph 5, when you were dealing with paragraph 5, amongst others you stated that from 2003 you got involved in the investigations in South Africa, the
5 investigations pertaining to the arms procurement.

MS GUERRIER: Yes, I did.

ADV RAMAGAGA: Now, can you please indicate to the Commission as to how you participated, as to whether there were any meetings that were held, if so, with whom they were held and what happened? One at
10 a time.

MS GUERRIER: So, I think there has been a lot of meetings, and I cannot pretend that I attended every meeting. But, the first meeting I personally attended with South African authorities was in September 2003, which I understand was a follow-on on the previous meeting
15 which took place during the summer of 2003 with the Director of the National Prosecution Authority in South Africa, Mr Bulelani Ngcuka. So, I was not at the first meeting, but I was at the second meeting where Mr Bulelani Ngcuka wanted to meet with Mr [indistinct], who has been accused of many things in South Africa.

20 ADV RAMAGAGA: Now, this meeting that you are talking about that you said was held in September, between Mr Ngcuka and yourself and the other, is it the CEO?

MS GUERRIER: No. It was Mr Thetard who had been the CEO of one of the Thales companies in South Africa.

25 ADV RAMAGAGA: Yes. Where was that meeting held?

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MS GUERRIER: That meeting was held in Paris, at his hotel.

ADV RAMAGAGA: What, just give us briefly the purpose of the meeting and the outcome of that meeting.

MS GUERRIER: The purpose of that meeting was that the prosecution
5 wanted to have to get Thales' cooperation in the current investigation in
South Africa. During the first meeting, I did not attend that, which I was
informed by Mr Perrier who was the attendee from Thales. I understood
that Mr Perrier had agreed that Thales would cooperate with the
investigation, and the request from Mr Ngcuka was to meet with Mr
10 Thetach.

ADV RAMAGAGA: Yes, and what was addressed at this meeting?

MS GUERRIER: So, the meeting, Mr Ngcuka wanted to have
confirmation of certain facts which allegedly occurred in South Africa in
1999 or 2000, I do not recall exactly the dates. But, so he wanted to
15 interview [indistinct] about what happened in those meetings, and Mr
Thetard is not someone very easy to deal with, and I do not know
exactly what happened in the impression they got of each other. But, Mr
Thetard got very angry very soon, and Mr Ngcuka as well. So, the
meeting did not last that long, because it appeared very quickly first of
20 all that Mr Thetard would not want to go to South Africa, because he had
heard about a warrant of arrest against him. So, he will not go to South
Africa, and he was not satisfied with the answer he received from Mr
Ngcuka. So, I think the meeting did not last more than 45 minutes, an
hour maximum.

25 ADV RAMAGAGA: Is there any agreement that was reached, or how

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was the meeting closed then?

MS GUERRIER: The meeting was closed and Mr Ngcuka said he was not happy, Mr Thetard said he was not happy. So, there was no conclusion, nothing came out of that meeting.

5 ADV RAMAGAGA: Are there any documents that were drawn out of that meeting, or were there nothing that was drawn out?

MS GUERRIER: No nothing was drawn out.

ADV RAMAGAGA: Now, other than that meeting, relating to the investigation in South Africa, is there any other meeting that you
10 attended?

MS GUERRIER: I attended another meeting in April 2004 at the residence of the Ministry of Justice, Mr Maduna. I think it was beginning of April 2004.

ADV RAMAGAGA: Around April 2004?

15 MS GUERRIER: Yes, it was beginning of April 2004.

ADV RAMAGAGA: Now, can you tell the Commission as to who attended that meeting, how this meeting was arranged?

MS GUERRIER: I do not know exactly how that meeting was arranged, but it seemed that for some time there has been some understanding
20 that there would be a meeting. I think that we had some lawyers involved and through the channel the meeting was arranged. So, I travelled here especially here from France to attend the meeting. The idea was we wanted to change our view as to what kind of cooperation and what kind of agreement we could get, Thales could get, and the
25 South African authority could get. So, the meeting was at the residence

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of Mr Maduna, because I think he has been in an accident, so he was not at his office. When we came in, we just said hello to someone who was leaving the house, and I was told later it was a special advisor to the president, but I cannot tell you... [intervene].

5 **ADV RAMAGAGA**: A special adviser to the president, which president?

MS GUERRIER: South African president. I could not confirm really exactly who she was, but I think that she was someone important. So, I was with Mr Monyot, who was the CEO of the local company here in South Africa, Thales [indistinct]. I was with my attorney, as well as Mr
10 Casey Naidu, and Mr [indistinct].

ADV RAMAGAGA: So, you say when you arrived.

MS GUERRIER: Mr Ngcuka was present.

ADV RAMAGAGA: When you arrived at the minister's residence, you see this person, the special advisor, or whom you later came to know as
15 the special advisor of the president, was leaving the residence of the minister.

MS GUERRIER: Yes.

ADV RAMAGAGA: Whom did you find at the minister's home?

MS GUERRIER: At the minister's home there was Mr Ngcuka, and I do
20 not remember if there was anyone else when we went to his home office.

ADV RAMAGAGA: What was the purpose of this meeting, of April 2004 at Minister Maduna's place?

MS GUERRIER: So, at the time Thint Pty was charged together with Mr
25 Shabir Shaik and all their companies, with I think corruption. We

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wanted to get the who is all of the charge against that company, as well as a commitment that no officer of the company would be prosecuted. Since we had understood that the National Prosecuting Authority wanted to have cooperation, well, ready to offer cooperation in
5 exchange withdraw all the charges.

ADV RAMAGAGA: How did this meeting go?

MS GUERRIER: We understood from Mr Ngcuka, saying that he would be ready to drop the charge, because he was not looking for prosecuting Thint. But, he wanted to have some confirmation that Mr Thetard was
10 the author of the so-called encrypted fax.

ADV RAMAGAGA: Right. I note that you describe it as a so-called encrypted fax. Then, did you manage to reach an agreement, or what is the position?

MS GUERRIER: Yes, we agreed that we would go back and speak with
15 Alan Thetard, who was at that time working in France, and try to get him to confirm that he was the author of that so-called encrypted fax.

ADV RAMAGAGA: Now, this document that you describe as the so-called encrypted fax, did you manage to see that document at the residence of Mr Maduna, or ultimately?

MS GUERRIER: So, we say that we would agree to talk to Mr Thetard, but before we could talk to him, it would be necessary to see the document, because so far the only thing that we had seen was a printed document in English. So, we wanted to have the actual document and make sure that it existed, first, and what it was. So, it was arranged with
20 Mr Ngcuka that we would go thereafter and visit Mr McCarthy, I think it
25

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was McCarthy, at his office and he would show us the encrypted fax, so-called encrypted fax. So, the day after we went and visit Mr McCarthy, and I was with my attorney, and we were shown the document and it was under a plastic envelope. I recognised Mr Thetard's handwriting,
5 because I knew Mr Thetard's handwriting from former dealings with Mr Thetard.

ADV RAMAGAGA: How did this document look?

MS GUERRIER: It look as it had been crumpled, so it was one piece of paper, an A4 piece of paper. It was handwritten, there were a lot of
10 scripts and scribbles around it, so it was in French of course. It was clear it had been crumbled, but someone has taken care of putting it a little bit better than it was probably at the beginning. So, it was not really understandable I would say.

ADV RAMAGAGA: I would like to draw your attention to page 58 of the
15 bundle. Now, that document that you see on page 58 is a copy. We have not had opportunity to see the original, but are you able to say whether you do recognise this document, or not?

MS GUERRIER: Yes, I recognise the document. The only difference is that it is a copy. I think the original was written in blue, so you cannot
20 see the blue here, and it was only one page [indistinct] written on the face and [indistinct].

ADV RAMAGAGA: So, you say the document that you saw that looks like this one, was actually written on the page and overleaf, it was not two separate pages.

25 MS GUERRIER: Yes, exactly.

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ADV RAMAGAGA: Right. In your introduction you indicated that you are French and you live in France. This document we are told is written in French. Do you confirm that it is, what appears here, is actually French?

5 MS GUERRIER: Yes, it is written in French.

ADV RAMAGAGA: Now, there have been interpretations of this document that had been placed in public by the media and other sources. Turning to page 60 of the same bundle, there is a typed document which also appears to be written in French, as you say what
10 we see on page 58 and 59 is French.

MS GUERRIER: Yes, I saw that and it typed in French.

ADV RAMAGAGA: On page 61 you see a document, that at the bottom, it is written:

“Translated from a fax copy by...”

15 Whomsoever. But clearly, this seems to be a translation.

MS GUERRIER: Yes, I see that, but I am not sure that it is correct mention that it is [indistinct] from a fax copy.

ADV RAMAGAGA: Now, you say you are not sure whether it is a translation to a fax copy.

20 MS GUERRIER: What I mean is that in my view, the handwritten note, memo or letter, whatever, is not a fax. It is just an handwritten note.

ADV RAMAGAGA: Right. In the original that you say you saw, which was written in blue and put in a transparent plastic bag, the one that you say looked crumbled, when you looked that that document then, was
25 there any indication on that document that it was a faxed document?

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MS GUERRIER: No, in my view it was clear, it was not something which could be sent through a fax machine and received by the recipient.

ADV RAMAGAGA: Now, turning to the contents of this document, which
5 is on page 58, now it becomes difficult, because you say that the translation, this translation that you see in 61, refers to a fax document, and you do not see this one, page 58, as a faxed document. With that in mind, I will nevertheless ask you the question that I want to ask you, and I will tell you why, or the Commission why I am asking this question.
10 It is because, Chairperson, before the Commission, there is a statement that is now also placed on the website about the encrypted fax and about the interpretation of that document, that is described as the encrypted fax. That is in the statement of Dr Young, and even in the evidence that was presented by Dr Young, there was also the
15 introduction of the encrypted fax. While it is so that the Commissioners did get in and make a ruling about talking further with the merits of that, the fact of the matter is that in the statement there is a full interpretation by the author of the statement, which is in the public domain, and for that reason, we would like to proceed then to lead this evidence. Thank
20 you. Thank you, Chair.

Now, page 58, assuming that page 61 is the interpretation of page 58, the English interpretation of page 58, would you concur... Maybe before I ask that question, you have alluded to the fact that you are French, you are presenting your evidence in English, you have written your
25 statement in English, and thus far you have illustrated an understanding

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of English. Now, are you in the position to assist this Commission, with the interpretation of this document that appears on page 58?

MS GUERRIER: Yes. Even if my English is not as good, that is true, I can say that. It is rather a simple document, so I can help the
5 Commission with the translation.

ADV RAMAGAGA: Right. Thank you. Now, then we can go ahead to what I had initially wanted you to do, to firstly remark as to whether what appears on page 61 is a fair and accurate reflection of what appears on page 58.

10 MS GUERRIER: Not completely. I think it is, you know, it is not a bad translation, but there are some words I would not have translated in the same way. It is not something... Basically it is not... It is accurate in most of the parts, but there are some parts I would have translated differently.

15 ADV RAMAGAGA: Can you highlight to the Commission as to what it is that you see as an inaccurate translation of this document, that appears on page 58?

MS GUERRIER: So, for example the third line, I think that there is a translation, and the translated document say”

20 *“During a private interview...”*

I do not think that I would have called that a private interview. The word interview is not really accurate, it is just a private meeting I would think that you would say. I mean, it is of course interpretation is different, different people, but interview seems to be there were
25 questions and answers and things like that.

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ADV RAMAGAGA: Okay. Thank you. The word "private" does appear on the French version, appearing on [indistinct].

MS GUERRIER: Yes, but I think that in French it means that it was not a public meeting.

5 ADV RAMAGAGA: Okay. Thank you. Then, you can go ahead about other inaccuracies, if any.

MS GUERRIER: I am not sure that I would have translated the word which are on the second paragraph third line, in an [indistinct] form, because in French it is very bit different. It is not [indistinct], but more or
10 less there is a formal word. It is difficult to explain, but from me in English it does not have the same meaning that it is in French. I do not know what the best would be for that translation, but I do not think that [indistinct] is the right one.

ADV RAMAGAGA: Any other? [Indistinct]

15 MS GUERRIER: Yes. [Indistinct] inaccurate, and mostly because it appears that at the time this document was possibly written, there was no investigation. So, I think I would have translated the word *Enquêtes* as enquiries, more than investigations. It is under the first bullet point [indistinct].

20 ADV RAMAGAGA: Right. Anything else?

MS GUERRIER: From the top of my head I cannot tell you, but I know that Mr Thetard wrote that and will take exception to that translation.

ADV RAMAGAGA: You say the author of the document takes exception to the translation?

25 MS GUERRIER: Yes.

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ADV RAMAGAGA: Now, his objection to the interpretation of the document, as far as you know, was it ever communicated to the South African authorities?

MS GUERRIER: Yes, it was. Mr Thetard files another affidavit where
5 he gave his exception as well as his explanation of the circumstances of this document.

ADV RAMAGAGA: Now, there are three documents in this bundle which are described as the affidavits of Mr Thetard. I would like to take you to the affidavits. Before you deal with the contents, the affidavits are
10 lengthy. One is very short, the second one is slightly longer and the other one is even longer. I will not invite you to burden the record by reading into the record the full contents of the affidavit. What I would like to do, the affidavits appear on pages... It is three affidavits, the first one appears on page 65, yes, 65 of the bundle, the second one 66 to
15 70, and the final one 71 to 88, Commissioners. Now, will you advise the Commissioners about the essence of the affidavit that appears on page 65? May I mention that that document is written in English, and it is just a one page document? What is the essence of this affidavit?

MS GUERRIER: This affidavit is what was requested from Mr Thetard
20 after we had the meeting with Mr Ngcuka at Mr Madula's office. It was just a confirmation by Mr Thetard that he had written the document, it is his handwriting.

ADV RAMAGAGA: In his own writing. Now, in return for writing that affidavit, is there anything that was supposed to be traded off, or not?

25 MS GUERRIER: Yes. In providing this affidavit to the NPA, Thales

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Thint would be withdrawn, the charge against Thint would be withdrawn at the Shabir Shaik's trial.

ADV RAMAGAGA: Thank you. Now, I would like to take you to the second affidavit. Just before we leave that affidavit, may I just place it
5 on record that the affidavit that we were dealing with, it is dated the 10th day of April 2004. Now, the next one is dated the 12th day of May 2004. You will notice on page 69 there is the 10th day of May, and then the Notaries' date stamp is the 12th, and we shall thus go by that date. This document, what is the essence of this affidavit, and if necessary, please
10 just outline as to circumstances that led to the second affidavit being drawn.

MS GUERRIER: I think the second affidavit resulted from discussion between the Prosecution Authority, Mr Naidu, where they were satisfied with the first affidavit, but in some way they wanted to have more than
15 just the authorship of the document. They wanted to have an understanding of what it meant. So, we went back to France and talked to Mr Thetard, and tried to see what he could tell us about that famous document, what was the document and what he intended to say in that document, because as I said, it was not that clear, the meaning of the
20 document. So, Mr Thetard made that affidavit where he explains what the circumstances were of this document that he [indistinct] having written, but never sent and just put in the waste paper bin. So, he explained that there was never a meeting where a bribe was ever discussed with Mr Shaik or Mr Zuma. He just recalled a conversation
25 [indistinct] Mr Shaik, that Mr Shaik was just always asking for additional

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money, and playing a bigger role than he had [indistinct], that he knew very important people [indistinct].

ADV RAMAGAGA: Okay. I would like to come in here, maybe just to focus your attention to. I have already said we will not be dealing with
5 the entire contents of the affidavit, but the essence. Now, in paragraph 4 of this affidavit at page 66, in line with your evidence, did [indistinct] he does not agree with the interpretation recorded to ANNEXURE C by the state, and the bases is that the state seeks to draw inferences from ANNEXURE X, which are not justified. Then, he goes on to table the
10 contents of the interpretation, and then in paragraph 6, he then responds to the aforesaid interpretation. Do you see that paragraph 6, in page 67?

MS GUERRIER: Yes, I see that.

ADV RAMAGAGA: [Indistinct] document. Do you see that?

15 MS GUERRIER: Yes, I see that.

ADV RAMAGAGA: [Indistinct] can you just summarise to the Commission as to what his responses are to the allegations.

MS GUERRIER: *Ja*. He says that Mr Shaik never requested from him or Thales the payment of a bribe from Mr Zuma, and that at no time
20 during that meeting he had with Mr Zuma and Mr Shaik there was a discussion of a bribe. The document, the so-called encrypted fax, has never been minutes of meetings, or recalled on minutes of meetings. Also that he never instructed that document to be sent or faxed to anyone, or typed.

25 ADV RAMAGAGA: Right. Thank you. Then, I would like to take you to

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the final affidavit, being the last one that we have in our possession from Mr Thetard. Now, what was the purpose of this affidavit which appears on pages 71 to 89?

MS GUERRIER: Yes. The purpose of that affidavit was to try to obtain the lift of the warrant of arrest against Mr Thetard, and I think it was 2009, or something. Yes, it was signed in March 2009.

ADV RAMAGAGA: Yes, and it is correct that in terms of this affidavit, Mr Thetard goes to deal with the conduct of the National Prosecuting Authority in relation to him, as regards the towing and throwing of issuance and withdrawals of the warrants of arrest that were issued, and then later withdrawn and so forth. That the Commissioners can read, but is that actually the essence that is capture in this affidavit?

MS GUERRIER: Yes. Mr Thetard said that he has been treated badly over the year by the prosecution team authorities, and he wanted to say that he was accused of things that he never did, and he was in some ways assaulted by the Prosecutor Authority.

ADV RAMAGAGA: Right. Just finalising on these affidavits, unfortunately I have to do this to you, take you back to page 68. This has just been brought to my attention by my teammates here. In particular paragraph 5, I think it is subparagraph 6.5 [indistinct].

MS GUERRIER: Yes.

ADV RAMAGAGA: In that paragraph, there is an explanation relating to the amounts of R500 000, and the explanation by the author of that document that is said to be the encrypted fax.

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MS GUERRIER: So, Mr Thetard explained this R500 000 was not related to the payment of any bribe to anyone. It is just [indistinct] request for fun by Mr Shaik.

ADV RAMAGAGA: Now, in your evidence, I think it is at paragraph 11,
5 as you were talking about the business of Thales, amongst others you spoke about its business being to deal with the encrypted connections and so forth. Are you able to enlighten us about the encryption, as to when you talk about an encrypted fax, what you mean and what is the process leading to actually producing an encrypted fax?

10 MS GUERRIER: Yes. I think that the categorisation of encrypted fax is completely wrong, in the way that an encrypted fax [indistinct] going through a fax machine which is encrypted. So, I am not a technician and I will not go into the detail, but in fact, there is a kind of machine which has protection against hacking from third parties. So, it means
15 that you have a fax machine which looks like any other fax machine, where you put your fax on and the only thing is it is sending the document you are sending through, the line of communication which is encrypted. That means that there would be an algorithm, which will prevent third parties to that communication, to enter into the
20 communication. Of course you have to have another encrypted fax machine at the other end of the communications. That means that if you want to make sure that no competitor would have access to the document that you are sending through that line of communication, the normal network, it will not be readable by anyone but the recipient. But,
25 it is not the document itself which is encrypted, it is the communication

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line which is encrypted by an algorithm.

ADV RAMAGAGA: We are just trying to understand the encrypted fax.

Is it possible to regenerate and produce the data or the information that has been sent by that type of fax?

5 MS GUERRIER: No. What is possible to do, is to check into the fax machine itself, is the sending of the document. That means that you will have a number, the phone number or fax number of the recipient as well as the time it has been sent and the number of pages which has been sent.

10 ADV RAMAGAGA: But not the data.

MS GUERRIER: Not the content of the document.

ADV RAMAGAGA: Now, you stated while you were presenting your evidence, that you would be involved in investigations that were conducted by your company, in respect of any impropriety. Now, are
15 you able to tell this Commission as to whether the document that is described as the encrypted fax, as to whether there is any indication that that document ever reached any of your offices, be it in Mauritius, be it in France or anywhere else?

MS GUERRIER: No. We track the alleged encrypted fax on the other
20 side, to make sure to see whether a document was received from South Africa on that particular day or time, because as you know, the document is not dated. So, we try to work [indistinct] fax which has been received in France, same thing in Mauritius and there was no record of any document coming from South Africa during that period of
25 time.

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ADV RAMAGAGA: When you were with Adv McCarthy, or at the NPE when they showed you the document that they showed you, did they show you anything that shows that that document had in fact been faxed from one point to the other?

5 MS GUERRIER: No, they never showed me anything [indistinct] record the sending of the document.

ADV RAMAGAGA: Is there anything that you want to say in this respect, because I want to turn further on to deal with the criticism that there is.

10 MS GUERRIER: No, I am fine.

ADV RAMAGAGA: Right. In your last portion of your statement, I think you are dealing with issues pertaining to allegations. Now, broadly, the criticism that Thales seems to have attracted from [indistinct], Dr Young and other critics that have added their voices to the criticism of
15 respective suppliers, broadly that is divided into three topics that is the acquisition of the shareholding in ADS, the unlawful competition, as well as corruption. Broadly they have indicated as to why the [indistinct] of corruption and so forth. Now, you are generally also conversant with the criticism that has been levelled, which is out there in the open, be it
20 through the record of the commission, or the books that have been written and so forth, and even the submission of Paul Howden and [indistinct], have been brought to your attention, with specific reference to what entails Thales. Now, can we first then go ahead to deal with the acquisition of holding in ADS? What is your response to the criticism,
25 because the criticism is that of how could you do this, how could you

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engage with them and dead smacks of some improper conduct, that it seems to have been created in order to get access to what had already been set aside for ADS?

MS GUERRIER: I really think it does not make any sense. It has been

5 Thales' strategy since the privatisation of the company to appear local in every country where it is doing business, meaning that we want to be in the country where we operate, to consider that Thales is a domestic company, not an international company who is going to do a deal and then goes elsewhere. We want to have a footprint in countries. So, how
10 we could achieve that is by buying out companies who have a local standing and local experience with the main customers. So, we acquired companies like [indistinct] in the UK, we acquired the company called [indistinct] in 2000. We acquired companies in US, we for example have a joint venture with Retheon in the US. We do have a
15 joint venture in Korea with Samsung. We do have a lot of companies like that, so acquiring a company like ADS who had [indistinct] and be in line of the strategy as decided by the chairman.

ADV RAMAGAGA: So, in actual fact, what you are alluding to is that your acquisition was not something out of the ordinary. It is actually the
20 strategy that had been adopted by the country for the purpose of commercial transactions, even with other countries.

MS GUERRIER: Exactly.

ADV RAMAGAGA: Still, bearing in mind that this is a strategy that had been adopted by the country, and taking your position into consideration
25 as being in legal for this company in particular, is there anything that has

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come to your attention that seemed, or that suggest, or that would cause you to suspect that this acquisition of shareholding was visited by some impropriety from the part of Thales?

MS GUERRIER: No, I never heard that anything improper ever
5 occurred in the acquisition of ADS.

ADV RAMAGAGA: Now, the next topic that I would like to invite you to deal with, part of the allegations or criticisms, relates to the unlawful competition. This manifests itself in the form of the evidence that has been presented by amongst others Dr Young, and the allegations that
10 are found in the submissions that have been presented to the Commission by the witnesses that have reservations about the acquisition process itself. Now, the unlawful competition, it is said that for instance [indistinct] allowed to submit the bids out of time, and there were some manipulation. As Dr Young states it in his statement, page
15 100 paragraph 408, that there was actually even some manipulation. One is mindful of the fact that the evaluation would have been done by the Department of Defence, perhaps assisted by Armscor. Did Thales have, according to your knowledge, have any hand in developing the acquisition processes?

20 MS GUERRIER: No. Thales did not have any way to handle the competition process, and nor did it have any confidential information that would have been improper. I think that there has been litigation by some competitor who was unhappy with the outcome of the competition, and this litigation has been settled without Thales being asked to
25 contribute to the settlement agreement.

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ADV RAMAGAGA: Now, let us proceed to deal with... Just before that, may I just take a moment and check with the notes, Chair? Thank you. May I proceed? Thank you. Page 43 of the paginated bundle, paragraphs 420 and 421, it is about the issue relating to the Taiwanese.

5 While it has nothing to do with what we are dealing with, but for the purpose of the credibility of the players in the acquisition, it would help if you are able to enlighten the Commission about this, just to say as to... Without getting into the merits, the Commission is not interested in that, because it would not...

10 MS GUERRIER: Yes. You know, I am not going to go into the detail with the dispute with Taiwan. But, anyway, what I must say, the only thing is that it was a commercial dispute for breach of contract, which went to arbitration between Thales and the Taiwanese authorities. With respect to a criminal charge, there had never been any criminal charge
15 against Thales, or any of its officers or employees. In fact, the reality is that Thales filed criminal complaints against certain individuals, and that was the start of the story. So, Thales was a victim, not the offender. All charges were dismissed against Thales, there has never been criminal
prosecution on this matter.

20 ADV RAMAGAGA: Thank you. So, what you are saying is that this actually was initiated by a criminal complaint by Thales, against the Taiwanese company? Then, shall we then proceed to the next heading, that is corruption. Now, the bases of claiming that there was corruption generally, amongst others, there is mention of the meetings between
25 Thales and the higher ranking persons, such as the politicians, cabinet

ministers and so forth. What is your response thereto?

MS GUERRIER: I have never heard anyone telling me that there has been corruption in this matter. Of course, when you are dealing with procurement contracts of such magnitude, dealing with military, there are meetings with officials, government officials as well as high ranking
5 officials of the company. You know, it is not a usual business for a government to acquire companies, so they want to meet the CEO's, managing directors, to make sure that they could trust them. So, it is really a normal way to deal with that kind of military business, that you
10 will meet with government officials, high ranking officers of the Navy, or the procurement agency. It is just something which is our day to day life in that business.

ADV RAMAGAGA: Right. According to your knowledge, are there ways... Or rather, according to your knowledge, would you say whether
15 Thales would actively participate in encouraging impropriety in order to conclude or to procure big business transactions?

MS GUERRIER: No, because we had put in place a compliance program to make sure that there is no impropriety regarding the procurement business. And of course, it is illegal, and we do not want
20 to be involved in unlawful activities, and as you know, we are doing business all over the world, we cannot be at risk by people facing charges against the company itself. So, we have put a lot of effort to make sure that there are proper treatment of any dealings, making sure that every employee knows that that will not be acceptable behaviour to
25 enter into unlawful activities. So, it is something that is very important,

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and something that the chairman addresses regularly to the employees as well as to other stakeholders, to make sure that we have a standard of ethics which is renown in the business we are dealing with.

ADV RAMAGAGA: According to your knowledge, is there any person
5 that has been charged, and or convicted for matters arising from the arms acquisition of South Africa, which was commenced in 1998? Or not?

MS GUERRIER: No. No one has ever been charged [indistinct].

ADV RAMAGAGA: Right. In conclusion, is there anything that you
10 would like to say to the commission, that you believe might have been left out in your statement and can still be of assistance to the Commission?

MS GUERRIER: No. I thank the Commission for listening to me. I am
15 sure that my French accent is not always easy to understand, so I thank you for your time.

ADV RAMAGAGA: Just one more thing. One of the considerations that
should be made by the Commission, is the recommendation for the cancellation of these contracts that were concluded in 1999, and in your case your contract came into effect or operation from April 2000. Is
20 there any comment that you would like to make about that, as to whether that could be [indistinct] flow from that?

MS GUERRIER: First of all I think that we met all the obligations we
had under that contract, and we delivered a Combat Suite which are state of the art, and the country should be proud of it. I think that the
25 consequence of such [indistinct] never heard of, and I do not know if

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that means that we have to re-buy the ships, I do not know what we will do with that. But, it is not something that I really consider as something feasible.

ADV RAMAGAGA: Right. To Commissioner Musi, as I have indicated
5 during the presentation of my evidence, there is a substantial amount of information that will be found in the documents that are attached. However, we have made sure that the essence of the information is carried through the public hearings, otherwise we would not finish today. Thank you, that concludes the evidence of Thales.

10 CHAIRPERSON: Besides Dr Young, is there any other person who wants to cross-examine the witness? Thank you. Dr Young, do you have any intentions of cross-examining the witness?

DR YOUNG: [Indistinct].

CHAIRPERSON: More or less how long do you think your cross-
15 examination will take?

DR YOUNG: Okay. Madam, let us adjourn for 15 minutes, to allow you to do what you need to do, and then we will continue the cross-examination. We will adjourn.

(COMMISSION ADJOURNS)

20 **(COMMISSION RESUMES)**

CHAIRPERSON: Dr Young.

CHRISTINE GUERRIER: (s.u.o.)

DR YOUNG: Thank you, Commissioner. I probably have to state at the outset that I have not done this before, I have only been a witness. So, I
25 am going to do this to the best of my ability. Madam Guerrier, I hope I

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have got the pronunciation reasonable. May I refer you to paragraphs 40, and specifically 41 of your witness statement?

MS GUERRIER: Yes.

DR YOUNG: Well, 40 is the introduction to it, and I will not for the
5 interest of moving forward as quickly as possible. Specifically with regard to paragraph 41, you say here that:

“Most of these allegations fall outside the scope of the terms of reference of the Arms Procurement Commission, require no response in this statement.”

10 May I ask you, of course this is with specific reference to my own evidence, of which I think you are mostly aware. Which of the allegations regarding those referred to in paragraph 40, to which I have referred in my evidence, fall outside of the scope of this Commission?

ADV WILSON: Mr Commissioner, one wants to be light in objecting. Dr
15 Young has indicated that he has not experience in this and he is not a lawyer, but I think this pushes it too far for the witness, without pointing her to specific instances. I might also say that with those instances to be put, one might be tempted to object a second time, simply because they do fall outside of the scope.

20 CHAIRPERSON: I think I agree, because, Dr Young, you cannot assume that the witness knows exactly what you said, or the allegations that you have made to her. Probably you need to be more specific.

DR YOUNG: Okay. I will have to do that as I come to those individual points. Okay. Turning to page 6 of your witness statement, paragraph
25 23. It is quite a long paragraph, but I presume your statement there that

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there was virtually no other global competitor that could match it, clearly you refer to Thomson-CSF or Thales, that could not match the Combat Suite provided by Thomson. Is that correct?

MS GUERRIER: It is not clear. Could you repeat your question?

5 **DR YOUNG:** Okay. What you have said here about five lines from the bottom of your paragraph 23, that virtually no other global competitor could match it, is it correct to say that no other global competitor could match the Combat system that Thomson or Thales was offering at that stage?

10 **ADV WILSON:** Mr Chair, if I may, I think that the question actually is not related to what was stated. I really do not want to make Dr Young's position difficult. I do understand the predicament, but that would not be fair to ask the question in that way.

CHAIRPERSON: Dr Young, which point are you trying to make, and
15 then maybe if I understand it, I can try and explain it to the witness.

DR YOUNG: Yes, maybe that will be a type of inquisitorial cross-examination. She has made a statement, which is her own statement, that virtually no other global competitor could match it. I just like to know what does that mean?

20 **CHAIRPERSON:** I am sure the witness understood virtually no other competitor can match Thales, as far as the Combat Suites are concerned. What do you mean by that?

MS GUERRIER: What I mean is that because of the ability of ADS combined with all the Thales companies, that we had a very competitive
25 advantage compared to other competitors with that kind of system.

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DR YOUNG: If other global defence companies offering Combat Suites had also teamed with ADS, would that have been a viable competitor?

CHAIRPERSON: Dr Young, we are going to speculate now. If other global companies combined with ADS, which ones are we talking
5 about? Or should we leave the witness to speculate? Should you not try and be specific, so that the witness can understand and be in a position to answer the question.

DR YOUNG: Okay. Well, certainly in the context of this whole acquisition, it was well known that various other companies were also
10 woeing ADS, and here the witness has said that it was the combination of Thales and ADS that made this a competitor that could not be matched. So, be that as it may, if I may just ask the question, if other European Combat system, Naval Combat systems suppliers had been able to make offer, would their offers not have been competitive
15 compared to the Thomson ADS offer?

MS GUERRIER: It is relative speculation. But, anyway, I think that all our competitors, and the only thing that I am saying is that we had a competitive advantage of having ADS within the Thales Group.

DR YOUNG: I do not think your witness statement says that specifically
20 regarding ADS. I think that it has to be that there could have been many other, well a substantial number of other viable competitors. It could not possibly only have been Thales.

MS GUERRIER: I do not really understand your question, but if you want me to say that there are competitors to Thales, of course there are
25 competitors [indistinct] system.

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DR YOUNG: Yes, and if there were proper competitors, they would also have been able to put in a competitive bid, which could at least match, in your own words, the competitive bid put in by Thales and ADS.

MS GUERRIER: I think there were other competitors and they had
5 competitive bids, that are normal. International competition means that there are international competitors.

DR YOUNG: Yes, I think that answers my question adequately. Now, we have just extracted, and the Commissioners kindly made copies of just two of the documents from the evidence bundles, and they are in
10 front of us hopefully, that is RMY67 and RMY70. I just want to get clarification on RMY70 first. My question is... Okay, this is clearly a Thomson CSF international document. Can you identify first of all who the author and recipients are, as well as the date?

MS GUERRIER: Yes. I must admit, I have already seen the document,
15 but years ago, so I am not familiar with it today. So, the author was Mr [indistinct], and he send that to Mr [indistinct], where [indistinct]. Copied in the communication Mr Thetard who was in South Africa, and he copied as well his boss, Mr [indistinct], who was also with Thomson-CSF international.

DR YOUNG: Okay. Clearly, you did not address the date, or maybe I
20 was not concentrating, but it is the 9th of July 1998. My understanding, and I asking you to confirm if it is correct, that both Mr DeBoulediar and Mr Denise is both what we know in South African terms, are directors of Thales international. Is that correct?

MS GUERRIER: No, that is not correct. They are not directors, in the
25

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sense that they are not corporate directors. They are just employees of Thales international. They might have some title, but they are not directors.

DR YOUNG: Okay, but they are very senior employees. Am I right?

5 MS GUERRIER: Yes, they are senior employees.

DR YOUNG: Okay, that is sufficient. There are a couple of questions leading from this. The first one is just for a matter of clarification, seeing that this is on Thomson communication. I just want to get to the right place. I just like you to turn to page 1362, it is about the third page in
10 that document. Okay. The fourth point down, starts with the words "Decision taken previously..." Would you read that out to us?

MS GUERRIER: First, I should mention this, this seems to be a translation of some document in French, so I am not sure if the translation is accurate. But, if you want me to I can read the translation.
15 It says:

"The decision taken previously that ADS the nominated Combat Suite supplier has been cancelled, and as a result the local system Combat Suite supplier has not been nominated."

Okay. If you are representing Thomson-CSF here, which I think from
20 what I understood from the first part of your witness statement, would you confirm that that is a correct position that Thomson came to understand at this particular point in time?

ADV WILSON: Mr Chair, I must object. I think we are asking the witness, who is neither the author nor recipient of the letter, to confirm
25 its contents, where she has already said she is not sure that the English

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translation accords with the French. I think it would be pushing it a little bit too far to ask her to make that confirmation.

CHAIRPERSON: Dr Young, I think the objection is valid.

DR YOUNG: Okay, then I will have to deal with it this way. [Indistinct] I
5 heard attorney Ramagaga communicating and engaging with the
witness regarding English, and I think her English is certainly sufficient
for these purposes. But, I did refer her to at least the page 1359, and
that was the one where I asked the witness to identify the author and
the recipients of that, and that is the original document. So, if I could
10 ask her, as she is clearly fluent in French at least, and her English is
much better than my French, whether she could go to the equivalent
paragraph on that, which is just a two page document. So, on page
1360 also four dashes down, there is the equivalent of that in French,
and confirm whether the French and English versions mean the same
15 thing.

MR WILSON: Mr Chair, just thinking it through, that is an entirely
justified question to ask, but where is it going to, because again, all the
witness can say is that the English is a correct or incorrect translation.
She can take it no further. It is not something that is going to aid the
20 Commission, and it would unduly delay it pursuing this line, unless there
is another point, which escapes me.

CHAIRPERSON: Maybe let us give the witness a chance to respond to
this one, and let us see to where we go from her.

MS GUERRIER: So, it seems to be a correct translation.

25 DR YOUNG: It seems to be correct. So, the English wording is a fair

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representation, and that was the position known to Thomson at that time. Is that a fair summary of that point?

MS GUERRIER: At least it seems to be, what I am reading from this document, that it is something that Mr Shaik said at the meeting.

5 DR YOUNG: Yes, that is correct. Now, are you aware that Mr Shaik had a conflict of interest as regards the business interests of Thomson-CSF?

MS GUERRIER: I am not aware of that.

DR YOUNG: Okay. Would you accept it if I said that, slightly later than
10 this date, it was a conflict of interest that was formally declared, but by this stage he was Chief of Acquisitions and the reason for his conflict of interest involved the fact that his brother, Shabir Shaik, was actually a director of a Thomson subsidiary in South Africa.

CHAIRPERSON: Before you come in. Dr Young, I am not sure where
15 that point is taking us, she said she does not know. Let us get to the next point.

DR YOUNG: Okay. This letter also refers... I do have a reason for these questions.

CHAIRPERSON: Dr Young, you might be having a reason for this
20 question, but the witness says I do not know. So, that is why I am saying to you let us get to the next point.

DR YOUNG: With respect, as far as I was aware that she is representing Thomson here, in all respects, all the other people have retired or left the company, and as far as I know she I representing the
25 company here. So, somebody has to be able to represent the entity in

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respect of these commissions.

CHAIRPERSON: Can you get to the next question, Dr Young?

DR YOUNG: Okay. If we may, and certainly if you want to challenge the English translation, I am going to refer to the English version
5 because I do not want to embarrass myself for trying to read the French words. The first point, number 1 on the first page of the English translation, was 1361. Would you like to read that out to the Commission?

MS GUERRIER: I can read, but I do not know where it goes.

10 *“Mr Shaik was aware of how [indistinct] and spoke about them without any restraint. Most particularly he has spontaneously mentioned the name of [indistinct] to show us that he had a very good idea about our contacts here.”*

DR YOUNG: Yes. Now, I am specifically asking these questions with
15 regard to what you stated in your witness statement. Now, at some stage, I think it is your paragraph 32 on your page 9, would you like to find that?

MS GUERRIER: I do have that.

DR YOUNG: Yes, the last three or four lines of that states that the
20 commercial rationale and consequences of the transaction had been subjected to the most vigorous and transparent process, and were subject to difficult negotiations. Now, my question is that in your own words, this was subject to a transparent process. Could you explain the transparency of the process with reference to these talks held by your
25 company, whom you represent, in London, as well as Mr Shaik with a

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conflict of interest, and with [indistinct] a good idea of your [indistinct].
Could you explain how that falls into the realm of what you describe a
transparent process?

ADV WILSON: Mr Chair, I think I understand what the question might
5 be in due course, it might also be something put in due course, of
course I could not advise him. Dr Young wants to make a
representation. But, as presently constituted that is not a fair question,
it is in fact several questions with value judgments built into them, which
I think would be very difficult for the witness to answer.

10 CHAIRPERSON: Dr Young, do you want to rephrase the question, and
if you can, put these as short questions, which will be easier for the
witness to understand.

DR YOUNG: Okay. The witness certainly came across to me, both in
reading her witness statement and from what I have heard of the oral
15 evidence, that she has been involved in this process for many, many
years, and she makes a statement in her own words, that this was a
most transparent process. Okay, that is the first part, in your own
words. If one takes the normal meaning of that very short sentence that
she has just read out, I am sure anybody would agree that those talks in
20 London and references to people like [indistinct] are not part of the
official acquisition process. Is that a fair question? Are those process,
are they part of the official process, or not?

MS GUERRIER: You know, I did not attend the meeting in London, so I
would not know what was the subject matter of the meeting. The only
25 thing I can read that memo, but I was not present at the meeting, and I

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do not know exactly what was discussed. What I was referring to in paragraph 32 of my witness statement, is the way the [indistinct] proceed, and I think that the transparent process was always respected in a way that we explained the price, and was... I have talked to people
5 who were negotiated the contract, and they told me that it has been a very lengthy and painful process, because every piece of equipment was discuss as to the technical side, as well as the commercial side, as well as the price and risk. So, that is what I meant.

DR YOUNG: Okay. Would you accept that if it is true what is in your
10 own company's document, and you are representing them, it would certainly seem to indicate that there was another process other than the one you have just mentioned, this rigorous negotiation? Well, this seem to be a fair indication that there was actually something else going on as well.

15 MS GUERRIER: No, I disagree with that.

DR YOUNG: On what bases could you? I think the plain words themselves, meetings in London, I am unaware of any part of the acquisition process happening in London, and this Thomson document is clearly about the Corvette Combat Suite as part of the Corvette
20 acquisition.

ADV WILSON: Mr Chair, if I may, you may recall that when a number of documents were introduced into the bundle, there were objections from several parties and I objected at that time. You made a very judicious ruling, which allowed the documents to be permitted, but not waving any
25 party's rights to object on the normal grounds of admissibility. I think

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you may recall at one stage I objected, or not objected, but I noted that the potential then arises for parties to speculate, and to debate amongst themselves in evidence, as to what the documents mean. I think we are finding ourselves in a similar position here, and I am not trying to silence
5 Dr Young. I merely suggest that there would be more appropriate opportunity in due course, should he want to make representations during the closing argument. This witness cannot take it further, and well, maybe it was a good thing that I did not object before she gave that direct evidence herself. She is not the author, she was not at the
10 meetings and she is unable to take it further.

CHAIRPERSON: Dr Young, the point that has been made is that this witness says that I was not at that meeting. Whatever answer that she is going to give us about that meeting, she will be speculating.

DR YOUNG: But, she still represents the company, whose employees
15 were at that meeting. That is why she is here. Otherwise, she is representing the company, who wrote this document.

CHAIRPERSON: Dr Young, my function is to give rulings. Once an objection has been raised, my duty is to give rulings. I do not expect you to argue with my rulings, particularly on a small point, like that one. The witness
20 has said to us that she was not at that meeting.

Any further questions that you want to direct to this witness about that meeting, she will be speculating. I am not quite sure, whether it will help this Commission, if we are going to allow witnesses to speculate. But, then, if you want to insist on that point, the witness can start speculating.

25 But, I am not quite sure, if that is going to have any value to, to the

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proceedings of this Commission. Can I find out from the witness, if she is prepared to speculate?

MS GUERRIER: No, Mr Chair. I cannot speculate.

DR YOUNG: Okay. On the same point. We are using a document, which
5 you have adduced into evidence. It is at your page 39, of the, attached to your own witness statement. Now, clearly, okay, this is an extract out of my own, my own witness statement. But, you have introduced this into your own evidence. So, would it be fair to say that it has relevance to your evidence?

ADV RAMAGAGA: Mr Chair, I will like to beg leave, just to address this
10 issue, especially, with regard to the statement and the bundle, or annexures to the statement. The purpose, I think, in order to can understand better, as to which way to go, in terms of cross-examination or so, it is important that the purpose, for which the documents are attached, is placed on record.

Firstly, this witness will not be in the position and is not in the position and
15 is not even pretending to be in a position, to adopt the evidence of Dr Young, or any other witnesses, whose evidence or statements are attached hereto. She will not do that and she is not doing that. The sole purpose, for which these documents are attached, is addressed, by the evidence that has been presented by the witness.

20 Now, the information, relating to Dr Young, be it in the form of a statement or in the form of evidence is introduced, in order to illustrate the point of the criticism levelled, in respect of the three topics that I have placed before the Commission. That is solely the purpose, why these documents are there and not for the witness to try and actually authenticate and even speak about the
25 correctness or otherwise, except ...[intervene]

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CHAIRPERSON: Ms Ramagaga, I hear and understand where you are going. Let me hear, Dr Young, what he means, when he says that, you know, the introduced his, Dr Young's evidence into the record. Okay. Can you just explain to me, what does that mean?

5 **DR YOUNG:** Well, by doing so, she has to think that it is relevant in some way.

CHAIRPERSON: Dr Young, I do not quite understand you. You said the witness introduced this portion of your evidence into the record. What did you mean by that?

10 **DR YOUNG:** No. Not into the record, into her, because it is already on the record, into her own evidence.

CHAIRPERSON: I do not, I cannot understand how can she introduce them in her evidence, part of the transcript. This is already part of the transcript. As Ms Ramagaga was saying, these copies were made, for the
15 convenience of the Commissioners, so that she can be in a position to address the three issues that she referred to, not that she was adopting, what you were saying. Maybe it might be better if you can rephrase your question and not say that, you know, she adopted part of your evidence.

DR YOUNG: Okay. I have to learn on the fly here. Okay. Look, using
20 this document, this page, page 39 in front of us, would it be correct to say, or would you accept that is a verbatim transcription that came out of a criminal trial, where a Thomson employee was giving this evidence? Is that fair?

ADV WILSON: I am afraid, I think, the question is unfair on a whole lot of levels and particularly under cross-examination, the witness runs the risk of
25 appearing purely to be co-operative. We need to know who the Thomson

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employee is and we need to know, why she is being asked to confirm if she, before she can even begin to attempt an answer.

DR YOUNG: It is clear, that Mr Moynot is somebody that the witness has actually mentioned herself, at least, in oral evidence. So, I just ask her, is Mr
5 Pierre Moynot a, or was he an employee of Thomson?

MS GUERRIER: Yes. He was.

DR YOUNG: Okay. Now, his evidence is, is that he responded positively to an assertion, made by the prosecutor that your, being his and the company's informal contacts with high ranking personalities would give the
10 edge, as it were, at a high political level and his response is, that is what we hoped. The prosecutor says, yes, that is what you hoped? And Mr Moynot says, yes, that was what we were going for. Now, would you consider that, if that is true, would you consider that as part of a transparent process?

ADV WILSON: It calls for speculation on the part of the witness. I might
15 also say, even though, I would probably be straying a little, but the earlier proposition was that this was at a trial of a Thomson employee. I gather, in the context that the suggestion is that a certain Mr Schabir Shaik was an employee of Thomson. I would put on the record that if the witness was asked to confirm, whether Mr Shaik was ever an employee, she would have
20 to answer that he was not. So, I think the question is unfair.

DR YOUNG: I think that that is incorrect, because he might not have been an employee of Thomson South Africa. He was a director of Thomson South Africa.

CHAIRPERSON: Dr Young, maybe let us try and avoid, trying to argue
25 with each other. In fact, I am in charge of the proceedings. If somebody

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makes a point, if you do not agree with it, then, you know, I must give you permission to answer that. If at all, you are going to talk to each other, across [indistinct] that means we will not finish.

It was not necessary for you, to try and answer the legal representative immediately after he made a point. You wait for us to give you an opportunity to do that. But, in any event, coming back to this statement that you have mentioned, what do you expect the witness, do you want the witness to confirm that this is what happened? Or do you want the witness to confirm that she is aware of the contents of this document. I do not quite follow the questioning.

DR YOUNG: I just say, if the contention is correct, of what is being recorded here, as part of the process, would she agree or disagree, or would she still contend that this is part of a transparent process?

MS GUERRIER: I do not really understand the question. But, and Mr Moynot was testifying on his own. So, I just can read what he said.

DR YOUNG: Well, all I can say is, I think, you can read what he said and the words then speak for themselves. These contacts at high political level were not part of the process and it was not recorded, or it was certainly not transparent.

MS GUERRIER: Chair, it is not ...[intervene]

COMMISSIONER MUS: I just want to propose that maybe, in order for us to make some progress and I am trying to assist Dr Young here. When you look at the statement of this witness, I think, the area, where she has some kind of personal knowledge, relates to the offsets, relates to the offsets. It appears that is where she has some personal knowledge.

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Maybe it might be more useful, maybe, to rather focus on areas, where it appears that she has some personal knowledge. In my reading of the statement, that area is the offsets. Otherwise, the whole statement is in broad outline and it is quite clear that she was not involved in the actual
5 processes, the acquisition processes, especially, whatever transpired in South Africa.

I think it is not going to help really, trying to probe those issues with her, because she clearly has no personal knowledge of some of these things. Actually, the majority of them, especially matters that transpired in the
10 acquisition process in South Africa. So, I am just suggesting that maybe you might well rather focus, maybe on the area that appears that is within her personal knowledge and that relates to the offsets, if you look at her statement.

DR YOUNG: Well, with respect, I would have to disagree that her own
15 personal involvement only goes around offsets. Because her own evidence in chief, also, it was, it ventilated to a substantial degree, her involvement in meeting Dr Meduna and Mr Ngcuka and Mr McCarthy, with Robert Drewman and Mr AJ Sooklal, regarding the encrypted fax. Those are all to do with, that has got, in my view, those have got nothing to do with National Industrial
20 Participation.

COMMISSIONER MUSI: Maybe you should then ask her about the encrypted fax, because she has testified about it.

DR YOUNG: Yes. Indeed and that is, sorry, yes, that is exactly where I am going to now.

25 COMMISSIONER MUSI: You see, by way of example, by way of

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example, what, what I am saying, if you look at this letter that was written by the other gentleman, Mr Bollardiere, dated the 9th of July, she is not the author, she is not the author of the letter.

I not think she even understand the context. She does not, I do not know, whether she knows that, what role Mr Chippy Shaik played, in the whole acquisition process. I understood your point. I knew exactly where you wanted to get to, with your questions on this letter.

But, she is not the author. She can really not be asked about the correctness, or otherwise, of the contents of the letter. So, yes, that maybe try to focus on the areas, where she seems to have some personal knowledge. You talked about encrypted fax, about which she has testified.

DR YOUNG: I just wanted to refer to the very first page of the witness's witness statement and paragraph 4 there, page 1, right at the beginning. I suppose I will just, maybe read this and of course, allow the witness to confirm, whether it is correct. But, to, it is in response, mainly to Commissioner Musi's point. This is where I am coming from, is because both, according to her own witness statement and the fact that she is representing, the sole representative of this company, at these proceedings and seems to be authorised, to represent the company. But, nevertheless, it says:

"In the capacity for which I am employed, I have had extensive exposure and experience in the arms procurement process in South Africa, virtually since its inception. I am aware of the negotiations and signature of the contract in South Africa from 1998. But, at that time, was not involved in any detail at all. I became involved in more detail in 2002."

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But, certainly, in your own, if your own words are true, is that she said extensive exposure and experience. That was where I was coming from, in that regard. Nevertheless, if I may go to on a subject, which is a legal subject and the witness has, I think, she is an advocate or an attorney. This is something in the legal domain and she was personally involved. Regarding the encrypted fax, you testified that you first met Mr, Dr Maduna and Mr Ngcuka and Mr McCarthy, the latter two from the National Prosecuting Authority in early 2004. Is that correct?

MS GUERRIER: I think I said that I met them in early April 2004. Yes.

10 DR YOUNG: Yes. I have a date in my mind, of the 5th. It is either the 5th of 6th of April. That would accord with that. You also testified that you were shown the encrypted fax, the crumpled up version, written in French. Is that correct?

ADV RAMAGAGA: Just a point of correction, Chair. The witness did not say that she was shown an encrypted fax. She said she was shown an alleged, or a document that is described as an encrypted fax. So, she did not describe it as a fact that it is, it was in fact an encrypted fax. This, the witness has consistently described the document as such. So, it is just a point of correction on how she characterised the document.

20 DR YOUNG: I think, we will get to that point.

CHAIRPERSON: If at all, you put an incorrect statement to a witness, the legal representatives are entitled to correct you. I want you to remember the witness never said that it was an encrypted fax. She said that an alleged. So, those two concepts are totally different. Once you are being corrected for putting an incorrect version to a client, please do not display the type of

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attitude that you are displaying, by saying that no, we will come to that. You must concede that that was not correct. That is not what the witness said. I am sure that in that, we are in a position to make progress. You can proceed with your cross-examination.

5 DR YOUNG: Thank you. Okay. Is it correct that you were shown a piece of paper, written in blue, written on both sides, written by Mr Thetard?

MS GUERRIER: I was shown a document, which was written and it was blue ink and it seems that it was written by Mr Thetard.

DR YOUNG: Okay. Were you given a copy of, were you given copies of
10 this, or not?

MS GUERRIER: I do not remember. But, I think I have a copy of this document. I have had a copy of this document for quite a long time. Ja.

DR YOUNG: Yes. So, you are, you have been in possession of it for a substantial period of time. Okay. If we maybe use the English version of it.
15 That is at page 61.

MS GUERRIER: [Indistinct] have that in front of me.

DR YOUNG: Okay. On the third paragraph it starts of with:

“May I remind you that the main two objectives of the effort requested of Thomson are.”

20 Is it correct that your evidence was that your interpretation of this was that this was a request for money, by Mr Shaik?

ADV WILSON: That was not the evidence. I suggest that all that the witness was able to testify was to two things. Firstly, that she disagreed as a matter of fact, on the translation from French to English. Secondly, what she
25 was able to say was that she could submit a statement, by the author, as to

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what he said it meant.

The witness was not the author. She can merely report. But, I may also mention and it is true that this was included. It was included because the, my client's thinking was that even though this is outside the terms of reference of the Commissions, allegations have been made of a serious nature.

My client should attempt to deal with them. So, that is not being swept under the carpet. But, the way this question is being asked, is overly broad and is not putting to her, the propositions of the evidence she gave.

CHAIRPERSON: Can you try again, Dr Young? Try and put a proposition to the witness.

DR YOUNG: Okay. Just on the pure, the pure words of it. It would seem and I ask you is this a fair summary of it, is that this document is requesting something of your company, which you represent. It is requesting that, what they call an effort is supplied by the, by a recipient, of this transaction. Is that correct?

MS GUERRIER: I have difficulties to understand the question. Maybe you can rephrase it?

DR YOUNG: No. I will just carry on. Okay. The next line is those two efforts that are being identified, by the author, Mr Thetard. I just want to ask you, are you aware of the meaning of the word Sitron?

MS GUERRIER: I know it was a name of the projects of concerning, [indistinct] from the South African Naval, Naval ship, I am just a little bit confused with my English and French. It was the name of the project.

DR YOUNG: Yes. That is the correct, it is the name, the code name, in South Africa for the Corvette project. Okay. Were you aware, at the time

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and you, well, you must have been, from what you have testified, regarding your meetings with Dr Maduna and Mr Bulelani Ngcuka that there were investigations. They describe as current investigations, clearly, into Project Sitron. Were you aware of that?

5 MS GUERRIER: When I met Mr Ngcuka and Mr Maduna it was in 2004. So, I knew that there were investigations, because even one of the Thales company has been charged.

DR YOUNG: Yes. So, that was a little bit later. But, were you not aware, more in the time frame of this document. Let us say, early, I think, this thing
10 was sent in, the 11th of February 2000. In that time frame, it was well known in the public domain, even in the media that there were investigations. Would you not have known that, at that time?

ADV WILSON: Mr Chair, just, on a point of clarification, the witness has consistently said that she did not know that the document was ever sent.
15 But, it is not going to aid things, one way or another, if the witness attempts to answer this question, which she cannot. She cannot answer it. It is a different question, asked in relation to a document. Perhaps it would be easier if we just move from the document and she was, the witness was specifically asked if she was aware in February 2000, if that will assist.

20 CHAIRPERSON: Maybe, let us allow the witness to answer that one. If I understand Dr Young, he says it was well known, it has been in the media. I am not sure, whether when he says in the media, he refers to the South African media, or to the French media. Maybe if you can explain that because, mind you, the witness said that, you know, I am a French citizen.

25 DR YOUNG: Yes. I am certainly aware of documents and I have them,

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have them, there were a number of facsimiles from South Africa, from Alain Thetard, I think, back to head office in France, with copies of press articles, written about the Armsdeal investigations. One would have thought that if the witness was involved at this time, especially as a legal representative, 5 would have been aware of them.

CHAIRPERSON: Dr Young, can you get on with the question?

DR YOUNG: Okay. But, my main point is here, is that this document clearly describes one of the efforts, as protection for Thomson, during the current investigations. Now, at the risk of speculation, but it has to, it is, what 10 possibly, and you are the, the legal representative of Thomson, what possibly, in the light of transparent acquisition process, in Project Sitron, could Thomson require protection from investigation?

ADV RAMAGAGA: Just, you know, I am a person that does not raising objections. It is just that I am compelled to, in the circumstances. Firstly, 15 Chair, the witness says the document clearly shows that there was a request for protection. I beg your pardon, not the witness, but Dr Young.

He says this, in the face of evidence from the witness that firstly, she does not agree with the interpretation, the English version. This is even bolstered by the author of the document, Mr Thetard. In his affidavit, he says, I do not 20 agree with the interpretation.

It is not the correct version, of what is being said. Now, in the face of that can you say, relying on this document, whose interpretation is questionable, it is clear that it is saying the following. Where does, where is that clarity drawn from?

25 I will, I can see that the Commissioners are at pains to try and guide the,

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the cross-examiner. That is highly appreciated. I do not know how else you should communicate, but well, because if the cross-examiner is to understand you very well, I will sit back and not object again, because the necessity will be dispensed with.

5 CHAIRPERSON: Ms Ramagaga, maybe sit back and do not object again. Let us, I understand the point that you are making and I think, there is a point that I made, right at the beginning. But, then, the witness is a lawyer, if she wants to speculate, she can continue speculating. Do you want to speculate? If you want to speculate, continue speculating, because you are
10 not giving us direct evidence. Whatever answer that you are going to give to the question that has been put to you now, you will not be giving us facts. But, then it will give me, you will be giving us your opinion. You were not at that meeting. You will be speculating. But then, if you want to speculate, you can go ahead and do so.

15 MS GUERRIER: I do not want to speculate. I am not the author of the document and I just can read what is written.

DR YOUNG: Yes. But, you were deeply involved in this issue, with Mr Thetard and or the subsequent affidavits and the interaction with Mr [indistinct] and Mr Sooklal and Dr Meduna. So, you were intimately involved
20 with this and you have had, you have had this document for a long time. Is that correct?

MS GUERRIER: You know I have been involved. Yes. But, I have not been the author of the documents. I cannot speculate about, since I do not know.

25 DR YOUNG: I am just really asking you, from a Thomson representative

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and a Thomson legal representative, for your view on a Thomson document, written by a Thomson employee.

MS GUERRIER: I think, the one who can speak about this document is the author and could explain what he meant, once he wrote it.

5 DR YOUNG: I think that the author of this document refuses to come back to this country. That is a reasonable statement. Is that true or not?

ADV RAMAGAGA: Just, may I just put this in perspective, Chair? The author of the document, as I understand the evidence thus far, the author of the document that Dr Young is seeking the witness to respond to is not Mr
10 Thetard. From this, this English version, it is a document that is described as an interpretation, by someone from the High Court of the Good Hope, if one reads at the bottom of that document. So, is it, will it really be fair for someone to say, but let the author of this document come back from where
15 ever he is. Where is this author of the document? Who says the, he has interpreted it and he is from the Cape of Good Hope, as a translator
...[intervene]

CHAIRPERSON: Dr Young, do you want to respond to that?

DR YOUNG: May I just continue, what I believe is a relevant line of questioning?

20 CHAIRPERSON: Dr Young, I am in charge. I am going to determine what is relevant and what is not relevant. What I am asking you to do is to, whether do you have any response to what Ms Ramagaga is saying?

DR YOUNG: Yes. I did not hear everything. Her mike was not on all the time. But, maybe I just need to state that [indistinct] both attorney
25 Ramagaga and the witness's position that this document is simply, is simply

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a document that, it was, the one that I, it is just a translation. The translation was not written by the author. It was typed by somebody else. But, I just need to state in perspective that this document was used in a criminal trial of somebody, who was a Thomson director. His name is Schabir Shaik. If I
5 want, it was accepted into evidence, at the trial court in Durban, the Durban High Court. Even via objection from, you know, from the defence, it was accepted into evidence, by the trial court and that was taken on appeal to the Supreme Court. The Supreme Court also found the document to admissible and to mean what it means. So, if I may just state and maybe we can leave it
10 at that, is, I just want, I am looking a copy of the Supreme Court judgement here ...[intervene]

CHAIRPERSON: Do not worry, we have seen the judgement. We are all aware of the judgement. Just make the point that I want you to make, without [indistinct] maybe do not try and give us a lecture. We are all aware
15 of that judgement. What point do you want to make?

DR YOUNG: You asked me to respond to, attorney Ramagaga. It certainly, what came across to me there is that this document is just something that has dubious relevance or admissibility. But, it is actually far, far higher than that. It was the prime piece of evidence, used in count 1, on
20 finding Schabir Shaik, a director of Thomson guilty. That was confirmed by the Supreme Court of Appeal. So, this document certainly has substance. It has gravitas. Maybe, so that, that could be, a question is, is that statement accepted or not?

CHAIRPERSON: Dr Young, we are not going to answer questions from
25 you. Maybe I am just going to find out from the witness. Do you know

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anything about this document, the one, which is at page 61 that Dr Young was asking you about?

MS GUERRIER: I have seen that translation, but it is not the original document that I have seen, so [indistinct].

5 DR YOUNG: May I asked the witness, are you aware or not aware that this was a primary piece of evidence, used in a criminal trial in this country?

MS GUERRIER: Yes. I know that it was used, during the Schabir Shaik's trial.

DR YOUNG: Do you know that despite the objections, that it was deemed
10 admissible by both the High Court and the Supreme Court?

MS GUERRIER: I would have to read back the document. I have not read for a while.

DR YOUNG: With your permission, Chair, may I just read one sentence here, from the, for the benefit of the witness?

15 CHAIRPERSON: Okay. Dr Young, you can proceed. You can go ahead.

DR YOUNG: The, the Supreme Court of Appeals judgement in this regard, states as follows:

*"At the trial, the defence objected to the fax, being admitted in evidence. The trial judge ruled it admissible on a certain ground. We took a different
20 ground that the fax is indeed admissible."*

Would you accept that that is true?

MS GUERRIER: I assume that the sentence you read is true.

DR YOUNG: And if, if that is all true, tested in the High Court and the Supreme Court, would you not accept that the contents of the fax, whether it
25 is the original handwritten version, okay it was not the, okay, I agree, it may

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not have been a fax at that stage. It was typed. Then, it was faxed through as encrypted, this encrypted facsimile. Then, of course, later it was formally translated. If that is all true, would you not accept the relevance of that as evidence, regarding a director of Thomson CSF?

5 MS GUERRIER: I disagree with you on many counts.

DR YOUNG: Well, could you just state the first most important one?

MS GUERRIER: First ...[intervene]

CHAIRPERSON: Dr Young, I am not quite sure where this, your cross-examination is taking us. Whether she accepts this document, she does not
10 accept it, or whatever views that she might be having about this document, whether she thinks that it is proper evidence or not. I am not quite sure how that is going to help us, because at the end of the day she is not going to make the decision. Whether she accepts these documents or not, to me it is irrelevant. She might just say okay, I accept that what you are saying is right,
15 as well as Supreme Court of Appeal say it. How does that help us? If she answers, how does that help us?

DR YOUNG: In my view it is ...[intervene]

CHAIRPERSON: We know that what you are saying that is what the Supreme Court of Appeal said.

20 DR YOUNG: You see, in my view, the witness and supported by attorney Ramagaga, have basically, I am not quite sure of the, if that is the right term, have rubbished the veracity or the contents of the encrypted fax, using the generic, the colloquial term for it. Yet, at the same time, they say that, both of them. Yet, at the same time, it first of all refers to the conduct of Thomson
25 and secondly it seems to be second guessing the High Court and the

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Supreme Court in this country. That is my position.

CHAIRPERSON: Dr Young, I can promise you now, I am no longer going to interrupt your cross-examination. You can continue, now.

DR YOUNG: Thank you. We are getting very close to the end. I just
5 wanted you to turn to RMY 67 on the bundle of two documents that was given to you. Okay. Would you confirm that this document, okay, in what language is this document?

MS GUERRIER: It is in French. The document is in French, but is see there is a translation also.

10 DR YOUNG: Yes. That is correct. Could you identify the, the name, the name of the document?

MS GUERRIER: So, now, I must say that is the first time I have seen this document and it appears to be a document, describing the Project Sitron.

DR YOUNG: Yes. Would you say that is a reasonable inference that it
15 refers to the Corvette program?

MS GUERRIER: Yes.

DR YOUNG: And the, it is in reference to Afrique du Sud, so the South African Corvette program.

MS GUERRIER: Yes.

20 DR YOUNG: And it seems to be, it seems to indicate, on the face of it, that it is in respect of your company, Thomson CSF, NCS Naval combat systems of France. Is that correct?

MS GUERRIER: I do not know, because there are two companies. In fact, there is ADS and Thomson CSF, NCS France on the document.

25 DR YOUNG: Yes. That is correct. But, would you, okay, would you

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agree that it is those two companies that collaborated, in order to provide this most, most competitive bid for the combat suite? Is that a fair way of describing the relationship between ADS and Thomson NCS?

MS GUERRIER: Ja. I think they were working together, to put, to put an
5 offer for the combat suite system.

DR YOUNG: Yes. Okay. And the title of the front page, in French, describes it as:

“Systeme de Combat pour Corvette.”

In, four, that is four Corvettes. Is that correct?

10 MS GUERRIER: Yes.

DR YOUNG: Can you see a date, written on that?

MS GUERRIER: I do not really, I cannot read the, any date. Oh. There is a handwritten date, but I am not sure that it is contemporaneous.

DR YOUNG: No. I just asked you, can you see a date, written there?
15 Not what the meaning for it, I can see a date. Can you not see a date?

MS GUERRIER: Sorry. I do not understand.

DR YOUNG: I said, on my copy, I can see a date, just to the left hand side and slightly below the word pour.

MS GUERRIER: There is a date, a handwritten date, which is 28 January
20 99.

DR YOUNG: Yes. Now, you were involved in this process, according to your, your witness statement. Can you remember what the state of this acquisition process was at that time, the 28th of January 99?

MS GUERRIER: As I told you, I was not involved into the detail of this
25 acquisition programme. But, from what I understand, the contract was

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signed in December 99. So, it was the process of putting, putting together an offer, I think.

DR YOUNG: Yes. If I said the preferred suppliers were selected in late 1998 and then a process initiated, as you correctly say, of the negotiation, 5 towards a contract, that started in late, in, in middle December 1998, or early January 1999, would you accept that?

MS GUERRIER: I have to take that assumption that it is correct.

DR YOUNG: Very good. Underneath the date there, can you see some scribbling? It looks like an arrow and initials of somebody?

10 MS GUERRIER: Ja. It seems there are some initials and, but and the words as well, which is [indistinct].

DR YOUNG: Yes. I am specifically also interested in the word in, in brackets, after the initial AT, could you tell me what that means?

MS GUERRIER: It means encrypt, encrypted. Meaning that it would be 15 sent through a encrypted fax machine.

DR YOUNG: Yes. Thank you for that. Yes. Could you go now to page 1344, about halfway through that document?

CHAIRPERSON: What is your question, Dr Young?

DR YOUNG: Sorry. Okay. Could you, could you confirm that this is a 20 document emanating, or deriving from the Ministry of the Interior of the French Republic, specifically the National Police Directorate?

MS GUERRIER: I do not really know, because this is a copy and a translation, so I would not be sure that it is accurate.

DR YOUNG: Okay. Leaving that aside for a moment there, of course, 25 there has to be a French version, as well, whether or not it is in here, I do not

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know. But, taking, for example, that this is an accurate English translation, would agree or disagree that it seems on the face of it, to emanate from the National Police Directorate of the Republic of France?

MS GUERRIER: I cannot agree with that, because I would have to see the
5 original version, if it exists.

DR YOUNG: Okay. I cannot seem to find the French original version of it. But, I can assure you, it does exist. But, all I am asking you to say is, on the hypothesis that it is a genuine document, would it seem, on the face of it, that is all I am asking you, is on the face of it, would it seem to derive from the
10 French police department?

MS GUERRIER: I cannot speculate.

DR YOUNG: Okay. I think, if I may observe that this is not that difficult to do, for somebody, you know, we can see down the left hand side, what I understand to be the mark and the signature of the translator. But, if we
15 have to, or if we have to do it, we will have another break and while I find the French equivalent of this. But, be that as it may, I, for the record would like to indicate that this is an English translation of a document and at the very top right hand side, the number D415 is a French, a French number of seized documents. The equivalent thereof, in the Directorate for Special Operations
20 number is the 8800717.

CHAIRPERSON: Dr Young, there is a difference between you testifying and you cross-examining. I thought now, you were cross-examining. But, it seems as if you are now giving evidence. Let us get on with the job of cross-examining. Once you are done with this witness, probably tomorrow
25 morning, we can also look at the possibility of you testifying again. But,

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then, for the present purposes, you are supposed to cross-examine and not giving evidence.

DR YOUNG: Unfortunately, I was confronted with a situation, where I only knew this witness was appearing today. That is a pretty short time. I would certainly have ensured that the relevant documents were available for me and the Commission. But, I think, I did a reasonable attempt at this, in the time that was available. But, nevertheless, if we go down halfway through the page, would you care to, to read what the English translation is, of that particular sentence, starting off with Project Sitron?

5
10 MS GUERRIER: First of all, I can read. But, secondly, I am not sure that it is an English translation of something, which is in French. I can read the English. It says:

15 *“Project Sitron South Africa a file marked presentation to Mr DuFourcq and eight business cards from Nkobi Holding and ADS, together numbered from one to 25.”*

DR YOUNG: Thank you for that. Could you tell us, as an employee, of some time, who is Mr DuFourcq?

MS GUERRIER: I have no idea. There are 60 000, more than 60 000 people in Thales. So, I cannot say that I know everyone.

20 DR YOUNG: Okay. Is he not an employee of Thomson CSF in France or in Paris?

MS GUERRIER: I would not know. There are about 30 000 people, employed by Thales in Paris region.

DR YOUNG: And if I had to say that, that he was clearly an employee of, of Thomson in Paris, because these documents were seized in
25

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Thomson in Paris, would you object to that?

CHAIRPERSON: Dr Young, let us get on with the next question. She says she does not know. She says in that they have got over 30 000 employees. She does not know this one. Let us get on with the next
5 question.

DR YOUNG: I understood, from the very end of your evidence that you said that nobody from, no person and that means no natural person or a juristic person had ever been charged in this country, regarding Project Sitron combat suite acquisition.

10 MS GUERRIER: I am not sure, exactly what was my testimony. But, I think that no employee has been charged. As far as I know, it is true.

DR YOUNG: Okay. That was half of my, part of my question. You said employee. That is a natural person. Okay. Has a director of any Thomson subsidiary ever been charged with a crime, related to the Corvette, Project
15 Sitron?

MS GUERRIER: I assume that you are referring to Mr Schabir Shaik?

DR YOUNG: Yes. And he was a director. Was he charged with something, with an indictment, relating to the Corvette acquisition?

MS GUERRIER: As far as I remember it was not as a director that he
20 was charged. Not only, as a director.

DR YOUNG: No. But, he was also a director of Thomson CSF. There were two Thomson South Africa and he was a Thomson, he was a director of one of them at some stage. So, would you agree that he was a Thomson director and he was charged with a crime, relating to the
25 Corvette?

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MS GUERRIER: First of all, he was not a Thomson director, in the way that he was not an employee of Thomson. He was appointed by his company, as being a director, because of his share holding, which is completely different.

5 DR YOUNG: No. Well, he was a director of Thomson. Would you agree or disagree that he was also, well, he was also a director of ADS at one time?

MS GUERRIER: I cannot recall, but he may have been.

DR YOUNG: Yes. And he was a director, or, of ADS and at, certainly, at
10 some stage ADS was 100 per cent owned by Thomson. Is that correct?

MS GUERRIER: I would have to look at the records of the company. I do not know on top of my head when was that, what is the time line of this event that you are referring to?

DR YOUNG: Okay. But, that is, that is Schabir Shaik and a director.
15 Are you aware of no other, I am not talking about employee, but a juristic person, which is a company, an incorporated company, also being charged with a criminal charge, relating to the Corvettes?

MS GUERRIER: They have been charged, but charges were withdrawn.

DR YOUNG: Yes. But, it was not, that was not [indistinct] your evidence
20 was that nobody was ever charged. Is that correct or not?

ADV WILSON: Well, I think, if the question was put properly, it would have to refer to what the indictment in that, in that prosecution said. The witness is being asked to speculate. These were complex things and as, no one is trying to walk away from answering questions properly put. But,
25 the matter is of complexity and it would be unfair to put to the witness,

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without disclosing exactly what in the indictment referred to the combat suite.

CHAIRPERSON: Dr Young, I promised you that I am not going to interfere, to interrupt your cross-examination.

5 DR YOUNG: Well, it is very close to the end. You see, I am not asking whether anybody was found guilty. Your, the witness stated simply that, according to her, or she put on the record as, is that nobody was ever charged. I not think that is correct. So, I am asking her whether or not she is aware of anybody ever being charged. Well, if you want me to rephrase
10 it differently, according to her legal representative, is she aware of a formal indictment, being served by the National Prosecuting Authority on any juristic persons, within the Thomson group, relating, with charges, relating to the Corvette?

MS GUERRIER: I am not sure that I understand your question, because
15 from what you talk about the combat suite and the, and as I told you there have been charge against some of the company. But, they were not specific to the combat suite.

DR YOUNG: Well, I, unfortunately, there was not sufficient time to make copies of all this. But, I have copies of both the indictment and the
20 summary of substantial facts, in terms of Section 144 (3) of the Act 51. The parties to this indictment are one Mr Jacob Zuma, two Thint Holdings, accused 2, and the other, I think it is Thint (PTY) LTD, accused 3. Would it not, in that case, be reasonable just to ask, whether in that, if that is true that subsidiary companies of Thomson or Thales have been served an
25 indictment in this country for criminal activities?

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MS GUERRIER: They have been served. I agree with you.

DR YOUNG: Would you also disagree that at least one of those charges involved, directly involves the Corvette, the acquisition of the Corvette combat suite?

5 MS GUERRIER: I would have to read the document. I cannot recall right now.

DR YOUNG: Well, again, you know, I, in the shortness of time, all of these documents were not copied for the witness and for the Commission. But, I think it, certainly, in South Africa, it has to be common cause that
10 what I am stating is true. Okay. That concludes my cross-examination.

CHAIRPERSON: Thank you, Dr Young. Any re-examination? You know, I am not quite sure what we should, or whether we should do, because at the beginning I was saying that evidence leaders are not supposed to re-examine. But, then, they normally insist that they are entitled to re-
15 examine. Maybe I will start with the legal representative of the witness first and from there, then the evidence leaders.

ADV WILSON: Thank you, Mr Chair. Just one question. Ms Guerrier, the document in your witness bundle at page 58, which you have given evidence, is a copy of a document, which you have seen before. You gave
20 evidence that you caused investigations to be made in Paris and in Mauritius, as to whether it was possible that this document or another document of its nature might have been sent, around the time. As I recall it, you said that investigations showed that no faxes came from South Africa.

25 MS GUERRIER: That is correct.

ADV WILSON: Did you cause similar investigations to be done in South Africa, to see whether there is any evidence of the document having been sent, during that period?

MS GUERRIER: I do not recall, but the fax machine was in South Africa
5 and, but I really [indistinct] for any investigator existing.

ADV WILSON: Thank you, Mr Chair, Mr Commissioner, no request, further questions.

ADV RAMAGAGA: No re-examination. Thank you, Chair.

CHAIRPERSON: Not that I was not saying that you are not entitled to.
10 But, then, if you want to re-examine, you can re-examine.

ADV RAMAGAGA: Chair, no, there is no re-examination from my side [indistinct], not address.

CHAIRPERSON: Thank you. Maybe, let me say to the witness, thanks a lot for coming out and coming to testify. We really appreciate your effort
15 and we hope your evidence will help this Commission to carry out its mandate. If you do travel back to Paris, travel well and thanks a lot for testifying. Dr Young, we are going to adjourn now, until tomorrow morning at 9:30 and tomorrow we will continue with your cross-examination.

DR YOUNG: Must I convey that to my absent evidence leaders?

20 CHAIRPERSON: Thank you. Convey that to them.

DR YOUNG: Thank you, Sir.

CHAIRPERSON: We will adjourn now.

(COMMISSION ADJOURNS)