

Arms Procurement Commission

Inquiry into Allegations of Fraud, Corruption, Impropriety or Irregularity in the Strategic Defence Procurement Packages

Witness Statement

Richard Michael Moberly Young

Preamble

1. I, Richard Michael Moberly Young, state as follows :
2. I am an adult male citizen of the Republic of South Africa and a registered engineer by profession.
3. I am the managing director and effective beneficial equity holder of CCII Systems (Pty) Ltd (CCII Systems).
4. I attach my shortform curriculum vitae (CV).

[\[CV for APC-RMY.pdf\]](#)

5. The facts stated herein are within my personal knowledge and belief, unless the context indicates the contrary, and are true and correct.
6. While knowledge of many of the facts relevant to the commission has come to me in my capacity as the managing director and effective beneficial equity holder

of CCII Systems, I make this statement in my own name and as a concerned citizen of South Africa.

7. On 31 October 2014 I was summonsed to provide evidence within my knowledge that may be relevant to whether there was any improper influence or conduct in the awarding or conclusion of the contracts in the Strategic Packages (SDPs) and if so, the nature and extent thereof.

[\[summons feb 2015.pdf\]](#)

8. My evidence is given within the provisions of the relevant Terms of Reference published in the Government Gazette No. 34731 on 4 November 2011 as well as the Directives Issued by the Chairperson on 8 May 2012 and published in the Government Gazette No. 35325 on 9 May 2012. Accordingly, my evidence to the Arms Procurement Commission(APC) is made strictly under the conditions of **Qualified Privilege**.

Introduction

9. CCII Systems (Pty) Ltd and I personally were involved in certain of the processes for the acquisition of the four corvettes for the SA Navy and in particular the corvette combat suite, as well as for the corvette's Integrated Platform Management System (IPMS) and parts of the conventional submarine and its combat suite.
10. Because of my extended interest in the SDPs from all perspectives, I have also familiarised myself to a greater degree than most with the entire SDPs matter, but in particular with the corvette component.
11. Although my statement contains averments and allegations applying to all of the elements of the SDPs, I have personal and specific knowledge of one component of the SDPs in particular, namely the acquisition of four patrol corvettes for the SA Navy (SAN) due to CCII Systems's and my own involvement therewith.

12. However, since my initial involvement it has become the nature of things to become as familiar and knowledgeable with the other aspects of the SDPs, such as circumstances allow. In this regard I have come into contact with many people interested in the SDPs, including official South African and official international investigators, media investigators and writers, book authors and whistleblowers.
13. Regarding these whistleblowers, many of them prefer not to come forward publically and because of my already public profile, have approached me to hand over information and evidence to the authorities on a confidential basis.
14. I have previously made a submission in the form of a draft witness statement to the APC which was made with the view to indicate the areas in which I wished to cross-examine some of the witnesses giving evidence before the Commission. I attached some 158 pages of annexures in support of some of the allegations in the submission. Both the draft witness statement and its annexures were referred to in the evidence of at least Rear Admiral Jonny Kamerman, Frits Nortjé and Chippy Shaik. I will respond to some degree to the evidence given by Nortjé and Shaik, but to a greater degree to that of Kamerman, which was mostly untrue and defamatory in so far as it relates to me, later in this statement.
15. I also was compelled by the APC to make a full discovery of the documents in my possession relevant at that time to my giving evidence before it. In this regard I furnished a full Discovery Affidavit with Discovery Schedule, as well as produced all the relevant documents in scanned, digital PDF format.

[\[Discovery Affidavit\]](#)

16. As my actual appearance before the APC is scheduled to occur more than a year after my own discovery during which time other witnesses have appeared before it and to whose evidence I wish to respond, I will have to furnish further documents relevant to my extended evidence.

17. I have also previously deposed to an affidavit in the Constitutional Court supporting Terry Crawford-Browne's application to have the APC established.

[\[CCA Affidavit-02-041 scan all OCR.pdf\]](#)

18. I have also previously been involved in litigation with various parties as a result of the SDPs, both in my personal capacity as well as in relation to and on behalf of CCII Systems. In particular my PAIA applications and litigation against inter alia Armscor, DoD, Office of the Auditor-General have been successful and yielded thousands of pages of relevant documentation.

19. In the course of doing so, I have come to be in possession of a substantial body of documentary evidence relating to the SDPs, the volume of which is such that it cannot all reasonably be collated and put into this witness statement in order to ventilate every single factual assertion which is contained in documents. Instead, I have elected to annex some of the documents and selected those which go to support my own averments of fact. The selection of documentation I have chosen to annex to this statement is extremely limited, but goes some distance to show the evidence at my disposal and what I have by way of evidence to present to the APC, which is an independent commission of enquiry.

20. Should the specific existence of any specific documents which have not been discovered and which go to substantiate or support any specific point during my evidence or cross-examination come to light, I reserve the right to find and produce these during the proceedings.

Academic and Professional Qualifications and Accreditations

21. After completing school in 1975 I spent a year in the SADF performing compulsory national service, firstly in 3 South African Infantry Battalion and later in 2 Signal Regiment. I performed my Citizen Force duties in 5 Signal Regiment, the successor to 2 Signal Regiment.

22. My service in the SADF in 1976 implanted in me an ongoing interest in all matters military while that in 2 Signal Regiment and 5 Signal Regiment, which are electronic warfare units, gave me a particular interest in defence electronics. Indeed I can say that as a consequence I changed my previous plan to study chemical engineering to electrical engineering and electronics in particular.
23. I completed a BSc(Eng) in Electronic Engineering at the University of Natal in 1981 where both my final year projects were specifically to do with data communications, a field in which I later specialised, in particular as regards military applications.

[\[RMY_BScEng-01.pdf\]](#)

24. After some years of work as an electronics engineer I completed an MSc(Eng) at the University of Cape Town in 1992 where my dissertation was entitled ***Real-Time Distributed System Architecture using Local Area Networks***. The concepts developed in this regard were directly applicable to the system architecture and implementation of complex, distributed, real-time control and management systems, specifically for naval surface combat systems.

[\[Ymthsm21.pdf\]](#)

25. I then completed my Doctorate of Philosophy in Engineering at the University of the Witwatersrand in 1996 where my thesis was entitled ***Real-Time Protocol Strategies for Mission-Critical Distributed Systems***. This work and thesis substantially develops the concepts of the master's project to a doctorate level. In many respects my PhD project and thesis can be considered as a **super project** and not merely the development of a narrow theory.

[\[ydths21.pdf\]](#)

26. I am a registered professional engineer, initially in 1986 with the South African Council for Professional Engineers (SACPE) and later with the Engineering

Council of South Africa (ECSA) when the body changed its name. I am also an Associate Member of the South African Institute for Electrical Engineers (SAIEE).

27. In December 1991, I was invited to deliver a paper at the Royal Institute of Naval Architects NAVTEC '91 International Symposium on Information Technology and Warships in London. My paper was entitled ***An Information Management Infrastructure for an Integrated Combat Suite Architecture.***

[\[im_infra.pdf\]](#)

[\[Y_RINAS2.pdf\]](#)

28. I also delivered a paper in 1992 at the Armscor-sponsored industry workshop on New Generation Harsh Environment Computer Architecture, entitled ***Serial Communication Systems.***

Relevant Working Experience

29. I was a Design Engineer at Teltech from December 1981 to December 1983 and a Development Engineer at Plessey SA from January 1984 to May 1985, for some four and a half years in total.
30. Thereafter I joined Trivetts-UEC (Pty) Ltd in June 1985 and was appointed as a Development Engineer. Trivetts-UEC was owned by the Tongaat-Hulett Group. Later the company was sold to the Altech Group and became UEC Projects (Pty) Ltd.
31. At UEC Projects, in September 1986 I was promoted to Project Engineer and then later in September 1988 to Project Manager.
32. As Project Engineer I was responsible for the specification, design and development of a System Data Bus (SDB) sub-system using a specialised, high-speed, local area network defined by MIL-STD-1553B for a Command and Weapon Control System for a new conventional submarine for the SA Navy

under Project Wrack, later Winners, for the combat suite of the submarine. The entire vessel was being acquired under Project Natural. Later when appointed as Project Manager I was responsible for the project in its entirety.

33. The SA Navy's Project Officer for Project Natural was Commodore, later Rear Admiral (Junior Grade), Jeremy Mathers.
34. Additionally while employed by UEC Projects, I was also responsible for the system engineering, specification and initial stages of design of a Torpedo Fire Control System (TFC) for Project Winners.
35. My other main projects at UEC Projects included a Fibre-Optic LAN System where I was responsible for the requirements analysis and concept design of a system which provides the total information management infrastructure for a new frigate for the SA Navy under Project Foreshore, later Falcon (the entire vessel portion) and Project Frizzle (the combat suite portion). This was called the FDB Project.
36. In addition to my duties as Project Manager I was always from circa 1986 the effective deputy department manager of the Development Department and fulfilled many departmental management and administrative functions.
37. Later in circa mid-1991 the Department Manager resigned and I became the Acting Department Manager.

Cancellation of SA Navy Projects

38. For various strategic reasons Project Natural and Project Winners were cancelled in around 1989, but mainly because the South African Border War had ended in 1989 and the SA Navy concluded that surface combatants were more important to the fulfilment of its duties than submarines.

39. Then in 1991 Project Falcon and Project Frizzle were also cancelled for financial reasons.

My Reasons for Leaving UEC Projects

40. By mid-1991 both the large capital projects on which I had been working for nearly seven years had been cancelled.
41. At that stage there were no similar projects on the horizon.
42. In those nearly seven years that I had worked at UEC Projects there were many occasions where the company had reviewed its operations and its requirement to have a development capability in its Cape Town offices. Many of the directors over the years had concluded that the company required only an installation and support capability in Cape Town. That would mean that I would either have to relocate to Mt Edgecombe or Midrand or be retrenched. I had no stomach for either.
43. Indeed after Project Winners had been cancelled I actually formally tendered my resignation on 1989-10-03, but the company persuaded me to withdraw it.
44. Nevertheless I realised that working in the defence electronics sector in Cape Town offered very little job security in those uncertain times in the early 1990s. I realised that at any time I might have no other option than to go on my own in the commercial and industrial data communications sector. In this regard I thought up a company name should I ever have to do this. This was a play on the commonly used military term **command, control, communications and intelligence** or C³I and later adding computers and integration making it C⁴I². My speciality was computers and system integration and so I coined the name Communications, Computer Intelligence and Integration Systems or C²I² Systems for my company and on 1990-08-27 registered a company by that name in order to preserve that unique and appropriate name.

45. Until I left the employ of UEC Projects on 1992-01-31 and started actually working at CCII Systems on Monday 1992-02-03 I never did one hour's work or earn one brass cent for CCII Systems.
46. I had had a distinctly uncomfortable feeling since the cancellation of Project Winners that I would no longer have a job at UEC Projects in Cape Town.
47. At that stage I had completed the five master's level courses required for a master' degree which consisted partly of coursework and then a half dissertation. Two of these courses I had completed prior to my employment at UEC Projects and three while in its employ. However, I had not started working on my master's dissertation while at UEC Projects.
48. In late 1991 the Branch Manager of the Cape Town Branch, Duncan Hiles, was unexpectedly promoted to Managing Director and relocated to Durban.
49. As there had been no succession planning in this regard, it left the post of Branch Manager vacant. This position was then advertised on various internal notice boards within UEC Projects.
50. Although I was a project manager and acting departmental manager I initially had no inclination to apply for this post by means of a response to an internal advertisement.
51. I actually had decided that it was indeed time to resign from my job and have a sabbatical from work in which time I would also complete my master's dissertation.
52. As things transpired, in a telephone conversation with UEC Projects's personnel manager, Trevor Moore, he wanted to know why I was not applying for the position. He told me that I had the capabilities for that position. Somehow he persuaded me to do so and before my trip to the United Kingdom to present my

paper at the Royal Institute of Naval Architects (RINA) symposium I was interviewed for the post by Messrs Hiles and Moore.

53. I drew up a special internal CV for that purpose, the significance being that much of that was read into the record of the JIT public hearings by counsel acting for ADS, this being much to my bemusement at the time.
54. But actually there were much more purposeful and indeed in my view sinister reasons for this as it clearly was an attempt at that time to prove that I took something from UEC Projects when I left that company and started my own company and which eventually became the IMS for the corvettes.
55. This was an entirely untrue as firstly everything I worked on in the FDB Project was in respect of public domain technologies. There was simply no proprietary content in those early feasibility stages.
56. Secondly, the FDB Project was cancelled without any indication of it being resurrected in any way.
57. Thirdly, I had absolutely no Restraint of Trade against me as borne out by Trevor Moore's letter to me dated 1992-03-27 wherein he states as follows :

“I can confirm that, in terms of your Contract of Employment with UEC, a Restraint of Trade does not exist. This implies that you are free to pursue any business activity of your choice and that, from a Restraint of Trade point of view, UEC has no recourse against you. However, UEC would still enjoy the protection of any copyrights or patents which may apply.”

[\[DT1-0006.pdf\]](#)

58. I am unaware of any such copyrights nor patents and neither UEC Projects nor ADS nor anyone else have ever advised me as such or communicated with me in this regard.
59. Fourthly, whatever relevant knowledge or capability was developed at UEC Projects in respect of either the FDB or SDB Projects was for the SA Navy and paid for in its entirety by Armscor.
60. After I had been approached by Armscor in September 1992 to ascertain whether I was interested in continuing with this work for the SA Navy's Projects Diodon and Sitron, Armscor specifically instructed UEC Projects to transfer all of the project assets of both the SDB and FDB Projects to CCII Systems. This is stark proof that Armscor and the SA Navy wanted my company and me in particular to carry on with the technology and systems development that they had initiated under Projects Foreshore and Frizzle at UEC Protects.

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The Beginnings of CCII Systems

61. I was a very keen spearfisherman and owned both a 4x4 pickup truck and small ski-boat. For my sabbatical I wanted to go and spend 6 months at Sodwana Bay in kwaZulu-Natal and spearfish in the mornings when the weather permitted and completing my dissertation in the afternoons, evenings and when the weather did not permit.
62. I also had saved a reasonable amount of money being single and having worked for over 10 years. Thus I could easily sustain myself for at least a year without a regular job and salary.

63. However, none of that was to be because in January 1992 during my notice period at UEC Projects I was offered a contract and what looked like a very promising future for me personally and my embryonic company at the company Houwhoek Technologies (Houwtek) based in Grabouw in the Western Cape. According to it, it was developing a space launch vehicle, the RSA4 which would be using the data networking technology MIL-STD-1553B which had been used in the submarine combat suite of Project Winners and of which I was an acknowledged expert, albeit only nationally and at a system engineering level.
64. Later in 1992 the RSA4 and companion RSA3 space launch vehicle, as well as the reconnaissance satellite programmes, were abandoned for reasons not relevant to the issues before this commission and hence my contract with Houwtek came to an abrupt end in around June 1992.
65. However my microscopic company was by then established, I had gathered some capital (mainly my own savings which had been going to fund my sabbatical) and our modest profits from the Houwtek contract. This I used to hire some staff, purchase some equipment and rent proper office accommodation (which we still do today).
66. In the meantime in mid-1992 I took a couple of weeks off work to solely concentrate on finalising my master's dissertation which I submitted for examination in 1992-10-16, following which my Master of Science in Engineering Degree (MSc(Eng)) was awarded on 1992-12-08.
67. My previous employer Plessey had paid for my academic fees for the 1985 academic year wherein I completed two master's courses in 1985 and I paid for my fees for the 1992 academic year in which I submitted my dissertation.
68. UEC Projects paid for my academic fees for the 1986 to 1988 academic years wherein I completed three master's courses.

69. It is not true that UEC Projects paid for my entire master's degree nor that I started nor completed it while in its employ.
70. While all this might seem ancillary to the interests of the APC, I need to rebut the allegations that have been made in this regard by the likes of Pierre Moynot of ADS at the JIT public hearings as well as those made by RAdm(JG) Jonny Kamerman during the APC's proceedings. I need to do so because these antagonists of mine have repeatedly tried to sully my good name and reputation with untrue allegations that go to my integrity and credibility.
71. Not only are these allegation untrue, they have been made with the specific intention of portraying me in a negative light in these and preceding proceedings and at the same time discolouring both me and my evidence in this regard.

Work Experience at C²I² Systems

72. I am currently employed as Managing Director of C²I² Systems and have also been involved as project manager and specialist project consultant.
73. During the 1990s I was responsible for the requirements analysis and concept design for the Information Management infrastructure for a major naval combat system as well as for an Armoured Vehicle Turret system for a new generation armoured fighting vehicle for the SA Army.
74. Other projects included conceptualisation of the Navigation Distribution System (NDS), Tracker Radar Console (TRC) and an Integrated Command and Control System (ICCS) for a ground-based air defence system. The NDS and TRC are both deployed in the combat suites aboard the SA Navy's new Valour-class frigates.
75. Other than systems-level work and products, C²I² Systems specialises in a number of electronic board-level products for industrial and military applications, including boards and adapters for Fibre Distributed Data Interface (FDDI), ultra

high-speed serial I/O, Ethernet up to 10 Gigabit per second, digital-to-analogue I/O and analogue-to-digital conversion. These boards and adapters have found deployment in some of the world's most important defence systems including the US Navy's Ship Self-Defense System (SSDS), the US Navy's Rolling Airframe Missile Guided Missile Launch System (RAM GMLS), the US Marine Corps's Expeditionary Fighting Vehicle (EFV), NATO's AWACS Radio Control System and the US Air Force's Global Hawk unmanned aerial vehicle systems, inter alia.

Qualification as Expert Witness

76. Regarding the above academic and professional qualifications and accreditations, as well as 34 years of direct relevant working experience in the electronics and defence sectors, I submit that I can be considered for the purposes of these hearings to be an expert in this field.

Background to the SDPs

para no. The following is the background to the SDPs as I understand it.

77. During 1997 processes for the acquisition of armaments were initiated by the DoD and Armscor on behalf of the SANDF under the project names as follows :

| | |
|---------------------------------|----------------------|
| Advanced Light Fighter Aircraft | : Project Ukhozi |
| Coastal Submarine | : Project Wills |
| Lead-In Fighter Trainer | : Project Winchester |
| Light Utility Helicopter | : Project Flange |
| Maritime Helicopter | : Project Maulstic |
| Patrol Corvettes | : Project Sitron |

78. The body in which the final authority vested to approve the SDPs was the cabinet.

79. In the said procurement process Armscor should have acted as the State's statutory procurement agency pursuant to the statutory powers conferred on it under Section 3 of Act 57 of 1968.
80. It would however appear that in reality a hybrid process between the DOD and Armscor was used for the SDPs, viz. Ministerial Directive MD/147. I understand that although MD/147 was drafted and to all intents and purposes used in finality, it was not actually approved for use in these SDPs. In my view this is a questionable acquisition practice and goes a good way to colour the acquisition processes which I will be describing in my evidence.
81. The procurement process used by Armscor and DoD for the SDPs required that before the SDPs were submitted to cabinet for final approval they should first be successively considered by the following bodies :
- 81.1 initially during the selection phase all technical aspects relating to the acquisition of the corvettes, the selection of main suppliers and cost had to be recommended by the Joint Project Team ("JPT") and thereafter by the Strategic Offers Committee ("SOFCOM");
- 81.2 during the negotiation phase all technical aspects relating to the acquisition of the corvettes, the selection of sub-suppliers and cost had to be recommended by JPT and thereafter by the Project Control Board ("PCB"); and
- 81.3 the JPT was a body drawn from representatives of SAN, DoD and Armscor having the requisite technical expertise, with the SAN members being seconded to the DoD for this purpose.
82. The PCB was a body chaired by DoD's Chief of Acquisitions, one Shamim Shaik (Chippy) and whose members included the Chief of the SAN, Vice Admiral Robert Simpson-Anderson and the Chief Executive Officer of Armscor, Llewellyn Swan.

83. The various components of the SDPs were thereafter considered by the Strategic Offers Committee (“SOFCOM”), a committee co-chaired by Shaik and the acting Chief Executive Officer of Armscor, Mr Erich Esterhuyse, and whose members were drawn from the SANDF, Armscor, DoD, the Department of Finance and the Department of Trade and Industry.
84. SOFCOM was required to make a recommendation to the Armaments Acquisition Steering Board (“AASB”), a body chaired by the Secretary for Defence.
85. The AASB was required to make a recommendation to the Armaments Acquisition Council (“AAC”), a body chaired by the Minister of Defence and whose members included the Deputy Minister of Defence, the Chief of the SANDF and the Chief Executive Officer of Armscor.
86. Thereafter the SDPs were submitted to a cabinet subcommittee (“MINCOM”) and finally to the cabinet itself.
87. The JPT, PCB and SOFCOM were constituted as set out in the schedule attached.

[\[PC1BCCII-03\]](#)

88. The PCB was not constituted in terms of the formal acquisition process as a decision-making body, only as a co-ordinating body, but it nevertheless made fundamental decisions, which was irregular. Indeed in the cases of the Corvette and Corvette Combat Suite, this invalidates the entire acquisition process leading to contract award. This is dealt with in greater detail further in this witness statement. Pertinent examples of this are the project control board meeting of 8 June 1999 and the subsequent letter from the chief executive officer of Armscor to the GFC.

[\[PCB 1999-06-08.pdf\]](#)

[\[DT1-0489.pdf\]](#)

89. In actual fact at its first preparatory meeting held in September 1998, a draft PCB Constitution was tabled and is annexed as Appendix A to the minutes. However, it would appear that this constitution was never finalised and formally adopted.

[\[PCB 1998-09-29.pdf\]](#)

90. Even if the PCB had been constituted as a decision-making body, its constitution was never formally adopted, which would still have made its decisions irregular.

91. I do not know how the AAC was constituted beyond what is stated above, but I am made to understand that evidence before this commission has dealt with the constitution of the AAC.

The SDPs

92. Regarding the corvette acquisition, as matters transpired it was divided into two essentially separate contracts, the platform supplied by the German Frigate Consortium (GFC) (Part A) and the combat suite supplied by Thomson-CSF Naval Combat Systems of France (NCS) and the Thomson-CSF subsidiary African Defence Systems (Pty) Ltd (ADS) (Parts B and C).

93. The MEKO 200AS light frigate from Blohm+Voss, part of the GFC, was chosen for the corvette platform.
94. A set of South African designed systems, plus some systems from Thomson-CSF of France, including its Tavitac Combat Management System (CMS), its Multi-role Radar (MRR), its Hullmount Sonar (HMS) and the naval Surface-to-Surface Missile (SSM) from its French equity partner Aerospatiale were chosen for the corvette combat suite.
95. The Hawk 120 jet trainer from British Aerospace (later BAE Systems) was chosen for the Lead-In Fighter Trainer (LIFT).
96. The Gripen JAS39 jet fighter from Saab of Sweden, partly owned by British Aerospace, was chosen for the Advanced Light Fighter Aircraft (ALFA).
97. The Type 209 diesel electric submarine from HDW, as part of the German Submarine Consortium, was chosen for the Submarine.
98. The A109 from Agusta of Italy, was chosen for the Light Utility Helicopter (LUH).
99. The Super Lynx 300 Mk 64 from Westland of the United Kingdom, was chosen for the Maritime Helicopter.
100. I will proceed to deal firstly with the commencement of my involvement with corvettes.

Corvettes

101. During early September 1992 I was approached by Armscor (represented by Armscor Specialist Division Manager Anton Jordaan on behalf of Pierre Meiring senior manager of the Command and Control Division) to assist in the development of a combat suite for use on new frigates or corvettes which it was

anticipated might in the future be acquired by SAN. This assistance involved a continuation of the development efforts done at UEC Projects for a specialised, high-speed local area network to integrate the entire combat suite, as well as the system engineering efforts to achieve an integrated combat suite architecture, design and implementation.

102. A combat suite is a set of systems that enables a naval vessel to engage in naval combat.
103. Over the period 1992 to 1999 CCII Systems was awarded a number of contracts by Armscor relating to the development of the combat suite and these contracts were all duly performed by CCII Systems.
104. Among the systems forming part of the combat suite in the development of which CCII Systems was involved was the Information Management System (“IMS”), this being a local area network (“LAN”) or databus for the distribution of data to the various systems comprising the combat suite. The term “Information Management System” was, in this context, one coined by me to describe the databus we had developed for use by SAN.

Project Diodon

105. During 1993 a programme for the development of technology for future naval surface combatants was initiated by SAN under the name Project Diodon.
106. Project Diodon was the source of funding as well as technology for a number of naval projects, some of which were incorporated into Project Sitron.
107. In effect, the generic aspects of the IMS were funded and developed out of Project Diodon, while the programme-specific aspects of the IMS were funded and developed out of Project Sitron.

108. While Project Sitron was put on hold during the Defence Review during the 1995 to 1997 period, the IMS received its funding from Project SUVECS (an acronym for Surface Vessel Combat Suite).

Project Sitron

109. During 1993 a capital programme for the acquisition of patrol corvettes was initiated by SAN under the name Project Sitron.
110. Project Sitron was to employ the technology and products developed from, inter alia, Project Diodon and Project Caliban the then current strike craft upgrade programme.
111. An example of technology developed and decisions made stemming from Project Diodon is the following letter dated 1993-08-13 from Pierre Meiring to the Chief of the SA Navy :

“DATABUS TECHNOLOGY FOR PROJECT DIODON

Following an in depth review of the issues pertinent to the choice of databus technology for future Naval systems, attended by all relevant parties, and further discussions between myself and Lt Cdr J. Pienaar, Project Engineer for DIODON and SITRON, a final decision regarding the technology to be addressed by DIODON has been made as set out below.

1. The physical medium for the databus will be dual redundant fibre optic cable. This decision is the most important and directly influences the other aspects. The final decision was made on the basis of the clear advantages and reduced risk of integration perceived and is directly in agreement with the decision taken by Project

Oyster for the internal communications system being developed for the SAN.

2. The previous choice dictates that the hardware and databus standard to be used is then FDDI, due to the performance advantages over any other option for the same cost.”

[\[DT1-0013.pdf\]](#)

112. On or about 26 January 1995 a Programme Plan for Project Sitron: Combat Suite was issued and this Programme Plan was approved by officials of SAN and Armscor over the period December 1995 to April 1996.

[\[DT1-0062.pdf\]](#)

113. The purpose of the Programme Plan was to establish the management baseline for the execution of Project Sitron in relation to the combat suite. By “management baseline” is meant the terms in accordance with which the project was to be managed.

114. The Programme Plan recorded inter alia that the combat suite was to be designed around the principles of distributed processing within independent functional modules physically integrated in a system architecture built around a “modern multirole redundant databus infrastructure linking the various system elements” (Para. 5.3.2) and the IMS was identified as the databus (Pages 14 and 52). This IMS to which reference is made is the specific product being developed by CCII Systems.

[\[DT1-0062.pdf\]](#)

115. On or about 6 February 1995 the Programme Plan was forwarded to (among others) CCII Systems by Armscor under cover of a memorandum (signed by Meiring) which stated :

‘that the programme for the acquisition of the corvettes was now officially underway’;

“that the Programme Plan was to be placed under configuration control and that compliance with its requirements and stipulations was mandatory (by “configuration control” is meant the control of technical, management and production baselines through the observance of specified procedures for the alteration of baselines and in regard to the issuing, updating, deleting and addressing of documents. In the case of Project Sitron, the Programme Plan set out the configuration control requirements for the project);

“that the matter was one of urgency and that the sooner contracts were placed the sooner **the participation of the various recipients of the document in the programme would be assured**” (my emphasis in bold text)

[\[DT1-0065.pdf\]](#)

116. On or about 15 March 1995 I wrote to Armscor (for Meiring’s attention), recording that :

“CCII Systems was making significant progress in respect of the development of the IMS”;

“CCII Systems was confident that it could have at least all critical IMS functionality available by October 1996 with the

balance of functionality to be provided in the following three to six months”;

“in accordance with requests from Armscor, CCII Systems had maintained maximum progress, but that while I realised there was some risk in proceeding with the development before contracts were formally placed, such risk should be confined to the possible cancellation or delay of the programme and in no other way”.

[\[DT1-0069.pdf\]](#)

117. To the knowledge of Armscor, the DoD and SAN, CCII Systems continued thereafter to expend money and effort on the development of the IMS in the reasonable expectation that if the IMS met the technical and functional requirements specified by SAN, CCII Systems would be awarded the contract for supplying the IMS for the corvettes to be acquired by SAN.
118. Although Project Sitron had been approved by the cabinet in principle during 1993, the first democratic elections in South Africa gave rise to a change of government in 1994. The new cabinet decided to perform a Defence Review before proceeding with contracting. This Defence Review commenced in 1995 and took approximately two years.

Risks

119. Price and risk audits were conducted on CCII Systems's IMS by SAN, Armscor and ADS in April 1997 and again in May 1998. These incorporated into the overall combat suite price and risk audit which were documented in a set of spreadsheets. Armscor, SAN and ADS did not, pursuant to either of these audits, express the view that there were any material deficiencies in the technical and functional capabilities of the IMS or that the price of the IMS (as updated from time to time to account for inflation and the maturing technical requirements) posed difficulties of affordability or that there were any untenable risks in the acquisition of the IMS.

[\[DT1-0200.pdf\]](#)

[\[DT1-0201.pdf\]](#)

120. After the completion of the May 1998 audit SAN, Armscor and ADS consolidated the results in summary form onto a schedule which specified the anticipated cost of each system and an overall risk assessment for each system (classified as low, medium or high).

[\[DT1-0202.pdf\]](#)

121. The said price and risk audits were conducted by SAN, Armscor and ADS in accordance with questionnaires prepared by them and which candidate or preferred suppliers (such as CCII Systems) were required to complete, where after representatives of SAN, Armscor and ADS interviewed the suppliers regarding the answers furnished.

122. The questionnaires were designed to elicit answers regarding the cost of and risks associated with the various systems.

123. As regards risk, the questionnaires elicited answers to enable SAN, Armscor and ADS to determine whether the risk in question:

- 123.1 related to performance, cost or schedule (programme timing);
- 123.2 affected the combat suite as a whole or related only to the system itself;
and
- 123.3 was to be classified as critical, major or minor.

124. In its May 1998 Cost and Risk Audit Report CCII Systems had reported its assessment of risk for the IMS for the 1997/1998 period as follows :

“FDDI NIC development and VxWorks adoption have alleviated all major risks. No major risks remain. This remains a complex development however.”

125. It further reported its assessment of risk for the IMS for the 1998/1999 period as follows :

“No major risks remain. This remains a complex development however.”

126. In the JPT’s November 1998 anticipated and overall risk assessment for each system (classified as low, medium or high) the risk assessment in respect of the IMS was again specified as “low”.

[\[DT1-0417.pdf\]](#)

127. On 1998-12-07 ADS and Thomson-CSF Naval Combat Systems (NCS) conducted an internal review of the S.A.N. - Sitron programme and recorded as follows :

“After a careful risk analysis, A.D.S./N.C.S. have reached the conclusion that most of the risks in the South-African Combat Suite design were of an acceptable nature and therefore could be guaranteed except for the S.A.M. and the radar tracker systems.”

[\[DT1-0313.pdf\]](#)

128. When questioned about the matter of IMS risk during his Section 28 on 15 June 2001 Kamerman testified as follows :

“The IMS, in terms of the risk to our combat suite, was relatively **benign** with regard to the technical aspects. We did not do a risk assessment at that time under the technology programme of contractual commercial risk with regard to the issues that subsequently transpired under the capital programme negotiations, where the majority of the risk was a contractual (inaudible) type of vessel.” (Page 814)

“Certainly we were satisfied at the time that the C-Squid I-Squid's technology represented a **manageable technical risk**, otherwise he would not come in, put forward as the capital supplier in the tender documents that we instructed the (inaudible) to proceed with, i. e the URS that we gave them in December 1998. Have we not been satisfied that he had reached a level of technology that, albeit not a full level of technology, we were satisfied along with the remaining listing that we did of local contractors.”

[\[E paia-ag edoc interview10 JEGK all OCR.pdf\]](#)

129. Now in my view if there was both benign technical risk and manageable technical risk it is difficult to imagine from where this untenable commercial risk stems. In my at that stage 15 years of formal systems engineering which includes risk management the SA Navy, Armscor and involved commercial entities had only ever talked about and formally managed risks related to political issues (e.g. sanctions) and timescales, costs and performance. They were clearly none of these applicable to the IMS and so whatever commercial risks were a figment of someone's imagination and indeed were both self-serving and opportunistic.
130. The party to whom this position of an untenable self-serving and opportunistic was none other than ADS and Thomson-CSF who previously in December 1998 had not reported the IMS as an unacceptable risk. Yet as soon in circa January 1999 when there was going to be no competition for them regarding the corvettes suite then they used the pretext of risk to escalate the quoted prices of the combat suite and its subsystems, in particular that of the IMS for the reason that the IMS confounded it situation regarding the combat suite architecture in general and the French Thomson-CSF Tavitac Combat Management System specifically. The latter already had its own CMS databus and by having a combat suite databus based on the IMS firstly that the Tavitac CMS was no longer the central point of connectivity in the combat suite and secondly that one of the data buses effectively had to be redundant.
131. In this respect it is particularly informative to note the contents of a Thomson-CSF fax dated 1998-08-31 :

“Bae-SEMA has proposed an alternative solution, which will simultaneously protect the bus developed by C212. This solution weakens the ADS proposal and runs the risk of causing an eventual argument for those that support the questioning of the leadership of ADS.”

[\[DT1-0271.pdf\]](#)

132. In my view this puts the issue of the so-called IMS risk, possible competition for the combat suite with party such as British Aerospace (BAeSEMA) and the Thomson CSF intentions regarding both the combat suite architecture and the Tavitac-based CMS in the stark light of day.
133. On a slightly different point this fax also makes no reference to “our friend C.S.” which I believe can only be to be Chippy Shaik as they are few other people with the same initials who would be able to advise them as to :

“the reaction of the principal Chiefs of Service concerned after the presentation by ADS on its new system of combat based on TNT, to ARMSCOR and the SA Navy at the beginning of July?”

134. While the date of August 1998 is before Shaik formally declared his conflict of interest on 4 December 1998 he was by then Chief of Acquisitions, as well as that both ADS and Thomson-CSF were in the bidding process both in terms of the RFO and their position as the GFC’s declared combat suite partner and that his brother Schabir was a director of ADS which by then was controlled and 50% owned by Thomson-CSF. Hence not only did the state of conflict of interest exists, but here we have a case of the Chief of Acquisitions passing information of an ultra sensitive capital acquisition to a foreign company.
135. During June 1997 and pursuant to the Defence Review referred to above, the cabinet approved inter alia the programme for the acquisition of four patrol corvettes by the DoD for SAN.

Requests for Information

136. During September 1997 DoD, through Armscor, issued Requests for Information (“RFIs”) to countries interested in bidding for the supply of the corvettes.

137. Included in the RFIs issued as aforesaid was a document styled an ***Element Costing and Description*** (“ECD”) date of original issue 30 September 1997 and date of Issue 2 as 28 January 1998.

[\[DT1-0177.pdf\]](#)

138. By 8 December 1997 the cabinet had approved a shortlist of four potential suppliers of the corvettes, namely DCN International of France, the German Frigate Consortium of Germany (“GFC”), Bazan of Spain and GEC Marine of the United Kingdom.

Requests for Final Offer

139. During February 1998 DoD, through Armscor, issued Requests for Final Offers (“RFFO”) to the four shortlisted suppliers.

[\[DT1-0204.pdf\]](#)

140. The RFFO stated inter alia that it was envisaged that the combat suite contractor would be a South African industry consortium in which ADS would play a leading role, co-responsible for the overall design, integration and supply of the combat suite element (Para. 1.2.2).

141. Included in the RFFO was an updated version of the ECD as approved on 28 January 1998 by (then) Captain JEG Kamerman on behalf of the Chief of the SAN.

142. The RFFO stated inter alia the following :

142.1 The Combat Suite element was defined in the ECD (Para. 3.3.4.1).

142.2 The Combat Suite element to Ship Platform element interface requirements were contained in the Ship Platform Requirements Specification (Para. 3.3.4).

[\[DT1-0152.pdf\]](#)

143. The Ship Platform Requirements Specification in turn stated the following :

“Databus: A customer specified dual redundant fibre optic LAN databus to the SAFENET standard will be installed at build to provide for the Information Management System (IMS) in accordance with Appendix A and run in accordance with the vulnerability requirements stated in 079-6” (Para. 4.2).

144. The updated ECD recorded the following :

“The combat suite comprised systems specified and selected by SAN and developed and produced “by nominated RSA industry” as well as certain systems from SAN inventory and three systems (not here relevant) to be acquired from overseas” (Para. 2(a)(ii)).

145. It was intended that the corvettes would be acquired under a single prime contract, the ship platforms being built overseas and integrated with their combat suites in SAN’s dockyard in Simon’s Town (Para. 3).

146. The vessel contractor was to be a “teaming arrangement between the ship platform supplier and the nominated RSA Combat Suite supplier, with sub-contracts placed on nominated companies for the various sub-systems” (Para. 3).

147. The combat suite was to be :

“a modern, LAN-based naval combat suite with a distributed processing architecture, making extensive use of commercial off-the-shelf (COTS) technology” (Para. 9).

148. At that time South Africa had a reasonably well-developed naval combat system industry and as the maintenance and expansion of these capabilities afforded SAN certain strategic and cost efficiency advantages, the corvette combat suite was “mainly locally sourced” (Para. 10).
149. The primary local company nominated to integrate the combat suite was ADS (Para. 10).
150. Included in the ECD was a table headed “SA Navy Patrol Corvette: Nominated Combat Suite”, identifying inter alia the various elements comprising the combat suite and the “ELEMENT SUPPLIER”.
151. In this table the IMS was identified as an element of the combat suite and was described as follows :

“Dual redundant fibre optic (FDDI) local area network (LAN) databus and LAN management for the distribution of all non-video data information. Includes FDDI Network Interface Cards (NIC) to interface non-IFU sub-systems”.

152. CCII Systems was specified in this table as the element supplier of the IMS.
153. In the same table ADS was identified as the element supplier in respect of (inter alia) :
- 153.1 the Combat System Integration element; and
- 153.2 the Combat Management System (“CMS”).

154. The CMS is a system with capabilities to assist in the planning and execution of missions and in weapon, radar and air control through command display, tactical computers and picture-displaying consoles.
155. The table stated that the CMS comprised inter alia the Action Information System (“AIS”) and Weapon Control System (“WCS”), which were indigenous systems developed in South Africa at considerable cost to the State, initially under Projects Diamant and Caliban and later under Project SUVECS.
156. Revision 2 of the Naval Staff Requirement NSR 6/80 (“NSR”) dated 24 May 1993 governing the acquisition of the corvettes required that the combat suite be :

“The combat suite is to be integrated onboard in an open architecture with distributed processing that allows for graceful future upgrading.” (Para. 13)

This requirement in the NSR was never thereafter altered. However, the final architecture and databus actually implemented were not conformant to these stipulations.

[\[NSR V2-1993-05-24.pdf\]](#)

Further Assurances to Me

157. On or about 26 March 1998 Kamerman (in his capacity as Project Officer: Project Sitron, representing the DoD and SAN) faxed to CCII Systems extracts from the RFFO and ECD (including the pages containing the statements summarised above) in order to reassure me that our IMS was still part of SAN’s official requirements for the combat suite. These documents specifically refer to the IMS and it being supplied by CCII Systems as the nominated sub-contractor (Pages 9 and 10).

[\[DT1-0193.pdf\]](#)

158. Shortly before and again shortly after the said extracts were faxed to CCII Systems, there were telephonic discussions between Kamerman (in his said capacity) and myself in which Kamerman orally assured me of the commitment of the DoD and SAN to using the CCII Systems's IMS and the architecture specified in the ECD.
159. On 9 July 1998 and at a meeting of the technical committee for Project Sitron (attended by, among others, representatives of CCII Systems including me), Kamerman repeated that an indigenous South African combat suite remained part of the project and encouraged members of local industry (including CCII Systems) to continue developing the systems in which they were involved and to fund such work partly from their own resources, on the basis that once the corvette acquisition programme was finally approved local participants would receive the contracts for their respective elements.

GFC's May 1998 Offer

160. The four shortlisted suppliers to which the RFFO had been issued submitted their offers by 11 May 1998 (the closing date specified in the RFFO).
161. In its offer, GFC proposed that the primary vessel contractor should be the original members of GFC (Blohm+Voss GmbH – "B+V"), Howaltswerke Deutsche Werft AG – "HDW"; and ThyssenRheinstahlTechnik GmbH – "Thyssen") plus ADS.

Categorisation of Contracts

162. For contractual purposes, the Joint Project Team with responsibility for Project Sitron ("JPT") and comprising representatives of SAN, Armscor and DoD, divided the various components comprising the corvettes into three categories :
- 162.1 Category A, consisting of the vessel platform;

- 162.2 Category B, consisting of sub-systems for which the prime contractor was expected to assume full responsibility; and
- 162.3 Category C, consisting of sub-systems supplied by sub-contractors and for which the primary contractor was not expected to assume full responsibility until after the satisfactory and successful completion of factory acceptance tests.

163. The JPT classified the IMS as a Category C sub-system and the Request for Best and Final Offer was issued on that basis.

ADS/Thomson-CSF/Nkobi

164. Shortly before the submission by GFC of its bid, Altech Limited (which held all the shares in ADS) sold 50% of the shares plus one share in ADS to Thomson-CSF of France ("TCSF") and this 50% shareholding was transferred to TCSF on or about 28 April 1998. The plus one share was to give a controlling interest to TCSF.
165. TCSF is a French company with extensive interests in the armaments industry. One Pierre Moynot of TCSF was thereupon appointed as chief executive officer of ADS.
166. By this stage TCSF had caused two companies to be incorporated in South Africa, namely Thomson-CSF Holdings (SA) (Pty) Limited and Thomson-CSF (Pty) Limited.
167. Nkobi Investments (Pty) Limited ("Nkobi Investments") held 10% of the shares in Thomson-CSF Holdings (SA) (Pty) Limited and 30% of the shares in Thomson-CSF (Pty) Limited.

168. All the shares in Nkobi Investments were held by Nkobi Holdings (Pty) Limited (“Nkobi Holdings”) and all the shares in Nkobi Holdings were in turn controlled directly or indirectly by one Schabir Shaik.
169. Schabir Shaik became a director of Thomson-CSF SA (Pty) Limited (later renamed to Thint (Pty) Limited) from date of incorporation in July 1996, a position he held until his conviction for corruption and fraud.
170. TCSF would acquire the balance of the shares in ADS if GFC was awarded the contract for the supply of the corvettes and ADS was awarded the contract for the supply of the combat suite while Schabir Shaik would (through Nkobi Holdings or Nkobi Investments) acquire an indirect interest in ADS.
171. This subsequently occurred as follows :
 - 171.1 during February 1999 the remaining 50% shareholding in ADS was transferred by Altech Limited to TCSF.
 - 171.2 During September 1999 80% of the shares in ADS were transferred to Thomson-CSF (Pty) Limited (in which Nkobi Investments held shares) and Schabir Shaik was appointed as an alternate director of ADS.

Evaluation of Bids

172. During 1995 Shamim Shaik (“Shaik”), the brother of Schabir Shaik, was appointed to the planning division of the DoD where he was instrumental in the Defence Review and its output, the so-called Force Design. The Force Design was the design recommended for the SANDF in the Defence Review and in which the core defence capability requirements of the SANDF and the nature and quantity of the equipment needed to fulfil those requirements were identified.
173. During May 1998 Shaik was appointed as DoD’s Chief of Acquisitions, although he had been designated to take over this position at an earlier point in time. As

Chief of Acquisitions Shaik was the Fund Manager of the Special Defence Account from which the SDPs were to be funded. He was also in control of policy matters and planning relating to all acquisitions by the DoD.

174. The responses to the RFFO (the closing date for which was 11 May 1998) were evaluated by the JPT and subsequently considered by SOFCOM.
175. The JPT was led by Kamerman.
176. Shaik was the chairperson of the PCB, the-chairperson of SOFCOM and secretary of MINCOM.
177. GFC's bid failed to meet DoD's minimum Defence Industrial Participation ("DIP") requirements and Armscor was advised by its legal division that GFC should for this reason be disqualified. (DIP refers to the commitment made by an offeror to invest in the South African defence industry through the purchase of goods and services from local suppliers and by funding participation by local suppliers in foreign technology transfer programmes.)
178. However, the SOFCOM selected GFC as the preferred supplier of the corvettes and this recommendation was adopted by the AAC on 13 July 1998.
179. On or about 31 August 1998 and pursuant to a briefing by Shaik, MINCOM adopted the AAC's recommendations.
180. On or about 18 November 1998 the cabinet approved the SDPs, of which the acquisition of four corvettes for SAN formed part and GFC was approved as the preferred supplier of the corvettes.
181. This approval was given on the basis that the four corvettes would be acquired at a total cost of about R6,001 billion, with the combat suite component being at a cost (in April 1998 prices) of R1,47 billion (equating to about R1,9 billion in December 1998 terms).

User Requirement Specification

182. On or about 10 December 1998 SAN, as the end user of the corvettes to be supplied as part of the SDPs, issued to GFC a document titled "SA Navy Patrol Corvette Combat Suite Requirements Specification" ("the URS") as the requirement baseline for the combat suite component of the four corvettes.

[\[DT1-0315.pdf\]](#)

183. On or about 5 March 1999 a revised version of the URS was issued to GFC under Kamerman's signature.

[\[DT1-0361.pdf\]](#)

184. The URS contained inter alia the following statements and specifications :

184.1 The combat suite component of the corvettes comprised systems specified in accordance with the URS and selected by SAN (Para. 1.1).

184.2 The primary object of the URS was to describe the combat suite performance, design, logistic and associated hardware elements required by SAN in order to establish a baseline for the acquisition of the corvette combat suites (Para. 1.3).

184.3 The URS established the functional requirements of the combat suite and constituted the baseline against which all contractor functional and design specification documentation related to the combat performance of the corvettes was to be derived and subordinate and against which the combat capabilities allocated to the combat suite was to be tested and accepted by SAN (Para. 1.4).

- 184.4 The combat suite was to be a modern LAN-based combat system with a distributed processing architecture, making extensive use of Commercial Off-The-Shelf Technology (“COTS”) (Para. 2.1).
- 184.5 The required high-level system architecture was to be as depicted in the diagram attached marked “PC2”, which diagram depicted inter alia the use of a dual redundant FDDI databus (Para. 2.1). FDDI is an acronym for Fibre Distributed Data Interface.
- 184.6 The combat suite architecture was to be of an engineering efficient design that “maximises inherent and graceful growth potential for enhancing and upgrading the system across its lifespan, particularly the easy and rapid adding of additional sub-systems” (Para. 2.1).
185. Because South Africa had a reasonably well-developed naval combat system industry across a wide range of products and technologies and because the maintenance and expansion of these capabilities afforded SAN certain strategic, cost and logistic support advantages, the combat suite was to consist mainly of sub-systems developed or under development by South African industry (Para. 2.3) and was to be locally supported by a combination of SAN and local industry capabilities as appropriate and cost-effective (Para. 4.16).

Information Management System

186. In a diagram depicting the product breakdown structure required for the combat suite, the IMS was specified as part of the integration segment and as being a system to be supplied by a “local industry supplier” (Para. 2.4.1 read with Figure 2.1).
187. The IMS was to provide the following functions and characteristics :
- 187.1 The IMS was to interface all the combat suite segments via a LAN derived from MIL-STD-2204A, Survivable Adaptable Fibre Optic

Embedded Network (“SAFENET”) and was to be based on the Alternate Path FDDI topology as defined in the US Navy SAFENET standard (Para. 7.1.1).

187.2 The IMS was to provide reliable data communication between sub-systems with enough spare capacity for combat suite expansion. This communication medium was to be “transparent to the sub-systems” and was to provide synchronised clocks for use in time-stamping of data (Para. 7.1.1).

187.3 The IMS signal data transfer capability was defined on the basis of a maximum latency of critical data transfer of 5 milliseconds for a maximum message size of 4 000 bytes (Para. 7.1.1). In other words, the IMS had to be capable of transferring up to 4 000 bytes of data from one sub-system to another in not more than 5 milliseconds.

187.4 The IMS clock synchronisation capability required maximum uncertainty between timestamps (i.e. node-to-node synchronisation accuracy) to be better than 500 microseconds (Para. 7.1.1).

188. Appendix I to the URS identified the CCII Systems as the supplier of the IMS.

Combat Management System

189. The development specifications, design and interface control documents applicable to the CMS (Para. 8.1.4) were those relating to the indigenous AIS and WCS systems referred to in the ECD.

Altech Defence Systems

190. Appendix I to the URS identified ADS as the supplier of (inter alia) the Combat Suite Integration Element and the CMS.

Change in Architecture

191. TCSF and its subsidiaries (including a company called Detexis) had developed various naval combat systems, including :
 - 191.1 the Tavitac CMS;
 - 191.2 the Detexis Diacerto Combat Suite Databus (“the Detexis system”).
192. Pursuant to the acquisition by TCSF of a shareholding in (and subsequently control of) ADS, the latter began to take advantage of its position, as part of the consortium headed by GFC and as the nominated supplier of the Combat Suite Integration Element and of the CMS, in order to substitute :
 - 192.1 the Tavitac CMS for the indigenous CMS specified in the URS;
 - 192.2 the Detexis system for CCII Systems’s IMS specified in the URS.
193. Furthermore, the Tavitac CMS (as distinct from the indigenous CMS specified in the URS) could not be used in conjunction with CCII Systems’s IMS without substantial adjustments to the Tavitac CMS and this was a further reason why ADS set about attempting to displace, as I shall demonstrate, not only the indigenous CMS specified in the URS, but also CCII Systems’s IMS.
194. ADS’s motivation in acting as aforesaid was to enhance the profits to be earned by ADS and TCSF from their involvement in the supply of the corvettes by :
 - 194.1 replacing indigenous South African systems with systems developed and supplied by TCSF and its subsidiaries;
 - 194.2 avoiding the expense which it would have to incur in making adjustments to the Tavitac CMS if CCII Systems’s IMS were to be selected in conjunction with the Tavitac CMS; and

- 194.3 gaining technical and technological control of the combat suite and its architecture in order to maximise their profit from support, maintenance and upgrade in the medium and long-term.
195. In pursuance of the foregoing objectives, ADS proposed several alternative combat suite architectures to the baselined architecture.
196. These alternatives, designated as “CS2” to “CS7” (as distinct from “CS1” – the baselined architecture), were proposed at a technical committee meeting held during July 1998 at ADS’s premises at Mount Edgecombe, kwaZulu-Natal and attended, by among others, Kamerman and representatives of the SA Navy and Armscor, ADS and CCII Systems.

[\[CS1-CS7.pdf\]](#)

197. Certain of these alternatives retained the CCII Systems’s IMS, but with reduced scope, while others eliminated the IMS altogether.
198. At a design review meeting held during August 1998 at ADS’s premises at Mount Edgecombe, kwaZulu-Natal and attended by, among others, Kamerman and representatives of CCII Systems, ADS proposed a further revised architecture styled “CS7 mod 1”.

[\[CS7mod1.pdf\]](#)

199. The said proposed architecture (“CS7 mod 1”) made use of the CCII Systems’s IMS, but in conjunction with the Tavitac CMS, thus requiring an alteration to the data-transfer protocols linking the CMS to the IMS.

200. These alterations would have involved :
- 200.1 incorporating a so-called Bridge Interface Unit;
 - 200.2 incorporating a Dual Protocol Stack;
- at additional cost to CCII Systems.
201. All the proposed alternative architectures, including “CS7 mod 1”, deviated from :
- 201.1 the formally accepted combat suite baseline which was at that time embodied in the Combat Suite Functional Specification (“the Functional Specification”) and Combat Suite System Design Document (“System Design Document”); and
 - 201.2 the URS subsequently issued in December 1998 and revised in March 1999.
202. At the same design review meeting in August 1998, representatives of ADS (among others, Messrs D.N. Hiles, D.C. Law-Brown and K.C. O’Neill) sought to undermine CCII Systems’s IMS by asserting that the IMS (and the architecture associated with it) entailed an unacceptable risk.
203. At a meeting of the technical committee held at Mount Edgecombe on 5 November 1998, ADS was directed by SAN and Armscor to generate and issue a technical description of the architecture “CS7 mod 1”, explaining the proposed changes in the combat suite design, but this was never done.

CCII Systems's Quotations for IMS

204. On 11 November 1998 ADS, as the nominated combat suite contractor and nominated supplier of the Integration Segment, requested CCII Systems, as the nominated supplier of the IMS, to furnish a formal quotation for the supply of the IMS. ADS's request included the following note in respect of the IMS for which CCII Systems was to quote:

“The Subsystem is as established at the level 4 DR under Project SUVECS and as modified by the selection of the CS7 (Mod 1) architecture at the last Technical Committee meeting (TC14)”.

[\[DT1-0300.pdf\]](#)

205. The said modified architecture had not in fact been selected nor had the modified architecture been described and specified in any amendments either to the Programme Plan or the ECD.

206. Furthermore, when the URS was issued on 10 December 1998 and subsequently revised on 5 March 1999, it continued to specify the original architecture identified in the Programme Plan and ECD.

207. CCII Systems nevertheless submitted a formal quotation dated 11 December 1998 in response to ADS's request of 11 November 1998.

[\[DT1-0317.pdf\]](#)

208. On 15 December 1998 ADS requested CCII Systems to furnish a further formal quotation for the IMS (for four ship systems and two test support systems), this time on the basis of an “alternative configuration proposal”.

[\[DT1-0320.pdf\]](#)

209. Full details of the “alternative configuration proposal” were not provided, but we were requested to :
- 209.1 “Exclude/Remove the Bridge (BIFU)”;
 - 209.2 “assume a single dual redundant FDDI LAN”; and
 - 209.3 “provide a connection oriented service, i.e. as per UDP/IP and TCP/IP.
210. Additionally we were to offer :
- 210.1 “scope of supply to include 5 sets ie the ITB LAN shall be equipped with the full complement of concentrators and NOT downscaled”; and
 - 210.2 “the new design to cater for 25 dual attached nodes”; and
 - 210.3 “separate prices for -
 - I) the 23 NIC modules (FDDI PMC + PCI carrier Host)
 - ii) the development of the APIS connection oriented services extension”
211. I deduced from these technical requirements that CCII Systems was being asked to furnish a quotation for the IMS with reference to the original architecture specified in the Programme Plan, the ECD and the URS.
212. However the items referred to under Para. 210 above were extra items over and above the original scope of supply and would constitute a not insignificant price increase. The specific items would be to support the architecture and combat management system that ADS and Thomson-CSF were now promoting.
213. CCII Systems duly submitted a formal quotation at a price of R54 985 451 (including VAT) or R48 232 852 (excluding VAT).

GFC'S February 1999 Offer

214. During February 1999 GFC submitted an offer to Armscor for the combat suite component of the corvettes for a total price (excluding VAT) of R2 607 968 000.

[\[DT1-0357.pdf\]](#)

215. The content of the said offer was determined by ADS as a member of the consortium headed by GFC and as the nominated supplier of the Combat Suite Integration Element.

216. In the said quotation the price allocated to the IMS was as follows :

| | |
|---------------------------|--------------------|
| As quoted by CCII Systems | R42 233 000* |
| Plus: ILS as per ADS | R 6 434 000 |
| Plus: risk as per ADS | <u>R19 731 000</u> |
| | R68 398 000 |

* excluding Integrated Logistic Support – “ILS”

217. Armscor and SAN considered the total offered price for the combat suite to be too high and negotiations ensued between them, GFC and ADS.

218. On or about 8 March 1999 Armscor addressed a letter to GFC, requesting the latter to present a further offer complying with the URS plus “alternative strategies to best meet the URS and at the lowest price”.

[\[DT1-0363.pdf\]](#)

219. During April 1999 ADS and TCSF presented to Armscor and SAN a revised combat suite architecture based on the Tavitac CMS and the Detexis System and completely eliminating CCII Systems's IMS.

GFC'S May 1999 Offer

220. On or about 6 May 1999 SAN addressed a letter to GFC and ADS, stating that because an acceptable price for the combat suite had not been achieved through negotiation, they were now requested to submit a best and final offer ("BAFO") for the combat suite.

[\[DT1-0426.pdf\]](#)

221. In the same letter it was stated that SAN was not prepared to consider further reductions in the primary scope of supply or performance and that a "hard wired solution" for the combat suite would not be acceptable.

222. On 13 May 1999 ADS in turn requested CCII Systems to submit its BAFO for the IMS, specifying the next day (14 May 1999) as the closing date for submission.

[\[DT1-0426.pdf\]](#)

223. On 14 May 1999 CCII Systems duly submitted an offer (including VAT) of R44 303 918.

[\[DT1-0427.pdf\]](#)

224. On or about 24 May 1999 GFC and ADS submitted a BAFO for the combat suite.

[\[DT1-0440.pdf\]](#)

225. This BAFO incorporated :

225.1 a price based on the supply of CCII Systems's IMS; and

225.2 an alternative price based on the supply of the Detexis system.

226. In the price based on the supply of CCII Systems's IMS, the total portion of the price allocated to the IMS was R89 255 000, being the price quoted by CCII Systems (R44 303 918) plus R44 951 08 as a risk premium, supposedly to cover integration risks and the risk of having to replace the IMS with another system if the IMS failed.
227. In the price based on the supply of the Detexis system, the total price allocated to the Detexis system was R49,55 million, which price did not include any risk premium.
228. ADS's BAFO also proposed to remove the ammunition, which will include the surface to surface missile rounds from the offer in order to bring down the price of its offer by approximately R300 million, viz. :

“In order to further close the gap, the removal of ammunition, except for the system qualifications, will result in a saving of approximately 300 MR at the level of the acquisition costs.”

Evaluation and Selection of Databus

229. On or about 27 May 1999 the PCB met, at which meeting Shaik was present and actively participated in the deliberations.

[\[PCB 1999-05-27.pdf\]](#)

230. At this meeting the PCB discussed inter alia the possibility of replacing CCII Systems's IMS with the Detexis system, but resolved to defer a decision until full specifications of the Detexis system and the architectural implications for the combat suite had been furnished by ADS.

231. On 3 and 4 June 1999 officials of Armscor and SAN (“the evaluation team”) performed a technical assessment of the respective merits of CCII Systems’s IMS and the Detexis system.
232. The technical assessment was undertaken on the instructions of Kamerman (of SAN) and Frits Nortjé (then Programme Manager: Patrol Corvettes in the employ of Armscor) in order to obtain the further information required by the PCB as referred to above.
233. Kamerman and Nortjé constituted the executive committee of the JPT known as the Project Executive and it was within their authority as such to commission a technical assessment of the kind in question.
234. The evaluation team comprised :
- 234.1 SAN
- Cdr (later Capt now Rtd) H.N. Marais, Cdr (now Rtd) I.K. Egan-Fowler and Lt Cdr later Cdr now Rtd) A. Cothill (all Project Engineers);
- 234.2 Armscor
- Mr L.R. Mathieson (Combat Suite Acquisition Manager); and
- 234.3 GFC
- Dr Wolfgang Vogel (B+V Combat System Department Manager).
235. Representatives of Detexis (Jean Marc Ferre and Laurent Royer) were present during the performance of the assessment.
236. CCII Systems was not informed of the assessment nor invited to send representatives to be present.

237. This report lists the points which the evaluation team identified in their report as the pros and cons of the two systems.

[\[DT1-0456.pdf\]](#)

238. In summary, the evaluation team identified 16 areas of concern in relation to the Detexis system, six in relation to the IMS and concluded, on the basis of 15 listed considerations, that the (then) current architecture based on the IMS should be retained.

239. The evaluation team concluded that the IMS was a superior product to the Detexis system (Point 15).

240. Furthermore, a number of the evaluation team's criticisms of the Detexis system identified aspects where the Detexis system did not comply with the baseline requirements specified in the URS (in particular, Points 1, 4, 7, 8, 10, 13 and 15).

241. The IMS was in fact (as the evaluation team found) a superior product and the Detexis system was in fact deficient and failed to comply with the URS for the reasons identified by the evaluation team and for the following further reasons :

241.1 the revised architecture brought about by the use of the Detexis system in conjunction with the Tavitac CMS is not an open architecture in accordance with the SAFENET and FDDI standards, but a closed architecture based on a network which employs proprietary components and protocols rather than COTS elements, with the result that the user (the State) will be compelled to retain the supplier (ADS and TCSF) as the exclusive source of supply over the lifespan of the combat suite;

241.2 furthermore, the combat suite based on Detexis system is essentially a hard-wired point-to-point solution rather than being bus-based and its potential for growth and upgrading is thus severely curtailed; this being directly contrary to the SAN's own formally stated RFO requirement;

- 241.3 the Detexis system does not provide synchronised clocks for the time-stamping of data;
- 241.4 the transfer capability of the Detexis system is only 165 bytes in 6,5 milliseconds, which falls far short of the capability required by the URS (4 000 bytes in not more than 5 milliseconds);
- 241.5 the Detexis system's node-to-node synchronisation accuracy is at best only of the order of 10 milliseconds (10 000 microseconds), contrary to the 500 microseconds in a worst-case scenario as specified in the URS - a factor of 20 times worse. In fact, the end-to-end synchronisation accuracy of the combat suite based on the Detexis system will be considerably worse than 10 milliseconds due to its hard-wired component. This accuracy is critical to the combat suite's air defence function;
- 241.6 the real-time performance of the Detexis system is deficient due to its employing the Transmission Control Protocol/ Internet Protocol ("TCP/IP") which has inherent deficiencies in this regard, specifically its Time-Wait state machine and primitive message priority scheme. According to the Internet standard RFC 793 a connection can stay in a Time-Wait state for a maximum of four minutes known as a MSL (maximum segment lifetime); this is highly deficient and unacceptable for a real-time system such as the combat suite;
- 241.7 the Detexis system attempts to achieve system reliability by means of a combination of dual-redundant, dual-homed Fast Ethernet switches, duplicated Network Interface Cards ("NICs") and software-implemented data packet duplication and selection logic, but reliability is compromised by the following :

241.7.1 the use of duplicated NICs is undesirable since hardware is doubled and each NIC requires the processing resources of its host, which is limited;

241.7.2 data packet duplication and selection is a potentially dangerous redundancy mechanism in mission-critical systems, since it violates the atomic commitment principle, namely that data transactions should either complete successfully (“commit”) or fail completely (“abort”), with no partial state. This is violated by the transmission of duplicate data packets.

242. The Detexis system also failed to comply with the requirements of the NSR quoted above in the following respects :

242.1 in the Detexis system the combat suite as a whole is not “based on” an architecture using a databus. Only the CMS component of the combat suite utilises a databus. The CMS in turn connects to the rest of the combat suite by multiple point-to-point (or hard-wired) links; and

242.2 the databus in the Detexis system is thus not a “multirole” databus, since it provides functionality to the CMS only and cannot provide clock synchronisation nor timestamping services nor bulk data transfer services to the combat suite, those being inter alia the functionalities of the databus specified by the URS (Para. 7.1.1 thereof);

242.3 the combat suite architecture based on the Detexis system is essentially a point-to-point system and such a system cannot be described as “modern”;

242.4 the architecture based on the Detexis system contains many single points of failure and is therefore not “distributed”;

243. The purpose of a “distributed” architecture is to ensure that the critical functionality of the combat suite is not jeopardised by the non-functioning of a single piece of equipment.
244. In the DoD’s letter dated 6 May 1999 to Messrs German Frigate Consortium and African Defence Systems (PTY) Ltd entitled ***Request for Best and Final Commercial Offer: SAN Patrol Corvette -Vessel System*** provided an Appendix B to the letter entitled ***Combat Suite Baseline for Vessel Best and Final Offer***. This stipulated as follows :

“A hardwired solution is not acceptable to the SAN.
Architecture to be as proposed on 07th April 1999.”

[\[DT1-0426.pdf\]](#)

245. In the case of the Detexis system, the non-functioning of a particular sub-system’s system interface unit will prevent other critical systems from operating (for example, if the tracker system’s system interface unit fails, the gun system fails since the tracker system can no longer communicate with the gun system in order to provide it with tracking data).
246. Such a failure of (for example) a system interface unit constitutes a single point of failure within the combat suite which violates one of its fundamental design principles.
247. By contrast, in a “distributed” architecture (such as CCII Systems’s IMS) all sub-systems communicate directly with one another and thus the need for system interface units and for communication via the CMS is eliminated.
248. Furthermore, the combat suite based on the Detexis system is dependent on a pair of fore and aft switches with processing intelligence and which link the CMS

with all fore and aft systems respectively. If the fore or aft pair of switches fails, all fore or aft systems (as the case may be) would fail.

249. By contrast, in a “distributed” architecture (such as CCII Systems’s IMS) there are no switches. There are pairs of concentrators linking the FDDI databus to clusters of sub-systems. The concentrators do not have and do not require, processing intelligence. If a pair of concentrators fails, only the cluster of sub-systems served by that pair will fail.

The Current View of Armscor

250. To emphasise my contention that the final choice of corvette (or frigate) databus was actually irrational is borne out by a very recent opinion expressed by none other than Armscor and the SAN in their response regarding the upcoming acquisition in terms of it RFO EMTM/2014/109 for the SAN’s new hydrographic survey vessel (HSV) :

“It is to be emphasised that it is not foreseen that a SAN Frigate type data bus solution will be implemented onboard the HSV vessel. **This particular system can be regarded as being obsolete and is certainly not considered to be a cost-effective solution as any competent level 4 integrator will attest to.**” (my emphasis in bold text)

[\[Hotel-01\]](#)

251. It is indeed difficult to envisage a more damning indictment of the Detexis Diacerto Databus than this by the very parties that were responsible for its acquisition.

Corvette Combat Suite System Selections

252. On 29 June 1999 Armscor (in the person of its chief executive officer, Swan) notified GFC in writing that the PCB had made certain supplier selections, which included the selection of ADS as the main contractor for the combat suite and as the supplier of (inter alia) the Integration Segment and the CMS.

[\[DT1-0489.pdf\]](#)

253. The said letter did not state that any selection had as yet been made in respect of the databus.

254. The price allocated by GFC and ADS to the IMS in its offer of May 1999 assumed that the IMS was a Category B system for which GFC and ADS were required to accept full responsibility.

255. At a time unknown to me, certain officials of SAN, DoD and Armscor decided that :

255.1 the databus should be reclassified as a Category B system (for which GFC and ADS would have to accept full responsibility);

255.2 CCII Systems's IMS should be replaced with the Detexis system and that the architecture of the combat suite should be altered so as to allow for the use of the Detexis system in conjunction with the Tavitac CMS.

256. The said officials included Shaik (of DoD), Kamerman (of SAN) and Swan and Nortjé (of Armscor). I do not have knowledge of the identity of the other officials, if any.

257. Shaik, Kamerman, Swan and Nortjé participated in the said decision despite having knowledge of the Detexis Databus report and conclusions of the evaluation team.

258. The report and conclusions of the evaluation team were not submitted or communicated to the JPT or the PCB nor to any other body authorised to make a decision on the selection of the databus and neither the JPT nor the PCB nor any other such body ever in fact took a decision to :
- 258.1 reclassify the databus as a Category B system; nor
 - 258.2 select the Detexis system in place of the CCII Systems's IMS; nor
 - 258.3 authorise a departure from the architecture and databus specified in the URS.
259. None of the minutes of these bodies show that they considered such matters, either properly or at all.
260. Notwithstanding the foregoing and in a manner unknown to me, the decision referred to above was incorporated into the budget subsequently approved by the Cabinet and in the contract subsequently concluded by the Government for the acquisition of the corvettes (as more fully set out below).

Final Contract

261. On or about 1 December 1999 the Cabinet approved the conclusion of contracts in respect of the SDPs, including the conclusion of a contract with the European South African Corvette Consortium ("ESACC") for the supply of four corvettes.
262. The ESACC was a consortium comprising B+V, HDW, Thyssen, ADS and TCSF.
263. The budget approved by the Cabinet for the acquisition of the corvettes was R6,873 billion (as against R6,001 billion in December 1998), of which R2,599 billion was allocated to the combat suite (an increase of R699 million as against the effective December 1998 budget of R1,9 billion).

264. The budget approved by the Cabinet made provision for the use of the Detexis system rather than CCII Systems's IMS.

265. Among the major contributors to the price increase of R699 million in the combat suite were :

265.1 the selection of the Tavitac CMS (at a cost of about R350 million) as opposed to the indigenous CMS specified in the URS (which would have cost about R96 million); and

[\[DT1-0228.pdf\]](#)

[\[DT1-0411.pdf\]](#)

[\[DT1-0423.pdf\]](#)

265.2 the acceptance by the State of ADS's integration fee of R425 million as opposed to the fee of R150 million which had been estimated as at January 1999.

[\[DT1-0202.pdf\]](#)

[\[DT1-0417.pdf\]](#)

[E_cs_fdoc_price-breakdown.pdf](#)

266. On or about 3 December 1999 a written contract for the supply of the four corvettes was concluded between the Government (represented by Armscor) and the ESACC ("the corvette contract").

267. The corvette contract made provision for the use of the Detexis system rather than the CCII Systems's IMS.

268. As at the foregoing date neither CCII Systems nor I had not been formally notified of the decision to replace the IMS with the Detexis system and the first formal notification to that effect occurred by way of a letter dated 6 October 2000 addressed to CCII Systems by RAdm(JG) O.J. van der Schÿf on behalf of DoD.

[\[DT1-0663.pdf\]](#)

269. The Cabinet authorised the conclusion of the corvette contract on the basis and in the belief that the selection of the various systems comprising the corvettes (including the architecture and databus for the combat suite) had been duly approved by the JPT and PCB.

Allegations of Corruption : Corvette Platform

270. While certain charges of bribery and corruption regarding directors of ADS and Thomson-CSF South Africa have been proven in court, further allegations were formally made by German prosecutors in respect of corruption by the GFC of very high level functionaries in the South African Government, including members of the Cabinet and the Department of Defence's Chief of Acquisitions, Shamim (Chippy) Shaik. In this regard the German prosecuting authorities formally requested assistance from the South African Government in the form of a letter requesting Mutual Legal Assistance (MLA) dated 19 June 2007.

271. I do not have a copy of the MLA request to the South African government. I believe (and I respectfully aver that this belief is an eminently reasonable one) that the APC should be in possession thereof. What I do have is a copy of the MLA request to the Swiss government from the German government which I understand is almost identical.

[\[SwissMLA-01.pdf\]](#)

272. As will be seen from this document :

272.1 the German authorities formally allege bribery of some USD22 million paid to a range of high level South African functionaries through a Liberian registered company Mallar Inc, owned by one Tony Georgadis (refer to Para. 11b of the MLA);

272.2 the German authorities allege a further USD3 million bribe paid to a British juristic entity Meriam Ltd, a company controlled by one Ian Elvis Pierce on behalf of Chippy Shaik (refer to Para. 11e of the MLA).

272.3 the MLA also identifies as suspects nine German officials of Thyssen (refer Page 2 thereof) including Blohm+Voss's CEO at the relevant time, Herbert von Nitzsch, the senior executive involved in the South African Corvette deal, Christoph Hoenings, the corvette programme director Klaus-Joachim Muller and Thyssen's South-African based local representative Sven Muller.

273. The MLA also identifies the German prosecuting authority's interest in a host of South African organisations, companies and individuals, including :

273.1 the ANC;

273.2 Nelson Mandela Childrens' Fund;

273.3 The Foundation for Community Development;

273.4 Armscor;

273.5 FBS (a 20% shareholder in ADS);

273.6 Thales;

- 273.7 Thint;
- 273.8 Nelson Mandela (then President);
- 273.9 Thabo Mbeki (then Deputy President and chairman of MINCOM);
- 273.10 Joe Modise (first Minister of Defence and member of MINCOM);
- 273.11 Mosiuoa Lekota (second Minister of Defence and member of MINCOM);
- 273.12 Alec Erwin (Minister of Trade and Industry and member of MINCOM);
- 273.13 Trevor Manuel (then Minister of Finance and member of MINCOM);
- 273.14 Ronnie Kasrils (then Deputy Minister of Defence and member of MINCOM);
- 273.15 Mac Maharaj (then Minister of Transport);
- 273.16 Ntsiki Mashimbye (Chairman of Parliamentary Select Committee on Defence);
- 273.17 Thandi Modise Chairwoman of Parliamentary Select Committee on Defence);
- 273.18 Jayendra Naidoo (Chief Negotiator of IONT);
- 273.19 Lionel October (Deputy Director-General in Department of Trade and Industry);
- 273.20 Vanan Pillay (Director and Head of SDPs Industrial Participation in Department of Trade and Industry);

- 273.21 Ron Haywood (Chairman of Armscor);
- 273.22 Llew Swan (CEO of Armscor);
- 273.23 Ken Jones (Marketing Manager of Armscor);
- 273.24 Kevin Hanafey (Armscor Senior Manager Maritime);
- 273.25 Vice Admiral Robert Simpson-Anderson (then Chief of SA Navy);
- 273.26 Vice Admiral Refiloe Mudimu (later Chief of SA Navy and currently Chairman of Armscor);
- 273.27 Rear Admiral Chubby Howell (then Director of Naval Acquisition and later Chief Director Maritime Strategy SA Navy);
- 273.28 Rear Admiral Rusty Higgs (presently Chief Naval Staff, SA Navy);
- 273.29 Rear Admiral (Junior Grade) Jonathan Kamerman (Corvette Project Officer and Naval Project Director SA Navy);
- 273.30 Chippy Shaik (Chief of Acquisitions);
- 273.31 Moe Shaik (brother of Chippy Shaik and Schabir Shaik and at that time Foreign Affairs representative in the South African Consulate in Hamburg, home city of Blohm+Voss);
- 273.32 Schabir Shaik (director of Thint (Pty) Ltd, ADS and Nkobi Holdings);
- 273.33 Ian Pierce (director of Futuristic Business Solutions (Pty) Ltd (FBS);
- 273.34 Yusuf Surtee (confidante of Nelson Mandela and interlocutor for Thabo Mbeki in corvette combat suite deal);

274. The allegations made by the German prosecuting authorities are serious allegations indeed and the Germans allude in various investigation reports to having substantial documentary evidence in support of such allegations, specifically regarding the payment to Chippy Shaik. In this regard they have inter alia the original of a memorandum written in German by one of its most senior executives Christoph Hoenings after his meeting in South Africa in mid-1998 with Shaik where the latter requested the bribe.

[\[DT1-0254.pdf\]](#)

275. In late 2009 I was faxed from Germany a copy of this memorandum dated 3 August 1998 written by Christoph Hoenings. It is typed for clarity with what I believe to be an accurate, albeit unofficial, translation.

It reads as follows :

“MEMO

South Africa

The last trip (27-30.07.1998) was suggested by C. Shaikh, Director Defence Secretariat. During one of our meetings he asked once again for explicit confirmation that the verbal agreement made with him for payment to be made in case of success, to him and a group represented by him, in the amount of 3 million US\$ [gilt]. I confirmed this to him and offered to record this agreement in writing at any time and proposed to put the latter in a safe that can only be accessed jointly. C. Shaikh will report back on this shortly.

Mr Shaikh has emphasised that the B+V/TRT offer was pulled into first place in spite of the Spanish offer being 20% cheaper. The Spanish offset (only the DTI share without "social components") was according to him also valued higher than ours.

In this respect it had, according to him, been no simple exercise to get us into 1st place.

Mr Müller/B+V was informed by me at that time about the arrangement made and also about the conversation I had just had with C. Shaikh, whereby he was asked to reserve the aforesaid amount for the price negotiations to follow, to which he was agreeable.

C. Hoenings”

276. This memorandum is clearly an executive statement in terms of South African anti-corruption legislation recording a bribery agreement, viz. The Prevention and Combating of Corrupt Activities Act, 12 of 2002.

277. The German prosecuting authorities have other documentary records written in English where Shaik provides the details of how the payment should be handled, including his authorisation that this be done through Ian Pierce. They are also meant to have a number of other internal memoranda referring to these to two records.

[\[DT1-1023.pdf\]](#)

[\[DT1-1025.pdf\]](#)

278. The German prosecuting authorities have a further documentary record written in German which, inter alia, provides details of the parties involved, the amounts involved and transfer of what they believe to be the bribery payments

[\[LNWReport-03_G.pdf\]](#)

279. In order to understand the document I have had it automatically translated into English.

280. In my view there are cogent circumstantial grounds for believing these allegations to be true, at least credible or at the very least worthy of independent investigation by this commission of inquiry. These allegations stem from the background of the corvette acquisition.

281. It is common knowledge (and I was also personally involved at that time as well) that between 1993 and 1995 the SA Navy, together with the DoD and Armscor, essentially and to all intents and purposes completed an acquisition process under Project Sitron for the acquisition of four corvettes. After receiving initial proposals from a range of countries, including Germany, five short-listed companies were requested to provide formal offers in response to the RFO (also referred to as RFP). These countries included Denmark, France, Spain, the United Kingdom and Germany. The result of the evaluation was as follows :

- | | | |
|-------|-----|------------------------|
| 281.1 | 1st | Bazan of Spain; |
| 281.2 | 2nd | Svenborg of Denmark; |
| 281.3 | 3rd | Blohm+Voss of Germany; |
| 281.4 | 4th | Yarrows of UK; and |
| 281.5 | 5th | DCN of France. |

282. However, for strategic reasons the Minister of Defence decided that in order to maintain and promote the Rooivalk combat support helicopter in the UK helicopter competition, the UK would not be excluded from the next round of Project Sitron tendering. The Minister therefore instructed that the shortlist of shipyards to receive a Request for Best and Final Offer (RFBAFO) were to be Bazan of Spain and Yarrows of the UK, even though the latter had been placed fourth.

283. Hence Germany was excluded from contention at this point.

284. Two companies survived to this final round of bidding, these being Yarrows of the United Kingdom and Bazan of Spain, with Bazan being finally selected by the SA Navy, DoD and Armscor.
285. The Germans were not taking this lying down and consequently requested a meeting with the Chief of the SA Navy and the Chief of Naval Staff Plans (CNS), RAdm Howell. The meeting was held on 18 January 1995 with a group representing the GFC and CNS, as well as with two Armscor representatives responsible for the acquisition, Mr Erich Esterhuyse, General Manager Aeronautics and Maritime and Mr Byrall Smith, the corvette programme manager.
286. The Germans had had a separate meeting with the Managing Director of Armscor, Mr Tielman de Waal, the previous day on 17 January 1995.
287. RAdm Howell provided a written recordal of the meeting as follows :
3. The Germans are obviously upset that they are not in the final 2 and have been told by Mr de Waal that they may submit a unsolicited proposal.
 4. The following was discussed/stated : (Mr Koopman did all the talking from their side).
 - a. **The Germans had discussed the unsuccessful bid with V Pres T. Mbeki during his visit to Germany.** Mr Mbeki is reported to have said that there have been procedural problems/errors and no one should have been taken out at this stage. **Both Mr Smith and myself gave the assurance that there have been no procedural errors at Armscor/Navy level.** (my emphasis in bold text)

- b. It was pointed out to us that the Spanish and British price escalations over the past 10 years have been much higher than the Germans. Mr Esterhuyse assured them that **all these factors have been taken into account.** (my emphasis in bold text)

[\[JEgk 15 memo cns plan 1995-01-18.pdf\]](#)

288. Offers from both Bazan and Yarrows were received by the RFFO closing date of 31 January 1995 and subjected to evaluation against the same value system as applied in November 1994. The offer of Bazan of Spain was again assessed as superior to that of Yarrows of the UK, both technically and commercially. It was recommended for acquisition in the evaluation report authored by the Project Officer Capt Kamerman, accepted by the Naval Board and forwarded to higher authority by the Navy in February 1995.
289. The Germans were still not accepting defeat and switched their strategy to the political arena.
290. In this regard on 22 March 1995 they had a follow-up meeting with CNS which is recorded by him as follows :

“The visit was made to deliver 3 copies of a document outlining the German Frigate Consortium's offer for the MEKO 100 L Patrol Corvette for the South African Navy. The reason given was that they felt that the SAN should have a copy of **what had been given to South African politicians.** They **were not prepared to expand as to which politicians.** (my emphasis in bold text)

“2. Mr Hoenings did all the talking. He was very open as to where the Germans stood wrt Project SITRON. They acknowledge the receipt of the notice on 23 Dec 94 **taking them out of the running,** however **they do not accept that they are out and**

are fighting at a political level. They are fighting on the grounds that their ship is better as apposed (sic) to the other ships are no good. (my emphasis in bold text)

3. They asked for confirmation that their ship was acceptable to the SA Navy as **they did not want to win the political battle, only to find out the Navy were not happy with their ship.** They were told that their ship had been found acceptable but not where it had ranked in the evaluation.” (my emphasis in bold text)

[\[JEgk 16 conf notes meeting gfc cns 1995-03-22.pdf\]](#)

291. When final Cabinet approval was sought on 3 May 1995, the Cabinet refused to give such final approval to the contract, despite all formal requirements having been fulfilled for doing so during the formal and comprehensive acquisition process.
292. Officially, the reason given for this was that the country first needed to complete a Defence Review before embarking on a major refurbishment of the SANDF. This may well have been valid in general, but this in my view did not apply to the acquisition of a frigate or patrol corvette for the reason that the SA Navy had been trying to replace its president class frigates since the early 1980s and there had been two fullscale albeit unfulfilled, acquisition projects in this respect since then, viz. Project Falcon and Project Sitron (first round).
293. It is clear that the German approaches, whether this be through the formal acquisition channels of Armscor and the SA Navy's Chief of Staff Plans, or through the political route, were unsuccessful. A completely new approach was required.
294. At this juncture it is extremely interesting to note that in the Germans first meeting with CNS Plans and Armscor, the person who did all the talking was Mr Koopman of Thyssen while in the second meeting with CNS Plans the person

who did all the talking was Mr Hoenings. The former was indicted by the German prosecuting authorities for corruption directly regarding the Corvette acquisition and indeed actually spent a few weeks incarcerated therefore. In the case of Mr Hoenings, the German investigating authorities found and seized the Thyssen bribery agreement with Tony Yengeni in his home and it is he who made the recordal of the bribery agreement with Chippy Shaik.

295. In my view the inescapable logic and conclusion is that the documentary facts show that when the Germans were unable to succeed in their bid for the corvette by normal means with the acquisition authorities they simply turned to firstly political methods and secondly direct bribery of the relevant political role players. The former amounts to undue influence in the acquisition processes and clearly the latter are clear cases of corruption.

296. In this regard, the German MLA request is informative and records as follows :

“The investigation is based on the following essential causes:

The companies Thyssen Rheinstal Technik GmbH, Blohm & Voss GmbH and Howaldtswerke-Deutsche Werft GmbH have, in 1994, joined together as a consortium, namely the German Frigate Consortium.

This consortium initially participated unsuccessfully in the invitation to tender for a project to modernise the South African navy, which project entailed the building and delivery of four Corvettes.

After the invitation to tender for the same project was repeated four years later, the consortium was successful and on 18/11/1998 it was appointed as "preferred bidder".

297. I believe certain parties including the Germans used Tony Yengeni who used the Defence Review to get back into the game. In this respect the following is reported by the German investigating authorities and I believe to be both the true situation and the relevant facts in this respect :

"During the June 2006 search of TRT an agreement between Yengeni and Hoenings dated 11th August 1995 has been seized.

According to that document Yengeni was promised a commission of 2.5m DM.

In fact I could prove that the agreement had been signed one month later on the 11th October 1995 during a South Africa journey of Hoenings, K-J. Muller and Koopmann.

Yengeni and Hoenings were the signatories of the agreement.

Hoenings, Koopmann and Georgiadis at this time took part in a meeting with Yengeni in Cape Town during which the agreement most likely was arranged.

On his return to Germany Hoenings arranged a provision for the promised commission of 2.5m DM. This provision had been entered into the accounts of TRT on the 28th September 1995...."

298. The report continues :

"Nevertheless the facts of the Yengeni case show that employees of TRT contrary to their defenders' statements did have direct contact to and themselves arranged bribery agreements with South African officials."

And the report continues :

"Yengeni himself claimed in front of Hoenings that he had been responsible for the cancellation of the first tender in 1995. As chairman of the Joint Standing Committee of Defence and chief whip of the ANC he could perform strong influence on decisions relevant for GFC.

Hoenings obviously gained information in August/September 1995 that Yengeni had been named as a possible successor of Modise in the cause of an expected Cabinet reshuffle. This fact makes clear why ten days later the agreement was signed."

[\[LNWReport-03 E.pdf\]](#)

299. Very soon, indeed within weeks, Mbeki was visiting Germany and advising both German politicians and executives of the German Frigate Consortium (GFC), including the aforementioned Christoph Hoenings, that the corvette acquisition was to be reopened and Germany was welcome to bid.

300. After Project Sitron was reconstituted in 1997 with the same user requirements baseline and essentially similar technical baseline, a similar acquisition process commenced and a short-list of four countries was drawn up, but this time including Germany and excluding Denmark.

301. Normally military equipment is selected according to the combined criteria of military performance and price or Military Value. On this basis Bazan again won the evaluation with its 590B light frigate with the GFC in a fairly distant second place with its MEKO 200AS light frigate.
302. In its ***International Equipment Offer Evaluation Corvette Military Evaluation Report*** dated xxx the SA Navy's and Armscor's evaluation team concluded as follows :

“The Spanish Bazan 590B has the best Military Value as the most cost-effective Patrol Corvette offered, being excellent value for money.”

[\[DT1-0226.pdf\]](#)

303. According to adherence requirements of the tendering rules the GFC should in any case have been excluded from the bidding process due to its non-conformances of certain stipulated requirements at certain stages of the bidding process. This was confirmed by Armscor, the statutory acquisition authority, in a legal opinion, a copy of which I am in possession. However, this disqualification was over-ridden by Chippy Shaik in his role as co-chairman of the Strategic Offers Committee (SOFCOM), even though Shaik neither had the authorisation of the committee to do so and in any case that SOFCOM did not have any decision-making authority.
304. After the GFC cleared the hurdle of its non-conformance it still needed to clear the final hurdle of not being the best bidder and in this regard some creative arithmetic was done.
305. Firstly, the GSC offered nearly 10 times the minimum of 10% of contract price as National Industrial Participation (NIP) in respect of its submarine offer. This was without providing a contractual guarantee for this extended amount of NIP. The GFC's DIP score was upgraded from a score of 5 instead of 1 on the basis of an

increased NIP commitment. Yet NIP and DIP should have been evaluated separately without any effect of one on the other.

306. At the same time Bazan's NIP offer was downgraded on the grounds that its offered projects were not of a strategic nature.

307. The Joint Investigation Report made the following findings in this regard :

307.1 Bazan provided the highest percentage of DIP and NIP in relation to the contract price.

307.2 In terms of the minutes of a special AAC meeting held on 13 July 1998 it was stated that the ranking of the Spanish bidder was due to most of their industrial participation not being of a strategic nature.

307.3 The DIP and NIP value systems did not provide the formulae for the calculation of the scores.

307.4 There is no evidence regarding the manner of awarding the NIP quality multipliers of 1 to 25, as these were not linked to any documented benchmarks.

307.5 No evidence regarding the manner for awarding the NIP quality multipliers could be found as these were not linked to any documented benchmarks.

307.6 There was a lack of a clear statement as to the manner of calculating the scores with regard to the NIP and DIP value systems. In the absence of this, it could not be ascertained if the scoring complied with the prescribed value system.

307.7 GFC, however was nominated the preferred bidder on the basis of their NIP offer. This is despite the fact that its NIP was not ascertainable in terms of achievability.

308. However, a detailed forensic analysis of the scoring also shows that there was a change in scoring formula and were certain errors in the points allocations, the latter either being genuine mistakes or done deliberately.

309. Originally the scoring formula that was supposed to be used to assess the different bids was :

$$BV = (MV + IP) / FI$$

310. However, at the 1-2 July 1998 SOFCOM meeting this was changed to :

$$BV = MV + IP + FI$$

311. This decision to change the formula was highly irregular as SOFCOM was an ad-hoc committee with no formal decision-making powers.

312. Using the original value system, the GFC bid still came out ahead, however the differential between it and Bazan was much smaller (97,61 [4] vs 99,17 [2]).

313. In the NIP evaluations carried out by a team of the Department of Trade and Industry, the GFC had been given over double the score (100) to Bazan's (48). This was despite the fact that their offers were almost identical in monetary value (USD2 730 783 000 vs USD2 722 645 000), a difference of just 0,3%.

314. Bazan had however presented a far superior DIP offer to the GFC, both qualitatively and quantitatively.

315. Bazan was the only bidder to provide a detailed business plan for its DIP offer on the combat suite. It had promised 21,9% Direct DIP on the platform component,

as well as Indirect DIP to the value of USD406 million. By contrast the GFC offered only 11,5% Direct DIP on the platform and only USD6 million Indirect DIP. It had also failed to meet a series of minimum criteria on the DIP offer which should have led to its disqualification.

316. Bazan was given the best score on its DIP offer of 100 to the GFC's 81. However, when the Auditor-General's Office re-examined the DoD's DIP calculations it uncovered a number of errors. According to its revised figures the GFC should only have received 71 points to Bazan's 100 (Para. 7.3.5.4 Page 206).

[\[JIT Complete d 01.pdf\]](#)

317. What this meant is that Bazan's IP score should have been 86,51 rather than the 81,63 it was given.

318. Using the additive formula, if the correct DIP score had been used Bazan would have received a normalised Best Value score of 99,41 to the GFC's 100 while with the incorrect DIP score being used Bazan would have received a normalised Best Value score of 97,61 to the GFC's 100.

319. Under the financing evaluation system a score of 1 to 5 was given on each criterion with 1 being best and 5 being worst. According to the JIT Report, in terms of the financing value system, the bidder with the lowest score was ranked first (best). This was because the financing index formed the denominator in the original formula. GEC Marine received the best score on this index, then DCN, then Bazan. According to the JIT Report, GFC's offer was the worst and it was ranked fourth.

320. Clearly when the scoring formula was changed to the additive version the financing index had to be changed to a reciprocal version.

321. On their own, the miscalculations in the DIP scores and the change of formulae did not change the GFC's number one ranking. But combined they do so. On the original formula and using the correct DIP score, Bazan comes out ahead of the GFC. It has a normalised score of 100 to the GFC's 98,20 [5] using the divisive formula and 99,41 [3] to the GFC's 100 using the additive of formula.
322. What this means is that the corvette contract was swung from Bazan to the GFC on the basis of a combination of calculation errors on the DIP and the irregular change in scoring formula.
323. But what really swings it away from Bazan to the GFC is the inexplicable adjusting of Bazan's NIP score to about half that of the GFC even though both NIP offerings are nearly identical. It seems as though there were arbitrary and undefined multiplication factors of between 1 and 25 that were applied by DTI to the raw NIP figures and so Bazan ended up scoring 48 points for NIP to the GFC's 100. In this case, using either formula Bazan would clearly have won [15] [16]. (Para. 7.3.6.2 Page 214)
324. In summary the following are the facts relevant to the award of the corvette contract :
- 324.1 Bazan was the only bidder that complied with all critical minimum criteria in respect of technical and DIP evaluation.
- 324.2 Bazan obtained the highest Military Value and DIP scores.
- 324.3 Bazan provided the highest percentage of DIP and NIP in relation to the contract price.
- 324.4 Bazan offered the lowest price of the four bidders.
- 324.5 The GFC offered the worst financing.

325. The GFC, however, was nominated the preferred bidder on the basis of its NIP offer. This is despite the fact that NIP was not ascertainable in terms of achievability.
326. Under the circumstances it is very clear that the entire award of the corvette contract was very carefully stage-managed by the South African Government in general and Chippy Shaik in particular. There are also clearly two stages in such manipulation, i.e. firstly getting the GFC to being a contender after not being successful in the 1995 round and secondly from No. 2 to No. 1 in the 1999 round. That this took the German Frigate Consortium three bribes of DM2,5 million, USD22 million and USD3 million as alleged by the German prosecuting authorities should come as no surprise.
327. Indeed, while the Christoph Hoenings memorandum is clear enough, he states explicitly that :

“Mr Shaikh has emphasised that the B+V/TRT offer was pulled into first place in spite of the Spanish offer being 20% cheaper. The Spanish offset (only the DTI share without "social components") was according to him also valued higher than ours.”

328. And in particular as follows :

“In this respect it had, according to him, been no simple exercise to get us into 1st place.”

329. Accordingly, it is difficult not to conclude that the GFC payments of a bribe to the chief of acquisitions resulted in it winning a R6,873 billion contract in the SDPs.

Allegations of Corruption : Corvette Combat Suite

330. The above allegations are just in respect of the corvette platform and it is in my view both unthinkable and illogical that the Germans would have paid some USD30 million as alleged by the German investigating authorities to secure their part of the deal as supplier of the corvette platform while their bid partner for the combat suite forced upon them by the South African Government got away with paying nothing for a more-or-less equal share of the contractual spoils.
331. In this regard it should be noted that the GFC's formal offer for the corvettes, including both platform and combat suite, was made on 11 May 1998 in response to Armscor Request for Offer (RFO) issued circa 13 February 1998. This offer includes Altech Defence Systems as GFC's partner to supply the combat suites. However, such inclusion was not of GFC's own volition, but simply in response to the SA Navy's formal bid requirements documented, in particular in the SA Navy Patrol Corvette Combat Suite Element Costing and Description dated 30 September 1997, as well as Armscor formal RFO.
332. Now the factual situation at that time was that a group of South African companies had, along with the SA Navy and Armscor, developed more-or-less an entire corvette combat suite under Project Sitron and temporarily under Project SUVECS (while Sitron endured a hiatus while the DoD completed its Defence Review between 1995 and 1997). The heart of this combat system was Altech Defence Systems's Combat Management System (CMS) originally developed for the SA Navy's strike craft under Projects Diamant and Caliban and later refined for specific purpose under Project Sitron.
333. Altech Defence Systems were, as the country's main naval systems company, also responsible for combat suite integration. As such, Altech Defence Systems and the South African sub-system suppliers were formally nominated in the offer baseline as well as identified in the SA Navy technical specifications to supply the combat suite, specifically in terms of the SA Navy's SA Navy Patrol Corvette Combat Suite Requirements Specification dated circa December 1998.

334. The GFC's May 1998 offer hence included Altech Defence Systems as its combat suite supplier in line with the stipulations of Armscor February 1998 RFO.
335. At this stage Thomson-CSF was nowhere in the official nor open scheme of things, although it was working all of the unofficial avenues and at the highest political levels to get the lion's share of the combat suite business.

This was stated later most clearly under oath by Pierre Moynot, ADS's CEO, during the Schabir Shaik trial. (Page 6022 to 6025 of trial transcript)

“Prosecutor : But now in your informal contacts with high ranking personalities, you said that you - this would give you the edge, as it were, at high political level?”

Moynot : That's what we hoped.

Prosecutor : Yes, that's what you hoped?

Moynot : Yes, that's what we were going for.”

[\[E cs transc ss-P6022-P6025-01.pdf\]](#)

336. Thomson-CSF was also consolidating its position to get this business by purchasing Altech Defence Systems which was then owned by the Altech Group and then giving shareholding in Black-owned companies Nkobi Holdings, owned by Schabir Shaik, brother of Chief of Acquisitions Chippy Shaik and Futuristic Business Solutions owned by Lieutenant-General Lambert Moloj, Ian Pierce and Yusuf Mohammed, all friends of Minister of Defence Joe Modise and of Chippy Shaik.

337. I believe that this is where Thomson-CSF comes into the bribery picture and I intend to explain below why there is ample circumstantial evidence to show that Thomson-CSF bribed functionaries in the South African Government to a very similar degree as did the GFC.
338. Firstly, in terms of a simple plausibility test, it is now court-established fact that Thomson-CSF paid a bribe through Schabir Shaik to the deputy president of the country, Jacob Zuma, to protect Thomson-CSF from the massive joint investigation that Parliament initiated into the SDPs in October 2000.
339. The document known as the Encrypted Fax written by Thomson-CSF's Alain Thetard which records the bribery agreement and is now accepted by the court as an executive statement, specifically refers to Project Sitron.

The English translation of the parts relevant to the corvette project, i.e. project Sitron and ADS reads as follows :

“May I remind you that the two main objectives of the "effort" requested of THOMSON are:

- Protection of THOMSON CSF during the current investigations (SITRON)
- Permanent support of JZ for the future projects

Amount : 500 k ZAR per annum (until the first payment of dividends by ADS)”

[\[DT1-0599.pdf\]](#)

340. What has never been ventilated properly anywhere is why Thomson-CSF needed such protection. There is however, some verbal evidence accepted in court that :

“While he was doing that, Mr Shaik said that if the Heath Investigating Unit continues, we're going to be under an amount of pressure and if a certain ANC member - he did mention the name and I can't recall - had to open his mouth, we would be in real trouble.” (Page 288 of trial transcript)

[\[E cs transc ss-P288-01.pdf\]](#)

341. This evidence was given by Bianca Singh, Schabir Shaik's personal assistant in his corruption trial. The trial judge specifically found in his judgment her testimony to be credible. While it is unfortunate that the identity of this person is unknown, the most likely inference that can reasonably be drawn is that Thomson-CSF had paid bribes to the ANC and other functionaries in order to secure the lion's share of the corvette combat suite and that a proper investigation would ascertain this.

“He then got up and went and made a copy of all those articles. While he was doing that, Mr Shaik said that if the Heath Investigating Unit continues, we're going to be under an amount of pressure and if certain ANC member - he did mention the name and I can't recall - had to open his mouth, we would be in real trouble.” (Page 288 of trial transcript)

[\[E cs transc ss-P288-01.pdf\]](#)

342. Another item of evidence provided by Bianca Singh in the corruption trial was that regarding an interaction between Chippy Shaik, Schabir Shaik and Jacob Zuma. This involved Chippy Shaik during late December 1998 telephoning his brother Schabir to advise him that he was :

“...under pressure and we really need your (Zuma's) help to land this deal (the corvette combat suite deal” (Page 348 of trial transcript)

[\[E cs transc ss-P348-01.pdf\]](#)

343. Schabir then used his position with and access to Zuma to telephone him and transmit this message from Chippy Shaik to Zuma.

BAeSEMA / ASM

344. British Aerospace (now BAe Systems PLC) is a very large European defence systems supplier of both commercial and military aircraft as well as landward and naval defence system, including naval combat systems. BAeSEMA was then a 50/50 joint venture between British Aerospace and the French company SEMA).

345. On 22 December 1998 the GFC issued a request for best and final quotation for the command and control segment of the corvette combat suite to Advanced Systems Management (ASM) led by British Aerospace Land and Sea Systems division. BAeSEMA's own combat management system would then be in direct competition with the Tavitac CMS of Thomson-CSF.

[\[Ebv asm fg 19981222\]](#)

346. British Aerospace had for more than a year been trying to get the SA Navy and Armscor to allow it to compete for the corvette combat suite, but until then it had not been allowed to do so by the DoD and Armscor because Altech Defence Systems had developed its own CMS for the SA Navy's strike craft (consisting of the Action Information System and Weapon Control Unit) which was also being upgraded for the new corvettes. However, when Thomson-CSF purchased 50% of Altech Defence Systems in May 1998, it immediately made all the moves to replace the South African CMS with its own French one. This appeared to encourage BAeSEMA that it might eventually get a chance to offer its own CMS, to such a degree that at its own risk it had up to a dozen of its British engineering staff working in Cape Town for several months on its own bid for the combat suite.

347. I knew this because as nominated supplier of the integration element of the combat suite being the IMS, British Aerospace had approached us to possibly collaborate with them and adequately briefed us in this regard.
348. British Aerospace had also been vigorously and at the highest level lobbying Blohm+Voss in Hamburg to be given an opportunity to make an offer. Therefore when it received the formal request for quotation from the GFC it accelerated its quotation preparation efforts including working right through the Christmas and New Year period in order to be able to deliver its quotation by the stipulated date of 15 January 1999.
349. Yet on 14 January 1999, the day before offering its competitive quotation, BAeSEMA's parent company BAe Defence Systems suddenly and without prior notice formally withdrew from the competition, citing in its letter of the same date that "having reviewed the competitive position" as being the reason for this withdrawal.

[\[Eba asm fg 19990114\]](#)

350. This reference to "competitive position" is all important as it actually refers to the impossible position regarding Thomson-CSF. Indeed, some weeks later Roger Barnes, then managing director of British Aerospace Sea Systems (which had superseded BAeSEMA in name after BAe purchasing SEMA's 50% share), personally told me that :

"We considered the South African combat suite as a must-win opportunity"

and :

"Never in my 17 years in this industry have we (British Aerospace) been told so directly and from someone so high up in the home country that

we should withdraw our bid (for the SA Navy's Patrol Corvette Combat Suite).”

351. It is clear to me that these interventions were not only unlawful and should have invalidated the entire corvette contract, but they came from the highest levels of politicians. The reason that I know that came from these highest levels of politicians is that I asked Mr Barnes if the high level to which he was referring was Chippy Shaik and he just laughed and said “no, much higher than that”. Now when it comes to the SDPs acquisition process, to all intents and purposes the only persons higher than that were the Minister of Defence, the Deputy President and the President.
352. But despite the difficulties faced by BAeSEMA and ASM in being allowed to make an offer for the corvette combat suite there is a raft of relevant documentation demonstrating that the intentions were completely bona fide and above board. All these intentions were at the appropriate times canvassed with all the relevant role players including the SA Navy, DoD, Armscor and Blohm+Voss.
353. At that stage in late 1998 the GFC and its component member the shipyard Blohm+Voss had been declared the preferred supplier for the Corvettes by the DoD. In this regard BAeSEMA and ASM were advised to approach the GFC with regard to making a formal bid for the combat suite.
354. In this regard senior executives of BAeSEMA arranged a meeting with Blohm+Voss. The following was recorded from the meeting :

“Please find attached. points from last Monday night's meeting with B+V. A breath of fresh air.”

[\[A asm fg 19981223.pdf\]](#)

355. British Aerospace had also been declared the preferred supplier by the DoD for the LIFT and ALFA components of the SDPs and were sensitive in this regard to also being interested in making a bid for the corvette combat suite. They considered it necessary and appropriate to canvass political opinion in this regard. Accordingly they approached the chairman of the Joint Standing Committee on Defence (JSCD) Ntsiki Mashimbye and the following is recorded as being his response :

"No, stop being nervous."

356. The Chief of the Navy VAdm Robert Simpson Anderson was also approached firstly to advise the SA Navy of British Aerospace's intentions and secondly to canvass his opinion in this regard. His response is recorded 2 December 1998 as follows :

“3.0 Chief of the Navy meeting

3.1 Excited about competition for Combat Suite. Originally it was ADS or nothing.

3.2 Navy does not want a French solution on either Corvettes or Submarines, it wants a system which is working, not a prototype.”

[\[E asm min 19981202\]](#)

357. I was an attendee at this meeting and remember both the points of discussion as well as the context. With regard to the specific point above both Swan and Shaik run meetings for potential suppliers within the corvette programme as well as in certain instances recorded the positions in writing. In essence the positions of both at this juncture once the preferred suppliers at vessel level had been selected and negotiations at combat suite level were about to commence that the

would be competition at the combat suite level and that neither ADS and especially Thomson-CSF had any exclusivity in this regard.

358. The same minutes record that Kevin Hanafey, senior manager of Armscor's Maritime division which was overall responsible the acquisition of the Corvettes stated his response as follows :

“Agree that there was some confusion after the statements made by Llew Swan and then Chippy Shaik.”

359. One written example of Armscor's position in this regard is the letter to the GFC dated 8 March 1999 from Swan where he states as follows :

“In addition to the above. GFC is requested to present alternative strategies to best meet the User Requirement at the lowest price, eg. :

- alternative contracting model or models which achieve the most cost effective solution
- alternative sources of supply, both at the combat suite integration level, as well as the sub-system lever, with due consideration however, of maximising the levels of direct participation by local industry.

[\[DT1-0363.pdf\]](#)

360. While this letter was written after British Aerospace had withdrawn from its bid to offer the corvette suite what Swan recorded as set out above is precisely the position that was being openly expressed within the DoD and Armscor in the period commencing December 1998.

361. In essence both British Aerospace and ASM had an unassailable right to express their interest in offering the whole of all part of the corvette combat suite and specifically to approach Blohm+Voss to request to be given the opportunity in doing so.
362. To hold any position in opposition to this is contrary to the positions that were being expressed by the Chief of Acquisitions and the Chief Executive Officer of Armscor, who were the parties formally responsible for acquisition, as well as contrary to the constitutional imperative that all government systems of procurement have to be, inter alia, competitive.
363. Clearly such a position is both simply unlawful and hugely damaging of the rights of all parties interested in bona fide competition, in this instance specifically for the corvette combat suite.
364. I will address this aspect of my evidence further in my specific responses to Kamerman's written and oral evidence before the commission.

Bribery

365. Having obtained various documents directly relevant to the corvette acquisition process during my extensive investigations, there are fairly clear indications of both very high amounts of money being made available within Thomson-CSF's project budget to pay bribes to secure the corvette combat suite business by Thomson-CSF Naval Combat Systems (NCS) and African Defence Systems (ADS), but also an extraordinary level of political interference in the acquisition process.

[\[DT1-0339.pdf\]](#)

366. By this time Chippy Shaik had formally declared his conflict of interest and consequent recorded recusal from the combat suite acquisition process. However, the joint investigation found that such recusal was a sham or as the JIT

put it “no recusal it all”. Indeed, not only was this so-called recusal a sham, but a range of formal DoD documentary records show that Chippy Shaik was fully involved with the corvette combat suite acquisition process while other records show that the local representatives of Thomson-CSF, i.e. Pierre Moynot and Alain Thetard were having a series of regular secret meetings with Chippy Shaik.

[\[Moynot Shaiks Meals-01.pdf\]](#)

[\[DT1-0344.pdf\]](#)

367. A stark example of Shaik’s interactions with Thomson-CSF in respect of the combat suite is the following recordal from a senior executive Bernard de Bollardiere of Thomson-CSF regarding a meeting he had with Shaik in early mid-1998 :

“Object: Discussion with Chippy Shaikh, Chief of Acquisitions (ARMSCOR)

A Thetard and I have had long talks (more than 2 hours) with Mr. Chippy Shaikh; these talks were important taking into account what was discussed and the interlocutor's position (Chief of Acquisitions).

The main points are as follows :

1 - Mr. Shaikh was aware of our London talks and spoke about them without any restraint. More particularly, he has spontaneously mentioned the name of the "Tailleur" to show us that he had a very good idea about our contacts here. **His position is both simple and clear: if the way we stand with partners and various friends suit him, he will make things easier and, should the opposite occur, he will make them difficult ...**” (my emphasis in bold text)

[\[DT1-0236.pdf\]](#)

368. In this recordal of his discussion with Shaik, interestingly the latter also stated his position regarding the exclusivity, indeed non-exclusivity, of the position of ADS in supplying the corvette combat suite :

“the decision, taken previously, that ADS be the "nominated combat suite supplier", has been cancelled and, as a result, the local system combat suite supplier has not been nominated”

369. Another example is provided by an extract from Alain Thetard’s 1999 diary where he diarises a meeting with Shaik.

[\[DT1-0344.pdf\]](#)

370. Chippy Shaik was also directly engaging with the head of Thomson-CSF NCS, Alex Dorrian as well as ADS CEO Pierre Moynot regarding negotiating the scope and price of the combat suite. This was known at that time to both the corvette DoD project director, RAdm(JG) Jonny Kamerman and to Armscor corvette programme manager, Frits Nortjé. Although they recorded this in an internal programme memorandum, nothing was done by them or their superiors about this clear violation of project acquisition process.

[\[DT1-0445.pdf\]](#)

[\[DT1-0360.pdf\]](#)

371. I understand that none of Kamerman, Nortjé and Shaik in their evidence before the APC, have admitted any knowledge of any violations.

372. By a perusal of a range of project records, such as minutes of the Naval Project Control Board (PCB) meeting minutes, there is clear evidence of pricing manipulations and, in particular, last minute upward pricing changes, which are

unexplained and inexplicable. In my view it is a reasonable and indeed inescapable conclusion that this amount of some R300 million was probably used by Thomson-CSF to pay bribes and/or illicit or at least undeclared commissions to secure the combat suite contract.

373. This would have been well worth it for Thomson-CSF because it was no way in the running up until the final stages of the acquisition process and it ended up in securing about R1,6 billion worth of contracts and on extremely advantageous and non-competitive pricing terms. In doing so it not only managed the exclusion of Altech Defence Systems's indigenous CMS by replacing it with its own French Tavitac system, but also replaced two South African sub-systems with its own products and "won" all three of the items that were originally designated to be foreign procured items. This gave Thomson-CSF about R1,3 billion and ADS about R0,3 billion worth of contract value.

[\[DT1-0505.pdf\]](#)

Further Observations on Pricing

374. The extra costs of the so-called risk of the IMS as ADS so vehemently campaigned the following taken from the Minutes of ADS Sitron Meeting dated 2000-05-16 is noteworthy :

“Due to the change in the "bus" architecture ADS was exposed to an additional cost of ±R10m. PM to discuss with NCS.”

This goes to show how far the combat suite had developed based on the IMS architecture and what the implications of such a radical change would imply at such a late stage. This being said a R10 million implication was a drop in the ocean for the R1,6 billion worth of contracts that ADS and Thomson-CSF have received for the corvette combat.

[\[DT1-0607.pdf\]](#)

375. To demonstrate the risk that was being taken as well as the maturity of the system which replaced the IMS it should be noted that its Detexis Diacerto Data Bus (DDDB) Specification was dated 1999-06-22. This was nearly 3 weeks after the visit to South Africa by representatives of Detexis to review its offering. By contrast the IMS specification had existed since about 1993 and been formally reviewed a number of times as well as formally baseline.

[\[DT1-0475.pdf\]](#)

376. The following document entitled JPT Response to Vessel Best and Final Offer and dated 1999-05-25 :

13. Information Management System (IMS): The offer of the 07 April 1999 had the IMS cost at RM 47,101 and included a fifth system, a mistake acknowledged by yourselves. Thus the offer actually was a total of RM 42,860. There is no rational explanation for the current price of RM 77,157, an increase of 80% within a two month period. The current price is totally unacceptable.

14. IMS Study: This price is far too high for the envisaged work to be undertaken. It is our considered opinion that this item should cost less than RM 10,000.).

377. While on the SMS it recorded as follows :

“15. System Management System (SMS): On 16 April 1999 ADS offered the SMS at RM 29,647. In the scope of supply of this offer, there are 4 Digital Video Recorders listed in the scope of supply. In the current offer, the SMS price is listed as RM 30,756 and the DVRs are listed as CFE. The current offer is unacceptable: kindly offer the same price and scope of supply

16th of April 1999. Kindly also clarify the remark that there is no tactical interface to the VSS.

376. While on the NDS it recorded as follows :

“20. Navigation Distribution System (NOS): Based on an offer of CCII, received on 16th April 1999, the cost for this subsystem, including the ADS fees, was calculated to be RM 15,492. The current offered price of RM 22,040 is therefore unacceptable. We expect the most cost effective solution to be offered, not exceeding the RM 15,492 price offered to us for this sub-system less than 5 weeks ago.”

378. This is stark proof that even at this late stage of the end of May 1999 ADS effectively was still continuing to bump heads with the JPT regarding its sub-system prices and indeed was just changing prices as it went along despite the so-called competitive quotations.

Certainly at this stage it is clear that had not only no intention of subcontracting CCII Systems on the NDS, but also simply going to do the subsystem itself at its own price.

[\[DT1-0443.pdf\]](#)

379. The following handwritten Notes of Price Discussions between JPT and GFC on 1999-05-24 further indicative of the situation :

[\[DT1-0438.pdf\]](#)

[\[DT1-0483.pdf\]](#)

380. What is especially noteworthy is that, although negotiations for the precise scope of supply and price of the corvette combat suite only commenced in early December 1998, culminating in the supply contract signed on 3 December 1999, the records show that Thomson-CSF was increasingly confident of securing this workshare right from around September 1997.
381. In the 1997 baseline, the DoD had set a cost ceiling for the combat suite at R1,47 billion. This figure is on record as having been arrived at by the SA Navy and Armscor after a comprehensive price and risk audit during May 1998 of the prices being offered by the South African combat suite system suppliers as well as potential foreign offerors for the foreign equipment and was in 1998 Rands. By the time that scope of supply and price negotiations commenced in January 1999, this R1,47 billion could be justifiably have been escalated to R1,9 billion due to prevailing currency exchange rates and other escalation factors.

[\[DT1-0152.pdf\]](#)

382. However, Thomson-CSF, knowing its illicit support base at a high political level, had the DoD and Armscor figuratively over the negotiating barrel and made its first technically conformant offer of R3,9 billion in February 1999. This was clearly unacceptable as there was a Cabinet-approved price ceiling of R6,001 billion for the entire corvette including an allocation of R1,47 billion just for the combat suite. Over the next three months or so the SA Navy radically reduced its expectations for the combat suite.
383. In this Regard the Project Officer and Programme Manager wrote a letter dated 6 May 1999 stating as follows :

“10. Since the initiation of discussions in December 1998, the process between us thus far has been characterised mainly by reductions to the cost of the Vessel achieved by reductions of the scope of supply (quantity) or performance (quality) from that originally offered. The SA Navy is prepared to accept

these reductions, and the considerable reduction in value that they represent, in the spirit of achieving a viable, affordable solution within the budgetary constraints of the project. They are reflected in Annexures A and B."

[\[DT1-0421.pdf\]](#)

384. By April 1999 a total price of R2,3 billion, including a risk provision and all other amounts for, inter alia, statutory costs, project management, financing and ECA premium. At this stage the Project Control Board had an expectation of price of R2,1 billion for the combat suite and the project officer is on the formal record as saying that the then offered current price was R2,3 billion and that the "Corvette was within goal of the Cabinet approved RM6001". Clearly if this was the case, the arithmetic shows that the R2,3 billion would have to reduce by at least R100 million.

[\[PCB 1999-04-28.pdf\]](#)

385. The project officer further advises the PCB that :

"Combat Suite price now approximately RM2300"

And that :

"Therefore I can report that Corvette is within goal of cabinet approved RM6001."

"Combat Suite

a. The project officer provided feedback on the project negotiations and gave a brief explanation of the reasons behind the unexpected increase in the combat suite cost. (See Appendix

A) He explained that the project team had managed to reduce CS costs by reducing its scope of supply and some performance without reducing essential capabilities or local industry participation. (All for Info)

b. C Navy stated that it must be noted that the scope of supply has been reduced fairly extensively since the original staff requirement and that the "delta" would have to be addressed by separated projects. (DNA for co-ord)"

386. Yet inexplicably Chippy Shaik records at the PCB meeting of 27 May 1999 that the SDPs Affordability Study indicated a price for the combat suite at R2,6 billion. There are absolutely no clear grounds for this, especially when this would take the Cabinet-approved ceiling price for the corvette from R6,001 billion to some R6,7 billion. The Affordability Study Report also makes no mention of any combat suite pricing. It is therefore clear that Shaik was using other sources of information and certainly illicit sources in this context.

[\[PCB 1999-05-27.pdf\]](#)

387. At the same time there are clear documentary indications that Thomson-CSF itself had an expectation of a R2,3 billion final price for the combat suite. Indeed Alain Thetard's facsimile to head office dated 17 May 1999 shows an expected price of "2,3 GF" amended hurriedly by hand to "2,6 GF", precisely in accordance with the pricing reported in the PCB meetings and at the Naval Board meeting. It should be noted that by this time that R1,00 was being taken for negotiation purposes to equal FF1,00; thus the actual prevailing exchange rate was not a material factor. The news of the increase to R2,6 billion came so quickly to Thetard that he had no time to update his computerised records.

[\[DT1-0432.pdf\]](#)

388. However, what in my view is particularly noteworthy is that the date of Thetard's facsimile of 17 May 1999 with its hurriedly updated combat suite price is exactly the same date as his encrypted facsimile about Masekela, Kogl and Thomson-CSF's secret business arrangement.

By that stage Thomson-CSF was clearly extremely confident of winning the corvette combat suite contract and rewarding its collaborators in kind.

389. In the 16 April 1999 notes made by Pierre Moynot, who was ADS's chief negotiator for the combat suite, he also refers to a combat suite price of "2,7 bn F" as well as to one of "2,350 bn F (except the 35 mm cannons)". These prices accord almost exactly with Alain Thetard's expectation of price as well as those of the PCB as advised by Kamerman. The reference to the 35 cannons is not overly relevant because even if the R2,350 total price did not include the price of these cannons (actually the Dual Purpose Gun (DPG)) the price of the DPG varied during the negotiations between R82 million and R106 million and thus even if it were excluded from the R2,350 price then including the DPG at R100 million would cause the combat suite price to be R2,450 million at this point. This is still a difference of R150 million from R2,600 billion or R250 million from R2,700 billion. The increase from R2,2 billion or R2,300 billion to the final price of R2,599 billion remains inexplicable.

[\[DT1-0407.pdf\]](#)

390. Yet the final corvette combat suite price at R2,6 billion was clearly approved during the late April to May 1999 timeframe and it was at this price level that the final selections were approved by the PCB on 8 June 1999 and contracted on 3 December 1999. This caused the corvette price to increase from the Cabinet-approved R6,001 billion to the final contract price of R6,873 billion. This R872 million is a very substantial difference indeed, especially after the DoD, SA Navy and Armscor had advised so adamantly all bidders at various levels that there would be no increase in the initial Cabinet-approved price ceiling (other than ROE and CPI escalations).

391. Adding impetus to my contention of inexplicability is that the current price and the price reductions were of such grave importance to the PCB and the Naval Board that this subject was not only a matter of lengthy discussion and the recorded minutes, but also invariably the main subject of a specific pre-prepared presentation by the corvette project officer, who was the DoD's chief negotiator with the German and French bidders for the corvette platform and combat suite. That the sudden price increase from late April 1999 to middle May 1999 was not noted in any official records of the PCB nor of the Naval Board, points to a complete breakdown of the formal negotiating and oversight processes at that stage and accordingly there is every reason to believe that some intervention from higher authority was the cause of this. In my view there is a strong circumstantial case to suspect corruption as being this cause. However as there is no logical explanation for this sudden price increase, in my view it clearly indicates a dereliction of the oversight and reporting duties of the parties involved who clearly have an obligation to the public purse to achieve the best value and/or lowest price in a publicly-funded acquisition as was this.
392. Along with other Thomson-CSF documentation, specifically an internal presentation dated 26 January 1999 which clearly provides for enormous "provisions" and "contingences" in the price of the combat suite, it is almost impossible not to believe that the unexplained price jump at the final hour from R2,3 billion to R2,6 billion did not provide for the R300 million to fund the required bribes for Thomson-CSF to secure its substantial slice of the combat suite contract.

[\[DT1-0339.pdf\]](#)

393. This Thomson-CSF presentation given in the French language in France also clearly shows that combat suite prices were being made known and discussed within the Thomson-CSF company as a whole and not just within ADS. In this regard it is noteworthy that the spreadsheet entitled Sitron Prices includes the then price of CCII Systems's IMS, which would eventually be replaced by

Thomson-CSF's own product. When confronted that CCII Systems's IMS price had been given to its competitors, Pierre Moynot is on record as having contented that the prices of the IMS and Thomson-CSF Detexis Diacerto databus were "only compared internally". That it was disclosed in a presentation in French and given in France makes this an unbelievable contention. ADS was a South African company and if this was an internal ADS presentation then the language used would definitely have been English.

394. The copy of this presentation was seized by the French police from Thomson-CSF offices in Paris and was in respect of containing a document marked "Project Sitron South Africa" and from a file marked "Presentation to Mr DUFOURCQ" (PDF Page 20). I have heard the names of most Thomson-CSF employees who worked in a South African office and I've never heard of Mr Dufourcq. I consider this as documentary proof that our IMS prices were given to Thomson-CSF as a group with this constituting unlawful competition.

[\[DT1-0339.pdf\]](#)

395. The disclosure of CCII Systems's IMS price to Thomson-CSF Detexis is also dealt with by Capt(SAN) H.N. Marais in his Section 28 interview under oath made with him on 29 June 2001 where he testifies on the subject. There are several typographical errors in the transcript, but I quote them as transcribed. The transcript reads as follows :

"there is a fourth I reason, which is why I was consulting my notes and so on. I suspected unethical business practises being exercised by ADS, by in advance making the prices they have .received from C-squed I-squed available to Thompson Detexis, prior to Thompson Detexis having had to submit their quotation for the BAFO. The reason why I am making that statement, I have overheard a discussion between a person Jean-mark Ferre from Thompson Detexis" (Page 1551)

"Those individuals both employed Thompson Desalt (sic) or Thompson Detexis and the conversation took place on 3 June 1999, Cape Town area" (Page 1551 to 1552)

"The also, the conversation that was overheard, I took further and during a tea-break confronted them with the statement that was made by Jean-mark Ferre, that they are offering their Bus System at approximately 30% less expensive than the C-squed I-squed Bus and that was made by that person" (Page 1552)

"That statement could not have been made by Detexis unless they had visibility, advance visibility into the C-squed I-squed Databus proposal" (Page 1552)

[\[DT1-0779.pdf\]](#)

396. Very relevantly in my view, the notes written by Pierre Moynot on 16 April 1999 indicate that the then currently negotiated price for the corvette combat suite was FF2,350 billion. At that time the French Franc and SA Rand were almost equal in value (1 ZAR = 0,96 FF). Yet these notes also refer to a price of FF2,7 billion, a difference which is not explicable on the marginal difference in currency. The briefing to the Naval Board on 26 March 1999, also attached to the minutes of the PCB meeting of 24 April 1999 refers to a price of R2,3 billion and that further price reductions were possible. Indeed the minutes of the Naval Board meeting held 30 April 1999 show that a large number of price reduction measures were indeed taken. Yet the minutes of the PCB meeting of 27 May 1999 indicate the then current price as R2,600 billion. And this is what the final price indeed was (actually R2,599 billion to be precise). I contend that my argument shows that a price of R2,300 billion was actually the negotiated price and that the R2,600 billion price included R300 million for additional disbursements including commissions, specifically unlawful and corrupt commissions.

[\[Minutes naval board meetings 1999-04-30.pdf\]](#)

397. Regarding the intentions of Thomson-CSF and ADS in the negotiations with the State over the corvette combat, it is relevant to note the conduct of the State negotiators. In this regard it is noteworthy to consider the averments of a senior naval officer, Capt (SAN) H.N. Marais who was a senior member of the corvette Joint Project Team and was intimately involved in these negotiations.

398. On the deselection of South African systems and selection of entirely French, indeed Thomson-CSF foreign procured items, Capt Marais avers in an interview under oath made with him on 29 June 2001 as follows :

"Accurate perspective. At that stage, higher authority applied pressures to maximise or increase the French content. It was not specifically the Navigation Distribution System."

"It is mainly because of the actual and perceived pressures applied to maximise the French content in the or to increase the French content of the combat suite."

399. Capt Marais's testimony accords very closely with what I personally heard at this same time as well as later, i.e. that this was that an instruction had been given by Mbeki to Chippy Shaik to maximise the French content of the corvette combat suite in order to placate the French for not having been awarded any of the contracts for the primary equipment in the other SDPs. In my view, this is not only plausible, it is entirely credible.

400. On the matter of CCII Systems's pricing for the SMS being given to ADS, Capt Marais avers as follows :

"It is the marketing department of every company's task to find out what your competitors are bidding. In this particular case it was actually given to ADS, because that was the communication channel."

401. I am unaware of there being any reason that Capt Marais would be lying under oath. If, therefore, it is accepted that ADS was indeed given this price, then this constitutes fraud.

402. Supporting the credibility of Marais's statement is the fact that ADS and CCII Systems were required to furnish competitive tenders after ADS's two previous quotations were rejected by the corvette project team. The chronology was as follows :

403. On or about 26 March 1999 ADS submitted to Armscor an offer of R64,5 million (excluding VAT) for the SMS.

[\[DT1-0381.pdf\]](#)

404. The JPT considered ADS's quoted price for the SMS to be too high and ADS was requested to submit a reduced offer.

405. On or about 7 April 1999 ADS submitted a reduced offer for the SMS of R37,62 million.

[\[DT1-1052.pdf\]](#)

406. The corvette project team then instructed the GFC, to get competitive quotations from both ADS and CCII Systems which had to be submitted at the same time on 15 April 1999. They did so, with CCII Systems's price of R23 192 922 (including VAT) being substantially lower than that of ADS's price of R32 479 000.

[\[DT1-0403.pdf\]](#)

407. But ADS was allowed to reduce its price the next day 16 April 1999 down to R29 647 000 (including VAT) on the grounds of having made clerical errors and omissions.

408. Not only was ADS allowed to reduce its price the next day, but this was done by means of a facsimile transmitted at 16:03 CAT 16 April 1999 whereas the closing time for this competitive quotation had been set as 17:00 hours CAT on 15 April.

409. Strangely, at least in transparent and normal tendering procedures, even though ADS's second price was still higher than CCII Systems's first quote, ADS were allowed to add on their own margin and handling fees of about 12,05% to CCII Systems price (but not to its own price) which then made CCII Systems extended price marginally higher than ADS's reduced and unextended price, this allowing ADS to win the contract to supply SMS.

410. Not only was ADS's lowered price accepted, unforewarned markups added to CCII Systems's price but ADS's lowered price was tendered after the stipulated closing date and time in a competitive quotation process. Although the administration of this quotation process was done by the GFC, the JPT not only initiated it, but were fully involved and make the relevant decisions.

411. It is clear that there was substantial and ample opportunity for our SMS price to have got to ADS after we submitted our price by the stipulated submission time. It is also noteworthy that at this stage the GFC had a year prior to this declared ADS as its consortium partner for the combat suite. I have no hesitation in considering this as an unlawful business practice.

412. It is also noteworthy that it is stated in the ***Report on the Process Followed for System Management System (SMS) and Navigation Distribution Sub-system (NDSS) for the SAN of Project Sitron***, which I believe was written by Nortjé of Armscor that :

“ADS proved to be a lower risk than CCII of getting the task completed as outlined in the above points.”

413. None of the “above points” to which reference is made contain anything new that was not known to the JPT at that juncture. Consequently if the conclusion, indeed if it is actually a bona fide one, that ADS proved to be a lower risk than CCII, then it begs the question of why they went out to the latter on a competitive basis in the first place. But what is clear is they used, indeed I would conclude abused, CCII’s good standing and precious time and effort merely to bring down ADS’s substantially inflated price for the SMS and indeed do this twice to an acceptable level. It had nothing to do with risk.

414. The report continues in respect of the NDS as follows :

“CCII had already progressed a large way under project SUVECS in establishing the basic hardware and techniques for such data distribution.”

“The risk of CCII not being able to complete the task was deemed to be acceptable.”

415. The first point is entirely untrue. CCII Systems had never embarked in any form whatsoever with whether with hardware or techniques for such data distribution. Where the author of this report may be getting confused (but also at the same time misleading the intended readership of the report) is that after CCII Systems won the competitive bid for the NDS, then it received a small interim development contract for it and Project SUVECS as a stopgap between that stage in 1999 into the perceived a full-scale development contract from ADS in mid-2000.

416. The second quoted point above is interesting because CCII Systems had never tackled a navigation distribution project before, yet ADS had done a number of these. The NDS is a mission-critical system in the combat suite, while the SMS is

not so. Yet without any reasoning whatsoever the JPT concluded that the risk of CCII Systems getting the NDS supply contract was acceptable. In my view this is incongruent.

Thomson-CSF and its International Conduct of Bribery

417. Although the evidence of this bribery by Thomson-CSF is in part circumstantial (other than of course its court-proven bribery of Jacob Zuma) this also needs to be viewed in terms of this company's known propensity for bribery and corruption on an international scale.

418. In this regard :

418.1 commentators have written that when Thomson-CSF's new Chairman Denis Ranque took over this position in 1998 he was so concerned about Thomson-CSF's poor reputation caused by bribery and corruption that he initiated the company's name change to Thales. This was so important that even at the cost of some Euro500 000 this expense was considered to be worth the break from the past, albeit only in name; and

418.2 dozens of allegations of bribery and corruption have been made against Thomson-CSF in many jurisdictions involving its many of its different operating divisions, across the world. Some of these have been proven.

419. The most stark and serious of these bribery allegations regards one of the largest international naval acquisitions ever made outside of the USA.

420. This is known as the Taiwanese La Fayette programme where in 1991 the Taiwanese Navy purchased six La Fayette frigates from France for a total contract price of some USD2,8 billion (in then monetary values).

421. The Taiwanese government soon realised (and formally alleged) that the contract price included some USD500 million in unlawful commissions. This amounted to

around 20% of the contract price which can be considered to be the norm in the circumstances and at that time.

422. Although the deal was signed in 1991 it took the Taiwanese authorities almost 20 years to finally win its case against Thomson-CSF (now Thales).
423. On 3 May 2010, the ICC arbitration court ruled that Thales had to pay a penalty of USD591 million plus interest, litigation fees and other related expenses for violating Article 18 of the contract, known as "Bravo" in France, which required that there should be no payment of commissions.
424. On 10 June 2011, a French court ruling finally rejected an appeal by Thales against payment of damages to Taiwan.

[\[ASDNews LaFayette-01.pdf\]](#)

425. Ironically, it is not Thales which will have to bear the brunt of this penalty, as the French government announced on the same day that it would have to pay Taiwan Euro460 million (USD591 million) after Thales lost its appeal over its wrongful payment of commissions on the warship deal.
426. This fairly recent information shows not only that Thales has the propensity to bribe foreign officials to be successful in its bids for lucrative contracts, but also the enormous time that is required to get justice done.
427. Further supporting my contention of Thomson-CSF's business model of securing contracts through bribery and corruption is a copy of an extraordinary document which is actually a printout of an overhead presentation given at a meeting of Thomson-CSF International managers ("delegates") in November 1998. The entire document that I have is 131 pages in length and so as not to burden this witness statement I annex just 39 pages of what I consider to be the most relevant content. The presentation is mainly in French and concerns Thomson-CSF's response to the then about to be formally promulgated

Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Previous to this OECD convention, bribing of foreign officials was lawful in many foreign countries, especially in Europe, where indeed the costs of such bribery and corruption were even tax deductible for the company paying the bribes. To deal with this Thomson-CSF formulated a set of company-sanctioned mechanisms to circumvent the OECD convention. The presentation refers specifically to its South African operations in respect of Thomson-CSF South Africa, ADS, Nkobi Holdings and FBS with Thomson-CSF South Africa and Nkobi Holdings, these entities having been formally indicted of corruption in the Schabir Shaik and Jacob Zuma matters. The presentation is literally littered with examples of these circumvention mechanisms including those of "offshore payments" (Page 94), "success fees", "lobbyist fees", "service provider" fees, etc. In its own version, inverted commas are used to indicate the farcical legitimacy of these mechanisms.

[\[DT1-0291.pdf\]](#)

428. Taking into account Thabo Mbeki's and Chippy Shaik's illicit involvements with Thomson-CSF (refer to later sections in these submissions for more detail), as well as almost reciprocal conduct as alleged by the German prosecutors regarding the corvette platform, I believe there are cogent reasons for the South African prosecuting and investigating authorities to be investigating both the roles that these two persons played in the combat suite acquisition process, as well as the possibility of them or related parties, such as the ANC, including the ANC Women's League, receiving bribes. They are not doing so and the appointment of an independent commission of inquiry is, in my respectful view, indicated for this reason alone.
429. It is also important to note that in the very early days of the joint investigation, in particular that by the Directorate of Special Operations (DSO), that there was indeed a joint investigation by the South African and French authorities. From this country it was led by Advocate Gerda Ferreira of the DSO and from France

by Magistrate Edith Boissette. Very substantial progress was initially made including raids of the headquarter offices of Thomson-CSF and of the Chairman of Thomson-CSF International Jean-Paul Perrier. These raids yielded vast amounts of documentary evidence, much of which was used in the successful corruption trial of Schabir Shaik and would also have been used in the trial of Jacob Zuma and Thomson-CSF South Africa had that case not been abandoned by the NPA (in my view on the flimsiest of reasons). However, while these investigations were underway and yielding excellent results, there were inventions from the highest of levels of the South African authorities, including visits to France by the Minister of Justice Dr Penuell Maduna and National Director of Public Prosecutions (NDPP) Advocate Bulelani Ngcuka, who had meetings with high level officials and judges in the French Ministry of Justice. So after, the co-operative investigation ended.

430. In this regard the evidence under oath of Ajay Sooklal, in a very recent legal matter and who was intimately involved in the entire matter is particularly informative and specifically relevant to this commission.

Special PCB Meeting of 19 August

431. It is alleged by DoD and Armscor officials that a Special PCB meeting took place on 19 August 1999 to discuss the categorisation of sub-systems as either Category B or Category C, i.e. shortly before the PCB meeting of 24 August 1999.
432. This special meeting, if it took place, was one of the most crucial meetings of the PCB. The investigation team has ascertained that all other PCB meetings were duly recorded and minuted, including the Special PCB meeting of 8 June 1999.
433. However, various factors create doubt whether this meeting on 19 August 1999 in fact took place; alternatively, if it is accepted that it did take place, serious doubt exists whether it was a properly constituted and valid meeting. Some of the pertinent factors are the following :

- 433.1 although all PCB meetings were minuted, this one was not. No reason for such omission could be advanced; nor is it obvious.
- 433.2 the minutes of the meeting of 24 August 1999, refer back to the minutes of the previous meeting of 8 June 1998, and contain absolutely no reference to a meeting on 19 August 1999; the minutes of the meeting of 24 August 1999 were accepted as correct at the next meeting, which took place on 6 October 1999;
- 433.3 no agenda for such a meeting could be found; only the agenda for the meeting of 24 August could be found.
- 433.4 there does not seem to be any reason why a meeting had to be held on Wednesday, 19 August 1999 only five days before the regular PCB meeting of Monday, 24 August 1999;
- 433.5 likewise, the exclusion of certain people from the meeting casts doubt on its being properly constituted and the issues discussed; and
- 433.6 the widely different positions adopted by the relevant parties of whether this meeting took place, whether it was a formal meeting will not and who actually attended.
434. Kamerman testified that a special PCB meeting was held on 19 August 1999 to discuss the risk issue, although no record of such a meeting exists. He and Nortjé made a presentation\ and the same presentation was done five days later at the PCB meeting of 24 August 1999 (although he was not present then). He testified that not all members attended, but that there was certainly a quorum in terms of the PCB constitution. The meeting was requested by Swan and was attended by Swan and Shaik, the Chief of the Navy, Howell, van der Schyff and Hanafey. He is not sure if Thomo attended.

435. As far as van der Schyff's attendance is concerned, he added that he did not remember it, but, not maliciously, he just said he did not recall the meeting.
436. As far as Shaik's attendance is concerned, he initially stated that he believed that he had attended. Later, however, he said, that he could not recall that he was there.
437. Kamerman and Nortjé made their presentations to the meeting. The presentation was also made to the Naval Board.
438. Nortjé testified that a Special PCB meeting was called by Shaik and Swan and that it took place on 19 August 1999. Only the Combat Suite issue was on the agenda and he had to make a presentation on the Category B and C risk issue. The proceedings were not minuted. The meeting was chaired jointly by Shaik and Swan and attended, as far as he recalls, by Hanafey, Watson, Howell, van der Schyff and the Chief of the Navy, who stayed only for a short period of time. Shaik remained present during the whole discussion and took part in it. The presentation made by him is Appendix D to the minutes of the meeting of 24 August 1999. His impression was that the PCB approved his proposals.
439. To illustrate the problems with both the legitimacy of the so-called meeting as well as the evidentiary positions of the relevant role players, Hanafey testified as follows in his Section 28 interview :

“Interviewer : Did you attend the previous meeting, where this whole issue, of the PCB, where this whole issue was discussed?

Hanafey : I cannot remember specifically, but I generally attended most of the meetings, so.

Interviewer : And that was, they tell us, a special PCB meeting and no minutes were kept.

Hanafey : That is highly irregular, because that should not be allowed.

Interviewer : That is contrary to the constitution?
Hanafey : Totally.

Interviewer : Now we are told that is an indication that there was in fact a meeting on 19 August.

Hanafey : I would like to know who attended that meeting, because I do not remember this meeting or attending this meeting, sorry.

Interviewer : Ja. We were told it was attended by Kamerman, Nortje, Chippy Shake (sic), Swan and one or two others.

Hanafey : Okay.

Interviewer : But it was not the whole board.
Hanafey : No it was definitely not. That is an irregular meeting then.

Interviewer : Ja, that is my impression as well.
Hanafey : The point being you must remember, if you have read the constitution of the PCB, the PCB is firstly not a decision-making body and to my knowledge and Mr Piega, I am looking at you here, is that in terms of ARMSCOR procedure, the PCB does not take over ARMSCOR's role to make decisions. In other words, our normal process that we follow, should be activated to make sure any decisions are ratified or verified in terms of the ARMSCOR process and procedure. So as far as I am concerned, this meeting should have no status in terms of that..

[\[DT1-0775.pdf\]](#)

Removal of Byrall Smith as Corvette Programme Manager

440. For all of its projects, at least it's major projects, Armscor appoints a programme manager to manage the project while the DoD appoints a project officer to supervise the defence aspects of project. Typically these two functionaries work together as the joint team leaders of a team of persons from the project's arm of service and Armscor.
441. Byrall Smith is a very senior, very experienced and long serving employee of Armscor, holding both a mechanical engineering bachelors degree and a masters degree in naval architecture. Prior to the corvette project he was either project engineer or programme manager of all the SA Navy's more recent (from circa 1977) major vessel acquisition projects including Project Japonica for the strike craft programme and Project Energy for the country's first build of a major warship, the SAS Drakensberg.
442. As far as I can remember Byrall Smith also had a major role in Project Natural while it was ongoing.
443. Accordingly, it is unsurprising that Byrall Smith was also appointed as the programme manager of Project Sitron, both in its first incarnation up until 1995 when it was suspended until after the Defence Review, as well as in its second incarnation starting in 1997.
444. However, Byrall Smith was removed from this position by Armscor at the request of the SA Navy.
445. It is my belief that this happened because he refused to go along with many of the processes and procedures involved in the second incarnation of Project Sitron which is the subject of this commission.

446. The very first inklings one gets of this matter are recorded in the first preliminary meeting of the Project Control Board in September 1998 where the relevant recordal is as follows :

“22. Any member of the appointed team who can not work for the best interest of the client and national interest will be remove (sic) from the project teams by mutual agreement of the members of the PCB.”

[\[PCB 1998-09-29.pdf\]](#)

447. I believe that this is precisely what happened to Byrall Smith, the most important and influential member of the Armscor component of the appointed team (which became the corvette Joint Project Team).

448. Byrall Smith at that time reported to his superior Kevin Hanafey, senior manager of the Maritime Division, who states under oath in his Section 28 interview as follows :

Interviewer : Was there any reason for his removal as program manager?
Hanafey : Ja. He was removed from Project Citron (sic) as a project, as the program manager, due to a request from the navy. There was a lot of conflict between him and Kamerman and the navy came and requested that we remove him for a number of reasons. Firstly the conflict was there. Secondly the fact that Byrel (sic) was located in Simon's Town, living in Cape Town and Kamerman was in Pretoria, which led to a lot of breakdown in communication between the two project members.

- Interviewer : Do you know what the natures of conflict between him and Kamerman was?
- Hanafey : Process, procedure, involvement, personality. I think that is essentially what it was.

[\[DT1-0775.pdf\]](#)

449. Thereafter Byrall Smith was replaced by Frits Nortjé, who had been acting programme manager for the corvette combat suite. Now Nortjé is actually an electronics engineer by background which makes him a good incumbent for that position because the combat suite, or least most of its critical elements, are of an electronic systems nature, but not as good a candidate for the corvette itself as a mechanical engineer and naval architect would be, because the vessel itself is predominantly a mechanical system.
450. I also find it noteworthy that at that stage Nortjé was working for Armscor on a contract basis actually having been retrenched from Armscor circa 1995.
451. With his appointment as programme manager for Project Sitron he regained his position as a permanent employee of Armscor.

Surface-to-Surface Missiles

452. Another specific, interesting and important point regarding the price of the corvette combat suite is the price of the Surface-to-Surface Missiles (SSM). In the 29 July 1999 costing prepared by Thomson-CSF, the cost of the SSM acquisition is indicated as R182 257 785 F (approximately R182 million) for the "Ammunition". Yet Kamerman testified during the Public Protector hearings that the cost of each Exocet Block 2 missile round was about R20 million. Simple arithmetic shows that only nine missiles could have been purchased for R182 million.

[\[DT1-0505.pdf\]](#)

453. I was advised that in fact another scheme was used. This entailed purchasing a minimum number of missiles outright, such as nine (two each per corvette plus one test round) and acquiring a further amount such as eight (to make up the total of 17) under a kind of lease scheme where the SA Navy pays a certain amount per year to possess them, as well as pays for each round when these are actually fired. I know that a number of Exocet missiles have been fired since the acquisition of the corvettes.

454. In addition there are references to the SA Navy having acquired and firing both MM40 Block 1 missiles as well as Block 2 missiles. The reference to Block 1 missiles seems to be incongruent with Kamerman's averment that the SA Navy acquired 17 MM40 Block 2 missiles under Project Sitron. Indeed the former Minister of Defence has subsequently confirmed in a written reply to a parliamentary question dated 13 August 2007 that actually 6 MM40 Block 1 and 11 MM40 Block 2 missiles were acquired. Why this is of particular importance is that by reducing the initial SSM programme cost by not including the cost of some of the missile rounds themselves, the price of the rest of the combat suite could effectively be increased to the advantage of Thomson-CSF.

[\[TrentQuestionSSM-01.pdf\]](#)

455. In any case Kamerman testified to the Joint Investigation Team during the Public Protector hearing into the SDPs as follows :

“At the end of the day one of the major decisions that the Naval Board made in its quest to lower the cost of the combat suite and thus the affordability of the whole Corvette as a whole, was to reduce the initial batch of missiles from 32 missiles to 17 missiles. And these are very expensive things. They approach R20 million apiece. So if you reduce by 16 missiles, or 15 missiles, you can imagine that is an awful lot of money.”

“But again, we were faced with a situation that neither of the two missiles that we had specified, rather neither of the two missiles that were on the table for evaluation before us, and incidentally the missiles that I have indicated to you are the world leading non United States missiles, the Aerospatiale missile and the Saab missile, between them apart from Russian missiles really equip the Western navies per se. We had neither of those two options fully met our user requirement.”

“In this exercise, by reducing the number to be initially purchased from 32 to 17, we obliged the German Frigate Consortium to go back to the manufacturers and we had done a technical evaluation of both of them but now we wanted a quote. They had quoted for 32, we wanted them to quote for 17.”

”If you went under that minimum level, if you ordered fewer items from them, their price still remained the same. So on a price performance basis, primarily, although there were certain distinct advantages operationally with the French missile and that is a fact of the matter, it was primarily on a price performance basis

that the Exocet missile was eventually proposed to the Naval Board, which ratified it, which in turn was proposed to the, or brought to the PCB which in due course ratified it. I want, however, to emphasize that the Exocet MM40 Block 2 is the leading European missile and is supplied to dozens of nations and is in fact the front line anti-ship missile right now for many NATO nations as we speak. It is a superb missile.”

“So the missiles that were on the table in front of us, that 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 different missile. It is a brand new state of the art missile. It is the leading edge of missile technology today. As I have said, the Naval Board was not prepared to compromise on our primary weapons.”

[\[DT1-0827.pdf\]](#)

456. In his Section 8 interview held under oath with the JIT investigators, Kamerman testifies as follows (Page 867) :

“There is actually no real risk for us to take the Aerospatiale MM40 Block 2 missile and put it into a category C....”

[\[DT1-0770.pdf\]](#)

457. Through the investigation, Kamerman never makes any reference, nor ever gives any indication, either that less than 17 Block 2 missiles, nor any Block 1 missiles were acquired under the SDPs corvette acquisition programme. The only reason for this, considering the fact that the MoD had formally stated in a written reply to

a parliamentary question that it acquired 11 Block 2 missiles and 6 Block 1 missiles, was that there was something highly irregular in this regard. And Kamerman would have known exactly what and when equipment was purchased because he was both the corvette project officer and the naval projects director at all the relevant times up until 2006.

458. Regarding the SSM, it appears that the Exocet missiles were ordered circa mid-2000. Indeed an article dated 1 August 2000 in the authoritative Jane's Intelligence Weekly reports as follows :

“The South African Navy (SAN) has placed an order with the European Aerospace and Defence Company (EADS) for the latest generation Exocet anti-ship missile system to equip its four new Meko A200 patrol corvettes.”

459. While it is a fact that the SA Navy was acquiring not only not “latest generation” missiles for the corvettes, there are a number of other aspects of this press statement that bear scrutiny, inter alia, the date of the reported transaction, that the order was placed with EADS and not Aerospatiale, as well as that the reference is to latest generation missiles. It could well be that there were multiple orders for missiles, possibly some within the corvette acquisition budget out of the Special Defence Account and some as a separate purchase, possibly out of the SA Navy's running budget.

460. In essence Kamerman testified that the SA Navy had acquired 17 state-of-the-art Exocet MM40 Block 2 missiles whereas in fact only 11 missiles had been acquired along with 6 inferior Exocet MM40 Block 1 missiles. To my mind, this is proof that Kamerman was lying to the Joint Investigation Team, or at least deliberately misleading them as to the true facts of the matter, during the Public Protector hearings into the SDPs as well as his Section 28 interview under oath.

461. Even if the 17 Exocet MM40 missiles were acquired under the corvette contract, but that six of these were Block 1 missiles, these 6 are to all intents and

purposes operationally useless to the SA Navy. They may be useful for testing the corvette combat suites as well as for training, but being operationally useless means that the SA Navy has to acquire further missiles for its operational stock as well as for war stock. In my respectful view this substantially fuels my contention that the corvette combat suite contract was fundamentally flawed and conducted to favour ADS, Thomson-CSF and France, who reciprocated in kind.

462. However another aspect that needs to be considered is whether the SSM and its missiles were actually acquired under the SDPs corvette contract through ESACC, or differently, i.e. directly through Armscor.
463. Of course, it is also well known and also a matter of public record that the SA Navy has had enormous funding difficulties just to maintain itself as marginally operational during this last decade since it acquired new corvettes and submarines under the SDPs. It is likely that funding expendable ammunition out of its annual running budgets, rather than from the Special Defence Account, which is meant to fund capital acquisitions in their totality, is the root cause of its financial problems. This is very important because this would mean that the SDPs have in fact detracted from national defence security and left the SA Navy severely debilitated in performing its constitutional duty.
464. The presentation given by the Project Officer to the PCB meeting and attached to the minutes as Appendix A records as follows :
 - Price discussions/negotiations commenced Feb 99 with Combat Suite price at RM3900

- **Substantial reduction in prices now as a result of :**
 - substantial reductions in scope of supply and performance, but essential combat capabilities and local industry participation maintained, eg:
 - reduce SAM ship fit to 16 missiles from 32 (FFBNW)
 - reduce SSM stock to minimum required with lease/purchase option”**

[\[PCB 1999-04-28.pdf\]](#)

465. It is thus undeniable on face value that the price of the combat suite had been reduced by the consideration of a lease/purchase option for the SSM missiles.

466. A further indication of the credibility of my version comes from ADS itself where in its letter dated 24 May 1999 to Capt Kamerman and entitled **SITRON Programme Combat Suite**, Pierre Moynot states as follows :

“In order to further close the gap, the removal of ammunition, except for the system qualifications, will result in a saving of approximately 300 MR at the level of the acquisition costs.”

[\[DT1-0439.pdf\]](#)

467. While most of the detail of this part of the corvette combat suite transaction has been obfuscated and hidden by the acquisition authorities from detailed scrutiny, there is certainly something not right here and it bears further forensic investigation.

IPMS Simulator

468. On 21 June 1999 Kamerman wrote to the GFC advising it as follows :

“The GFC offer for an Integrated Platform Management System (IPMS) training simulator was not accepted. The SA Navy has progressed a considerable way with developing generic Integrated Platform Management System software with a local company, namely C212 in Cape Town”

Discussions with C212 (Mr Gerhard Krüger) has indicated that a locally produced training simulator for the Patrol Corvette's IPMS is feasible and budgetary quotations indicate that it may be the most cost effective solution to obtain such a simulator. This based upon the same look and feel MMI as the Meko IPMS, but running on local generic software.

C212 was instructed to prepare a Statement of Work for, and Concept Description of, the IPMS Simulator (IPMS-Sim) which ***now reflects the SA Navy's requirements.***”

[\[DT1-0473.pdf\]](#)

469. On 23 June 1999 (that is just two days later) CCII Systems was requested to submit an offer for the Integrated Platform Management System (IPMS) Simulator (IPMSS) to Blohm+Voss, a member of the GFC.

470. On 24 June 1999 CCII Systems duly submitted a quote to the GFC for the IPMS Simulator in an amount of 4 985 000 (excluding VAT).

471. We were formally selected by the Project Control Board to supply the IPMS Simulator in terms of Llew Swan's letter to the GFC dated 29 June 1999.

[\[DT1-0489.pdf\]](#)

472. However, Blohm+Voss later requested an extension of validity of our offer until 30 June 2000 and then again until 30 March 2001. On 19 February 2001, Blohm+Voss supplied us for the first time with the detailed *Requirement Specification* and requested us to supply a “*last and final offer*” by 2 March 2001, which we did after an extension of three days. We were eventually informed by them on 11 April 2001 that we were not being awarded the contract for the IPMS Simulator.

473. Pierre Moynot also refers to this matter in his letter dated 26 July 1999 to our attorneys :

“To my knowledge, they (C²I² Systems) have also been selected as preferred supplier for another subsystem part of the platform as subcontractor to GFC.”

[\[DT1-0503.pdf\]](#)

474. The only subsystem to which he could possibly have been referring was the IPMS Simulator as CCII Systems had not bid for any other part of the corvette platform. What this means for Pierre Moynot to have stated this was that as an insider to the acquisition process he had definite knowledge of this.

475. During then-Capt Kamerman’s testimony in SCOPA hearings of 2000-10-11, he reported as follows :

“They are also critically involved in the software development of the machinery control system.”

476. This item of a machinery control system is also a reference to the IPMS Simulator and therefore on his own version he was stating that CCII Systems had received a workshare in respect of this item on the corvette contract. His

reference to the term “machinery control system” can refer to nothing else in the context.

477. In the draft *Project Sitron: Contractor Security Plan* (classified as Confidential) dated 2001-01-20, C²I² Systems is also referred to as the contractor for the IPMS Simulator (Item 438 on Page 10). It is unthinkable and illogical that this would be stated in a document dated 2001-01-20 unless it was also stipulated in the project contract baseline which was in existence at that time.

[\[DT1-0710.pdf\]](#)

478. It is thus clear that C²I² Systems was de-selected in respect of the IPMS Simulator at a very late stage.

479. However during the Public Protector hearings of the JIT’s joint investigation into the SDPs, Kamerman stated under oath as follows :

“But I am now going to come to the fact that he alludes that the IPMS simulator was selected by the State.” (Page 1215)

“That letter, however, was in no way a selection by the State or a prescription on the main contractor. It was merely a suggestion that the main contractor consider C2I2 as a potential supplier.”

[\[DT1-0487.pdf\]](#)

480. Yet the letter to the preferred supplier the GFC dated 29 June 1999 from Llew Swan, the Chief Executive Officer of Armscor was entitled ***Project Control Board Decisions Regarding the Project Sitron Technical Baseline*** and proceeds as follows :

“At a meeting held recently regarding the selection of major products and their Suppliers for the Corvette programme, the following were selected-see attached list.”

The meeting in question was the Special Project Control Board meeting of 8 June 1999 where the minutes describe this as “Minutes of a Decision-Making Project Control Board Meeting held in the Zipper Conference Room at Armscor on 080730B Jun 99 to Formalise Decisions wrt Projects Sitron, Wills and Maulstik (sic)”

[\[DT1-0462.pdf\]](#)

[\[DT1-0487.pdf\]](#)

Within the table entitled Ship Platform the element IPMS Simulator with its supplier “C212” are identified. “C212” is meant to be (and means the same as) C212 or C²I² or CCII Systems.

481. On the plain interpretation thereof nothing can be clearer that there was a formalised selection by the DoD and Armscor of CCII Systems to supply IPMS Simulator as part of the corvette platform.
482. Thus Kamerman’s evidence that there was never a selection by the State of CCII Systems’s IPMS Simulator simply cannot be correct.

The Revolving Door

483. On a slightly different angle at this juncture, but nevertheless quite relevant in my view, is that Kamerman resigned from the SA Navy as its Projects Director in around July 2006 and joined as its Vice President of International Sales, Thyssen Krupp Marine Systems (TKMS) which in effect was an amalgamation of the German Frigate Consortium and German Submarine Consortium. Not only is this a stark example of the practice of the so-called “revolving door”, but that this was specifically prohibited in the Corvette Umbrella Agreement without the written approval of the Chief of the SANDF. It is on record that no such approval was given. Interestingly, the relevant stipulation in the Umbrella Agreement is in a section entitled “Remedies in the Case of Bribes”.

484. Yet from the Umbrella Agreement it is stipulated :

“19.2. The Seller and each of its members shall not for a period of 8 (eight) years from the Effective Date, employ any employee or former employee of:

19.2.1. the South African National Defence Force or Armscor who is **or was in any way involved with the Agreement**, without the prior written consent of the Chief of the South African National Defence Force or the Managing Director of Armscor respectively, or their deputies;”

[\[DT1-0568.pdf\]](#)

485. In evidence before the commission Kamerman testified as follows :

“I did not need that permission as an individual of course because I'm not party to the Supply Terms” (Page 6073)

486. Yet in his CV which he tendered as an annexure to his witness statement he states as follows :

“In late 1998 I authored the Patrol Corvette Combat System User Requirement Specification (URS) and in 1999 I co-led the technical negotiations for the Patrol Corvette contractual baseline, which formed the technical basis of the Supply Contract for the Patrol Corvettes.” (Page 2)

[\[JK-01_CV of R Adm Kamerman ocr-02.pdf\]](#)

487. Now it is simple logic that the technical basis of the Supply Contract for the Patrol Corvettes are the Supply Terms which are part of Umbrella Agreement. Likewise the URS is an integral Part of the Supply Terms. As he states on his own version that he authored the latter and co-led the technical negotiations which formed the Supply Terms, simply put he was party to the Supply Terms. Furthermore as can be seen from the raft of the relevant documentation, Kamerman was the author of a substantial body of correspondence with the GFC regarding much more than just the technical basis of the Supply Terms. He was intimately involved in all matters including scope of supply, price and the selection of subcontractors to the GFC.

Allegations of Corruption : Conventional Submarines

488. Another component of the SDPs was the acquisition of new conventional submarines for the SAN under Project Wills. I pause here to mention that neither I nor CCII Systems were involved in the procurement of submarines, except for a relatively minor portion of the submarine combat management system where we were involved. The information in this part of the statement was given to me by various sources and I believe it to be true and worthy of mention for purposes of further investigation.
489. The final preferred supplier for the submarines was the German Submarine Consortium (GSC).
490. This surprised many insiders, including me, at that time because the GSC was considered to have a weak bid, especially in respect of Industrial Participation and price*. CCII Systems was part of the South African Submarine Industrial Cluster (SASUBCLUB) and had access to much relevant information and views* at that time. Until very shortly before the preferred suppliers were announced by Cabinet in November 1998, the GSC was considered to be either last or second last in the running. Yet just before, literally a few days, the announcement the GSC moved into first position.
491. More quantitatively, a careful review of the draft and final JIT Reports indicates that there were substantial anomalies with the way the GSC was selected as the preferred supplier. Specifically there seem to have been problems with the scoring of the NIP, DIP, Financing and Military Value. All the problems were to the advantage of the GSC. In the other contracts Military Value was determined by dividing Military Performance by Cost. On this criteria, Fincantieri would have come out on top.
492. But in the submarine contract a different formula was used and the Integrated Logistic Support component was given a very high weighting, even though it was a relatively small component of the contract price. The GSC was recorded as

offering a very low price offer on this component. This basically swung the Military Value component of the evaluations GSC's way. The JIT Report records that according to the Affordability Report the costs of the GSC's bid presented to Cabinet in November 1998 "did not take into account all the elements of costs."

493. Also relevant in this regard is the evidence of Davis Erasmus, senior manager of the Logistics division of Armscor. He was so concerned about this aspect of the evaluation and award to the GSC that he actually wrote and risk report on the matter as well as withdrew his involvement.
494. HDW was one of the members of GSC as well as of the GFC.
495. Another member of the GSC was the German company Ferrostaal. Ferrostaal subsequently was acquired by the Thyssen Group and is now part of TKMS.
496. This means that all of Blohm+Voss, Thyssen and Ferrostaal are part of the same TKMS group.
497. I understand that when the German prosecuting authorities and police investigators raided Blohm+Voss and Thyssen on 19 June 2006 in connection with the corvette allegations, on a tip-off they also raided the premises of MAN-Ferrostaal in Essen, Germany, having been advised that Ferrostaal was storing sensitive documents on behalf of its sister company Thyssen. There the investigators indeed found documentary records relevant to the corvette acquisition, but also found documents indicating bribery in respect of the submarine acquisition.
498. I was told telephonically soon after these raids by someone close to the investigation that "Ferrostaal paid even larger bribes for GSC to win the South African submarine deal than Thyssen paid for the GFC win the South African corvette deal".

499. In this regard the third German investigating report is informative and states as follows :

“We found indications that GEORGIADIS was recommended by HOENINGS to FERROSTAAL, member of the German Submarine Consortium (GSC), to support them during the tender process for the submarines for South Africa.

FERROSTAAL signed a consultancy Agreement with MALLAR Inc., GEORGIADIS acting on behalf of MALLAR Inc., over a commission of 19m Us and 6,603,000 € were paid to MALLAR Inc. in 2000/2001 from FERROSTAAL.

These facts we received officially and legally through documents seized during the June 2006 search of TRT.

Further investigations by the tax investigation officers of our team revealed more information which is unofficial and cannot yet be used as evidence as they are protected by tax secret:

Another 6,603,000m € were paid at the same time to a company called Kelco Associates SA, resident on Guernsey (PO Box 161, Ground Floor-Dixcart House, Sir William Place, St Peter Port, Guernsey, GY1 4EZ).

The CEO of Kelco had been named by FERROSTAAL as Tony ELLINGFORD.”

[\[LNWReport-03_E.pdf\]](#)

500. During the negotiation phase of the SDPs pressure by certain of the acquisition authority was put on the SASUBCLUB to meet with ADS with a view to the latter's possible involvement as the submarine combat system supplier and a

meeting of the SASUBCLUB and ADS was convened on 30 June 1998 under Shaik's chairmanship. Although I was not at this meeting myself, my company was a member of the SASUBCLUB and I was involved in approving that the chairman Gordon Blackbeard attended such a meeting, specifically because if things had been contractually successful, ADS would actually have taken workshare away from my company which was the only member of the SASUBCLUB involved in the combat suite and combat management system. Indeed I also approved Blackbeard inviting ADS to become a member of the SASUBCLUB which they subsequently did. I did so mainly for two reasons: there were actually two combat suites that needed to be supplied as DIP to the German naval consortia, one for the frigates and one for the submarines and my personal view was there was actually enough room for both of our companies to contribute and be involved on both a technical and business basis. I personally got specific feedback on this matter from Blackbeard as well as received the minutes of the SASUBCLUB meetings making reference to the meeting called by Shaik and Howell.

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[\[E cs min sasubclub-19980819.pdf\]](#)

[\[E cs fg 199807020.pdf\]](#)

501. Shaik also had meetings with HDW (represented by Clement Steinkamp) and with STN Atlas (represented by Peter Krollman and Ernst-Otto Max) in the latter part of 1998 during which he put pressure on them to allow ADS to participate in the supply of the combat system for the submarines. I am aware of this from personal discussions and interactions that I had with these parties.
502. Subsequently and although HDW had initially included only the STN Atlas combat suite in its offer, HDW was, at Shaik's insistence, required to submit an alternative offer incorporating the ADS combat suite (although in the event HDW's strong preference for the STN Atlas combat suite was accepted in the final contract for the acquisition of the submarines)

503. Although nothing eventuated from our cooperative standpoint, and although the GSC selected the STN Atlas submarine combat management system, the latter was forced to include ADS's Torpedo Fire Control System (TFC). I am intimately aware of this because the TFC was specifically included in the workshare of the agreement we concluded with STN Atlas.
504. I contend that Shaik actively campaigned on ADS's behalf in order to assist them getting business resulting from the acquisition of a new submarine.
505. Shaik's interaction with HDW and STN Atlas also prove that he directly violated his supposed recusal resulting from his declared conflict of interest in the naval combat suites.
506. It has been stated publically that the submarine acquisition for the Portuguese Navy is tainted with fraud, corruption, forgery of documents and bribery which is the reason why it is currently under investigation by both the Portuguese and German judicial authorities. In Germany MAN-Ferrostaal directors have been indicted, arrested and are said to be negotiating compensation with the German authorities.

Allegations of Corruption : Jet Trainer and Jet Fighter Aircraft

507. I was not personally involved in this aspect and therefore shall not deal in this statement with these aspects in as much detail as the other aspects.
508. However, it is clear from the multitude of affidavits of SFO Principal Investigator Gary Murphy, Senior DSO/DPCI Investigator Colonel Johan du Plooy, Senior NPA Prosecutor William Downer SC and NPA attorney Karla Saller, that there are credible allegations on oath of bribery and corruption on a vast scale by BAe and Saab (possibly BAe on behalf of Saab).
509. I have personally met Principal Investigator Gary Murphy and his colleague Barrister Lydia Jonson in my offices in Cape Town, with senior DSO investigator

Wilhelm Grassman, at their request, to brief them on the SDPs in general and of possible overlaps of role players across the different legs. I have personally seen some of the analysis of documentary evidence regarding payments to individuals and financial “special purpose vehicles” set up to facilitate the flow of these so-called commissions, especially the covert commissions. In my view, all the SFO’s evidence, which it has shared with the DSO and later the Directorate for Priority Crime Investigation (DPCI), is vast, credible, compelling and constitutes a prima facie case of corrupt dealings.

510. One specific aspect involving corruption by BAE Systems involves the daughter of a member of the Cabinet Stella Sigcau who was Minister of Public Enterprises and therefore a member of MINCOM by virtue of the fact this department would be selecting and administering all the NIP projects of the SDPs.
511. The minister’s daughter’s name is Portia Ndzamela. She was married that was getting divorced which the records describes as being a difficult one and she also was the mother of two small daughters.
512. At the request of Minister Sigcau BAE Systems made all the relevant financial and administrative arrangements for Portia and her two daughters to move to the United Kingdom for a couple of years where they paid for their accommodation and subsistence for three years as well as education and/or courses for both Portia and her two daughters.
513. If one analyses the total costs of BAE Systems’s largess in this regard it has to amount to an expenditure of several hundred thousand Rand in 2000 financial values.
514. The person from BAE Systems who received the request for this assistance and made the subsequent request for BAE Systems to provide it was Alan McDonald the Regional Managing Director responsible for Africa and for the LIFT and ALFA bidding processes.

515. All of this was formally communicated to BAe Systems head office in Farnborough.

516. In the BAe documents Portia is referred to as Young Lady Friend.

[\[YLF-01.pdf\]](#)

[\[YLF-04.pdf\]](#)

517. There is also a reference to another person involved in the matter who they refer to as Young Friend.

The identity of Young Friend is Fana Hlongwane.

[\[YLF-02.pdf\]](#)

[\[YLF-05.pdf\]](#)

Shaik / Swan Interference in Helicopter Decisions

518. While the bulk of my evidence concerns the corvette, submarine and aircraft components of the SDPs, I am aware that there were also allegations of impropriety in respect of the LUH programme. In this respect the draft JIT Report records as follows :

“11.5.11.4 During consultations with witnesses it was alleged that Messrs L Swan and S Shaik had intimidated certain staff members who had been opposed to the awarding of the contract to Turbomeca. The staff members concerned had been threatened with dismissal if they dared to openly oppose the said two persons.” (Page 532)

[\[E paia-ag edoc draft-report Full 2001-10-04 01 nocomments ocr.pdf\]](#)

519. While the names of the threatened parties are not disclosed in this draft report it is my view that such allegations are entirely credible and an indicator of impropriety in the helicopter programme and worthy of further investigation, especially now that 15 years have elapsed and the threatened parties may be less sensitive to the implications of coming forward.

Joint Investigation and JIT Report

520. After the conclusion of the SDPs contracts on 3 December 1999, many parties from civic society, losing bidders, opposition political parties, etc. were highly suspicious of most or many aspects of the SDPs.

521. Certain parties very close to the coal face of the SDPs gave then opposition MP Patricia de Lille a briefing on their perception of the illogicalities, irregularities and suspected criminalities involved. This was distilled by certain parties into written form later to become known as the ***de Lille Dossier***.

522. Independently I had been put in contact with the Special Investigation Unit (SIU) then headed by former Judge Willem Heath.
523. MP de Lille then handed her evidence to the SIU along with mine.
524. This was done as this was meant to constitute prima facie evidence on the basis of which the SIU could request a presidential mandate to initiate a formal, full blown investigation in terms of the Special Investigating Units and Tribunals Act.
525. I then began working closely with the SIU's investigators, but soon (within two months) they advised me that they were unlikely to get a presidential proclamation needed for the SIU investigation.
526. The SIU advised me to pass my complaint to the Auditor-General which I did formally by means of a letter dated 11 July 2000 to the Corporate Executive Manager of the Office the Auditor-General, Mr Wally van Heerden who was then overall responsible for the SDPs investigation. This letter was after a meeting in Pretoria at the AG's head office with Judge Willem Heath, van Heerden, and a member of the firm TCG which was consulting for the OAG at that time.

[\[DT1-0625.pdf\]](#)

527. MP de Lille's, mine and other allegations were consolidated and came to the attention of Parliament's SCOPA.
528. In October 2000, SCOPA formally initiated the joint investigation by the Joint Investigation Team (JIT), although it initially wanted the SIU to be part of the JIT.
529. A list of allegations entitled Report of Allegations was compiled which formed the brief for the investigation.

[\[ReportofAllegations-01.pdf\]](#)

530. The list contains 23 individual allegations to be investigated in the SDPs investigation.
531. Other than the Schabir Shaik and Tony Yengeni matters, there were no other successful prosecutions. There was one other prosecution against Ian Pierce, the accounting officer of FBS regarding the disappearance of company financial records for the relevant period leading up to the SDPs contracts. This prosecution failed through mismanagement of the case and poor co-operation between the NPA and SAPS.
532. Only a handful of the allegations listed in the Report of Allegations were even pursued in the joint investigation by the JIT. Indeed, although the allegations had been made as early as 2000 with a reasonable degree of detail being provided, including the nature of the wrongdoing, companies' names, individuals' names, even the sums of money thought to be involved, nothing was done by the South African investigating authorities in pursuing these allegations. It took foreign investigations in the United Kingdom and Germany in the mid-2000s period (circa 2005 to 2008), triggered by completely independent allegations of corruption in other defence equipment deals involving other countries, to yield documentary evidence which then caused the foreign investigators to seek the co-operation of their South African counterparts. Such co-operation then led to just two investigations in the late 2000s by the DSO and then the DPCI, i.e. the BAE Leg and the GFC Leg. These will be addressed in more detail later in these submissions.
533. On 19 January 2001 in one of the most extraordinary visual spectacles on national TV, President Thabo Mbeki announced that the SIU would not form part of the JIT, just as the SIU had predicted to me in July 2000, with President Mbeki ridiculing Judge Willem Heath by name before a national TV audience.
534. One of the things Mbeki did during the TV spectacle was to wave about a set of organograms accusing Judge Heath drawing up these organograms and that

they implied that both he and former President Nelson Mandela were linked to suspected corruption with regard to the SDPs.

535. I aver that Judge Heath did indeed not draw up these organograms. I did so in my company's boardroom in Kenilworth, Cape Town with the input of Bheki Jacobs, during late July and early August 2000. I still have the hand-drawn originals done with pencil on paper. I later converted these to computer form and have kept them more-or-less up-to-date since then.
536. The reason for us drawing up these organograms was to depict graphically how anyone trying to influence decisions or seek favours with government would possibly conduct such approaches. This was specifically in order to explain the SDPs to the investigators.
537. In this regard I had a meeting in my company's boardroom in Kenilworth, Cape Town during October 2000 with nine JIT investigators from the OAG, OPP, DSO and SIU. I used the set of organograms to brief them on the SDPs and gave each one of them an individually numbered copy printed in colour, on the condition of strictest confidentiality and that no copies or facsimile transmissions was allowed to be made of them.
538. I was quite surprised to see the president of the country waving around my organograms on a special afternoon broadcast on national TV and that some of these organograms were posted on the GCIS website.
539. In my view my organograms, even in those early days of mid-2000 accurately depicted the SDPs dealings and with some updates in the interim are as accurate and useful today as they were then. I attach the earlier computer versions of my organograms and the latest versions.

[\[Organograms-01.pdf\]](#)

[\[Organograms-02.pdf\]](#)

540. Without the independent SIU, the JIT undertook its investigation from early January until early November 2001. The Auditor-General (AG) was responsible for the so-called Forensic Audit, the Public Protector (PP) for the Public Phase and the National Director of Public Prosecutions (NDPP) for the Criminal Phase.
541. When the JIT published its Joint Report on 14 November 2001, I was thoroughly disappointed and indeed shocked as to its content and more importantly, as to its key findings and conclusions.
542. I had been working with a number of investigators of the JIT up until that time, including Advocates Charles de Chermont and Jan Swanepoel of the OAG, Dave Scrooby of the OPP and Advocate Gerda Ferreira of the DSO, as well as an auditor from the Office of the Auditor-General, Etienne Smith. I had, in so doing, formulated a reasonable idea of what their evidence and findings entailed and therefore had formed some kind of expectation of their joint report. As it transpired, the published JIT Report was quite different to what I expected from authors who were professionals and officers of the court and had been investigating the SDPs for a period of a year or more.
543. I also was advised by persons very close to the investigation that the three agencies had written separate reports and that these separate reports had been submitted as a "joint report" to the presidency, MINCOM, the DoD and even to Chippy Shaik for their review and approval before publication. I have both the draft and final versions of the JIT Report and this evidence is based on my analysis of them.

[\[CCA Affidavit-02-041 scan all OCR.pdf\]](#)

[\[JIT Complete d 01.pdf\]](#)

544. On thorough review of the final JIT Report it became clear to me that it was a dissembled version of the three agencies' reports, re-assembled into a singular version, after having been subjected to extensive truncation and thorough editing.

545. I was told by an investigator that the original version was some 1 200 pages in length and that this was cut down to some 800 pages and then down to 400 pages because the presidency deemed the original version to contain too much detail.
546. I understand that the presidency "liked" the draft report of the Public Protector, but not that of the Auditor-General. The JIT was instructed to redraft and reconstitute the three reports as a single report, along with MINCOM's own directives as to the key findings and conclusions. This resulted in a final report which is so starkly different from the final draft in both content and style, as well as fundamental inclusions and exclusions as to the key findings and conclusions.

[\[ErikaGibson-01.pdf\]](#)

547. In response, the JIT Project Leader Advocate Lionel van Tonder of PWC Forensics Services, insourced to the Office of the Auditor-General and Advocate Stoffel Fourie of the Officer of the Public Protector did precisely that editing during the period between 2001-10-14 and 2001-11-14.
548. It would appear to me that they did receive some assistance in the re-assembly and editing of the final JIT report, probably from an English-speaking senior member of Government Communications and Information Services (GCIS).
549. In short, the JIT Report whitewashed the entire SDPs, other than the Schabir Shaik criminal matter which was not in any case dealt with in the JIT Report.
550. Deeply concerned about this, I raised requests under the Promotion of Access to Information Act (PAIA) to the Office of the Auditor-General, the Office of the Public Protector, the National Director of Public Prosecutions, Armscor and the Department of Defence.

551. Armscor and the Department of Defence apparently agreed that the DoD would handle my request under PAIA. The DoD then effectively refused my request and I was forced to take the matter on review to the High Court, which found in my favour and ordered the DoD to grant access to all the requested records. The DoD's response was very poor and I was forced to again take the matter to the High Court which again found in my favour. The DoD consequently did grant me a considerable number of records, many of which were rendered to be of no or negligible value due to the DoD's unlawful and extensive severing (rendition) of the documents (which is omission of pages of records or obscuring parts of pages by means of erasing fluid, etc.). Although PAIA does make provision for severance, in this case at least this would have to be approved by the court and be for good reason within the provisions of PAIA. I submit that neither was there such approval, nor in the vast majority of instances was such severance justified in terms of national security, commercial confidentiality, etc.
552. The Office of the Public Protector effectively conceded to my request, albeit after much legal and administrative gamesmanship, but claimed that it had no records to provide me, other than one draft version of its SDPs investigation report and copies of the transcripts of its Public Hearings into the SDPs (the Public Phase). I already had these transcripts, having been a witness in the first place and having paid the transcription company for them. But it is extremely difficult for me to believe that the PP could have conducted a proper investigation into the Public Phase without having extensive relevant documentation, including correspondence with the involved parties as well as written submissions in response to the formalities of the hearings.
553. In any case, my legal and financial resources were limited and so I decided to concentrate on the Office of the Auditor-General and the Department of Defence and not pursue my remedies against the Office of the Public Protector and Armscor for the time being.
554. Like the Office of the Public Protector, the Office of the Auditor-General opened its response in a manner designed to frustrate my request for access to the

SDPs investigation records. Initially it furnished a mere few hundred pages of documents, most of which came from my company and were indeed written by me.

555. As with the DoD, I was forced to take the matter on review to the High Court. Again the court found in my favour and although I agreed to a "Reduced Record" pertaining only to the Corvette Combat Suite leg of the SDPs and my complaints in this regard (which was in any case quite clear from the covering correspondence of my PAIA application), plus all the draft reports. The High Court ordered the Auditor-General to grant access to all the records that I had requested, including copies of all the draft investigation reports in their entirety.
556. Again the Office of Auditor-General elected to comply with the court order according to its own interpretation thereof, including providing me only with copies of three of the twelve chapters of the draft reports and not the entire reports. So again I was compelled to take the matter to the High Court, this time to seek both full compliance of the court order and a further order for contempt of court and incarceration of the Auditor-General himself should he not comply. Again the High Court found in my favour and sentenced the Auditor-General to imprisonment of one month, suspended pending compliance of the court order (judgment handed down 11 November 2004).
557. The Auditor-General took this on appeal to the Supreme Court of Appeals in Bloemfontein. The SCA upheld the High Court's judgment and order regarding access to the records, including access to all of and to the full versions of the draft reports (judgment handed down 31 March 2006). For the sake of completeness, I mention that the SCA did overturn the contempt of court finding, not on its factual merits, but on a different approach to the nature of onus in contempt proceedings. As the proceedings were on motion and the SCA being unable to make credibility findings with the benefit of trial proceedings with evidence and witnesses being examined and cross-examined viva voce, the conviction was overturned.

558. I have no difficulty with the SCA's ruling on contempt, but it does not derogate from the point being made on the lack of co-operation which I received from the Auditor-General.
559. Nevertheless, in terms of actual conduct regarding production of the records sought under PAIA, the Auditor-General was in default of the High Court's order.
560. Subsequent to the ruling by the High Court, the Office of the Auditor-General proceeded to provide me with a large volume of records, including copies of the full versions of the draft reports and many, many copies of parts thereof.
561. Despite release of the draft reports, these were provided in so many forms and fashions, from complete versions of different drafts to partial versions, to just separate chapters. So in addition to their sheer multitude and the difficulty in certain instances of determining chronology and relevance, it is difficult to analyse this evidence in its proper context.
562. What I also know is that even longer versions of the AG's draft report were produced. One version that I received has Chapter 12 ending with Page 800. This means that the entire report would have around 900 pages. I never received a version with as many pages. So my conclusion is that, contrary to the court order, not all the draft versions of the full Report of the Auditor-General were furnished to me by the AG.
563. Also missing from the released documents are pages of responses from the DoD to the AG's draft report, other than those relating directly to my own complaints. Omission of these pages was in my view contrary to both the letter and spirit of the court order because firstly they related directly to the draft reports, but they also related to my allegations that the DoD and/or presidency had been able to respond in detail to the draft reports prior to the final report, as well as that any severance of records needed specific court approval, which was never requested, let alone granted.

564. In any case, these draft reports refer to a multitude of findings of irregularities in segments of the SDPs other than the corvette combat suite, including the Lead-In Fighter Trainer (LIFT) segment, Advanced Light Fight Aircraft (ALFA), Light Utility Helicopter (LUH) and Conventional Submarine segments and these findings were never included in the JIT's final JIT Report of 14 November 2001.
565. These findings of irregularities are vast in number, but for the sake of brevity I will list just a few of the most important examples in these submissions.
- 565.1 Part A - Public Protector, dated 2001-09-28, length 83 pages: there is an extra page inserted after the second page, plus insertions at the third page. All these are notes and instructions taken from the members of MINCOM (Ministers Erwin, Manuel, Lekota and President Mbeki) of their impressions of the draft report and how to change the report.
- 565.2 Part B - Auditor-General, dated circa 2001-10-04, length 194 pages: there is an extra page inserted after the Page 21. This also contains instructions taken from the members of MINCOM of how to change the report.
- 565.3 On Page 21 of the draft report it is stated as follows :
- "1.8.1 The findings of the joint investigation support the majority of the key findings by the A-G as contained in his Special Review dated 15 September 2000."
- "1.8.2 There were fundamental flaws in the selection of BAe/SAAB as the preferred bidder for the LIFT & ALFA programme."
- These crucial findings have been excised from the final JIT Report.

565.4 On Page 57 of the draft report it is stated as follows :

"5.3 Findings

5.3.1 Decisions of the Minister of Defence that could have influenced the process."

5.3.1.1 There is an indication that the former Minister of Defence that could have influenced the decisions of the role-players in the process, for example....."

565.5 Yet these findings were changed by hand as follows :

"5.3.1 the Visionary Approach of the former"

565.6 Paragraph 5.3.1.1 is deleted by hand in its entirety and does not appear in the final JIT Report.

565.7 On Page 159 of the AG's draft report it is stated as follows :

"12.4.3.7 In this regard the allegations of Dr R.M.M. Young clearly have substance." (Page 605)

565.8 Paragraph 12.4.3.7 does not appear in the final JIT Report.

565.9 Regarding the draft report entitled **Executive Summary to the Auditor-General**, it is clear that the final JIT Report included only an extract of the executive summary of the AG's report. In this regard the three agency reports made up only about 280 pages whereas the final JIT Report had 382 pages in total; yet the draft of the full version of the AG's report entitled **Strategic Defence Packages - Report of the Auditor-General** and dated circa 4 October 2001 had 729 pages in total.

565.10 On Page 532 of the draft report entitled **Report of the Auditor-General** it is stated as follows :

"11.5.11.4 During consultations with witnesses it was alleged that Messrs L Swan and S Shaik had intimidated certain staff members who had been opposed to the awarding of the contract to Turbomeca. The staff members concerned had been threatened with dismissal if they dared to openly oppose the said two persons."

565.11 Paragraph 11.5.11.4 does not appear in the final JIT Report. Suffice to say that it is both an extremely important matter worthy of appearing in the final version of the report (unless such a finding had been completely negated in the interim - which should be independently documented) and that whatever the veracity of the facts this omission alone constitutes a substantive difference between the draft report and the final report. It needs to be noted that this draft report was a final draft report as existing circa 5 October 2001 and not an early draft.

566. So it is clear that the truncated executive summary of the AG's report got amalgamated with the reports of the PP and NDPP to become the final JIT Report, while the far more comprehensive **Strategic Defence Packages - Report of the Auditor-General**, with 741 pages in total, was abandoned.

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567. One other important feature of the Report of the Auditor-General that disappeared between it and the final report was the comprehensive cross-referencing to and footnoting of evidence source documents. This

substantially impairs a report's value as a forensic investigation report, indeed it substantially impairs the value of almost any non-trivial formal report at all.

568. In my view, once a full pre-final draft of a report has been produced for external use, then to abandon it at the final hour in favour of a highly truncated summary is in itself inexplicable, unless a new imperative develops to change the content and shield the details from the target audience, which in this case was Parliament and the general public.
569. That this is what happened is an inescapable conclusion, because firstly it is impossible that a 741 page version of a report can be remotely similar in content to a 198 page version of it, or even a 384 page amalgamated version. Secondly, the radical change came directly after the heads of the Joint Investigation Team met with the President and the Ministers Committee.
570. It must also be remembered that this draft report was issued to the President and the Ministers Committee on 5 October 2001 with a view to the JIT reviewing it with them and tabling the final version in Parliament on 25 October 2001. As things transpired the final report was only tabled on 14 November 2001, this clearly being due to the very substantial effort to effectively almost completely disassemble and reconstitute the report.
571. It has never been publicly disclosed by the AG that he actually had a full draft investigation report (the Report of the Auditor-General), but that only a truncated summary of it was incorporated in the final Joint Report tabled in Parliament. This implies that only about 25% of the content of the AG's full report was ever formally disclosed. Furthermore, it remains unexplained and inexplicable why the more comprehensive and detailed report should have been abandoned in favour of the lesser version. This is in spite of a number of press articles, parliamentary questions and public questions regarding interference in the compilation of the final version after the draft was furnished to the President and the Ministers Committee for their review and input.

572. It is clear that there are numerous and substantive differences between the draft reports that were supplied to the President and the Ministers Committee and the JIT Report, this despite categorical statements made on a number of occasions within and outside Parliament by the then Auditor-General Shauket Fakie CA(SA) and the then Public Protector Selby Baqwa SC, i.e. that the only changes were formatting by nature and made in order to improve readability.
573. I would venture that the differences between the draft and final reports are numerous, substantive and include exceptionally serious omissions and even more serious additions.
574. I am bringing this to the attention of this APC for two primary reasons :
- 574.1 the complete breakdown of the joint investigation into the SDPs by means of direct executive interference by the President and the Ministers Committee and the consequent inexplicable acquiescence by the heads of the Joint Investigation Team in this regard by allowing the final report to be fundamentally changed, thereby effectively terminating the SDPs investigation by giving the government a clean bill of health; and
- 574.2 recognising and accepting the above and thereby providing a full justified platform for a full, proper and independent investigation of the SDPs.
575. The draft reports clearly contain information which Auditor-General wished to hide.
576. Yet on a number of occasions in Parliament the AG and PP stated specifically that there had been no material changes between the draft report and the final report. They stated that the only changes were made to provide an improved “user-friendliness” to the document. They use that term specifically.

577. In this regard, the PP stated in Parliament on 4 December 2001 as follows :

"Just one point. On the first question, which quotes the Auditor-General when we presented this Report as saying, views of the Executive added value. **No substantive part of this Report is a reflection of the views of the Executive.** That I would like to state categorically. The value that is being referred to is with reference to the format of the Report, because the Executive did comment about that. The Auditor-General talks about the 3 Sections when we were following the due process. The difficulty in the duplication that he has mentioned was that in my part of the Report I would have phrased another matter differently, and then they would say, which conclusion is the right one, or do we understand this to be similar. Because the words that the Auditor-General would use and that I would use would be different. So different people could interpret that differently. So the format changed in the sense that then it became one consolidated Report as you have before you now. **But in terms of change this, don't write it this way, or something to that effect, never happened.** And what is reflected here is the pure result of the Investigation." (PDF Page 35) (my emphasis in bold text)

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578. In this regard, the AG stated just minutes after that at the same occasion in Parliament on 4 December 2001 as follows :

"And it gives them (the President and the Ministers) the opportunity to bring to my attention something that is included in the Report that may be of national interest, and I must watch. And there was nothing in this Report, I want to give you

assurance, which was identified as issues of national interest, that I need to take into consideration, except the fact that it was stated that the detailed quotations from Cabinet Minutes, etc. are privileged documents. We can look at those Cabinet Minutes. We can make the findings from those issues that were deliberated but the details of those quotations should not be here. **That is the only issue we got input on.**" (my emphasis in bold text)

579. The Auditor-General also told Parliament the following :

“2.159 Ms Taljaard referred to an earlier comment from the JIT that the executive made input on the format of the report. She asked if the executive had any suggestions on the key findings and recommendations.

2.160 The AG responded to the member’s first question, saying that 14.2.9 comes from recommendation 8.13.3.

2.161 To the second question he said that the executive made no input in respect of the key findings and recommendations.”

580. It is relevant to compare what Mr Fakie and Adv. Baqwa have said in Parliament to what Fakie has given as evidence under oath in one of his replying affidavits :

"On the completion of the joint investigation the Second and Third Respondents and I each completed our draft reports independently. Each of the reports contained our respective understanding of the relevant evidence, the evaluation thereof, as well as our opinions and findings. The draft reports were sent

to the Office of the President for the sole purpose of having the factual content of the reports verified by Government. **Our respective opinions and findings were not negotiable, nor subject to change at the behest of whomsoever in Government.**" (my emphasis in bold text)

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581. Yet there simply cannot be any other conclusion, than that :

581.1 the differences between the draft joint report and the final JIT Report are stark, numerous and material; and

581.2 they were made by the JIT at the behest of MINCOM to protect the position of MINCOM, the Cabinet and the South African Government in their contracting position of the SDPs.

582. Indeed in my view the irregularities reported in the draft report are so serious that they are or give an indication of criminal conduct in certain areas and therefore the protection was indeed sought by and given to certain parties in their individual capacities and not their official capacities.

583. That such changes were sought by the executive reflects extremely seriously on them as individuals as well as a collective acting in an official capacity.

584. However, that the JIT, specifically the heads of the Chapter 9 watchdog bodies constituted in terms of the South African Constitution to protect its citizens and the public against government wrongdoing, brought about these changes to the draft report that had been produced by the actual investigators, is a wrongdoing of such high magnitude and materiality (because it undermines the very kernel of the constitutional state), that there can never be a prescription of time or any other constraint for the investigation and prosecution of such conduct.

Thabo Mbeki

585. There are court records now in the public domain that the growing confidence of Thomson-CSF to be awarded the lion's share of the corvette combat suite contract stemmed initially from indirect contact with Thabo Mbeki through his interlocutor Yusuf Surtee and later through a series of interactions and face-to-face meetings directly between the top echelons of Thomson-CSF and Mbeki himself during the period late 1997 to mid-1999.
586. This period is particularly important in the context because 23 September 1997 is when the SDPs were formally initiated and 8 June 1999 is when the decision-making PCB formalised its selections of the system and equipment of the corvette.
587. Indeed in the encrypted facsimile dated 28 November 1997 from Pierre Moynot of Thomson-CSF (Southern Africa) (Pty) Ltd to his superiors Michel Denis and Bernard de Bollardiere of Thomson-CSF France (the original in French with an official English translation) where Moynot refers to Mbeki as having given his "assurance that we (Thomson-CSF) would be awarded (the contract) for the combat system and its sensors". As this was a full two years before the contract was awarded and a full year before contract negotiations commenced between the DoD and Armscor (on the one hand) and the GFC, Thomson-CSF and ADS (on the other hand), this assurance - and indeed any communication between Mbeki, as a member of the Cabinet and chairman of MINCOM, and a potential foreign supplier (albeit this being through an interlocutor) - would be unlawful.

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588. Documentary evidence indicate that Mbeki probably first met with Thomson-CSF Chairman Denis Ranque, Jean-Paul Perrier and Alain Thetard of Thomson-CSF of France in South Africa probably on 26 April 1998. At least this shows that there had been agreement in principle for this.

[\[DT1-0192.pdf\]](#)

589. Court records also show that, on or about 17 December 1998, Mbeki met with Jean-Paul Perrier, Michel Denis and Bernard de Bollardiere of Thomson-CSF of France at its head office in Paris.

[\[DT1-0325.pdf\]](#)

[\[DT1-0326.pdf\]](#)

590. That the 17 December 1998 meeting was preceded by another meeting is in essence confirmed by the Thales memorandum dated 27 November 1998 by senior Thint executive Bernard de Bollardiere who records as follows :

"THINT already privately had access, 6 months ago, to your President T. Mbeki and at that time handed him the name of a partner (the company C.N.I.) to play the "black empowerment" role in ADS and to thus be our political guarantee; this company has since declined the offer; we are currently trying to give this role to one of the member companies of the local consortium, FBS, which seems to have received the backing of the ANC.

Besides a contact whom we consider authorised by Mr. T. Mbeki recently informed Mr. J.P. Perrier in RSA that ADS "had met the requirements" with regard to Black empowerment We **could receive a clear message from the President on this subject on his trip to Paris.**" (my emphasis in bold text)

591. References to utterances such as "privately had access", "political guarantee", "backing of the ANC", "receive a clear message from the President" are a very

severe indictment on the veracity and lawfulness of the acquisition of the corvette contract and a clear indication of undue influence in the acquisition process.

592. It must also be remembered that at this stage there was no formal requirement for Black empowerment in any government contracts and in particular in the SDPs. There was informal talk of a requirement for the involvement of SMMEs, i.e. Small Medium and Micro Enterprises, and later PDIs, i.e. Previously Disadvantaged Individuals, but this was never a formal or stated requirement and indeed this aspect was later completely removed as a criterion for selection. Therefore any response to this that Black empowerment was a valid reason for these clandestine manoeuvrings and related conduct is entirely misplaced and indeed wrong.

593. The addenda to de Bollardiere's memorandum dated 27 November 1998 are entitled **Meeting with Mr. T. Mbeki** and **Questions to be put to Mr. T Mbeki** and are exclusively about the corvette combat suite. Accordingly the planned upcoming meeting of 17 December 1998 simply cannot be explained away as being about something unrelated. Indeed the document refers to “contexte actuel” or “current contexte” in English.

[\[DT1-0306.pdf\]](#)

594. Likewise, the addendum to de Bollardiere's letter to Mbeki dated 18 December 1998, concerning the previous day's meeting entitled "Thomson-CSF / Naval Defense Programs", is again exclusively about the corvette combat suite. Once again this meeting of 17 December 1998 also simply cannot be explained away as being about matters unrelated to the corvette combat suite.

595. There are further court records indicating that Thomson-CSF executives again met Mbeki at least once circa 10 February 1999 and possibly again after 16 April 1999.

[\[DT1-0333.pdf\]](#)

[\[DT1-0346.pdf\]](#)

[\[DT1-0407.pdf\]](#)

596. It is also a matter of public record that Zuma met with Thomson-CSF on a number of occasions in South Africa as well as in June 1998 in London specifically to discuss the matter of the corvette combat suite contract with Thomson-CSF.

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597. This is all many months before the contract was signed and the latter meetings were right in the middle of a period of very sensitive contract negotiations between the DoD and Armscor on the one side and Thomson-CSF and ADS on the other side.

598. I contend that such intervention on the part of the chairman of MINCOM is highly irregular and unlawful, both in terms of the Constitution as regards government procurement and the Public Finance Management Act or its equivalents prevailing at the relevant time.

599. Giving veracity to the allegation of unlawfulness of Mbeki's conduct in meeting with Thomson-CSF in Paris and on other occasions, is Mbeki's amnesia in this regard, both with respect to formal parliamentary questions asked of him and in his evidence before this commission.

600. Mbeki has responded to formal parliamentary questions about his meeting with Thomson-CSF in Paris where his response was that he cannot remember any such meeting. This is plainly incredible. While presidents of countries might meet a lot of people, forgetting about a meeting with the top executives in the boardroom at head office in Paris of one of the top five defence companies in the world (and the top two in Europe), while at the same time being the Chairman of MINCOM during the largest defence acquisition in the history of the country, is plainly unbelievable.

601. In the 17 December 1998 Paris meeting, the South African ambassador to France, Barbara Masekela was either present in the meeting or arranged the meeting. When questioned about this, at first she would also not confirm the meeting, but later remembered both her and Mbeki's involvement in the meeting.
602. That Masekela could also not initially remember this December meeting is now a matter of public record as is the fact that she now claims that although she can indeed remember the meeting, she cannot remember what it was about.
603. Again Masekela cannot be taken at her word because if one considers why Thomson-CSF would especially write her a letter (in French) the day after the meeting to thank her for setting up the meeting with Mbeki and that there is a very similar letter to Mbeki (in English) of the same date and it is clear from the annexure of the letter to Mbeki that the meeting was about the corvette combat suite, there can be no other credible explanation for the meeting.
604. But adding very forcefully to this is the fact that Thomson-CSF then alludes in the encrypted fax dated 17 May 1999 to it having offered Masekela some kind of business arrangement with it that was so sensitive that it required both an encrypted facsimile to bring it to the attention of Thomson-CSF head office and that Masekela felt the need to appoint one Jurgen Kogl to deal with Thomson-CSF on her behalf.

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605. Making this all the more incredible is that I know that Masekela and Kogl met Thetard privately at his offices a number of times in the second quarter of 1999. It is clear that they were acting on Thomson-CSF's behalf.
606. Supporting my allegations of bribery regarding the combat suite is the examination of the contract price for the corvettes and in particular for the combat suite (this is detailed above).

Conflict of Interest

607. During 1993 Shamim (Chippy) Shaik, the brother of Schabir Shaik, was appointed by the ANC as MK's logistics representative in the transition period leading to the new political dispensation. During the 1993 to 1995 period he, inter alia, was the ANC's representative on the Arms Industry Workgroup which was responsible for drawing up a policy document for the entire Defence Family, as well as the ANC's representative on the Ministry of Defence workgroup which was responsible for advising the Minister of Defence as to the structuring of the Defence Force and the Ministry of Defence.
608. Indeed, Shaik was so immersed in the official work of the Ministry of Defence that he himself claims in his CV as follows :
- 608.1 that he was a "Signatory to the Draft National Policy for the Defence Industry which was submitted to the Subcouncil of Defence in April 1994";
- 608.2 that he conducted an "Analysis of the arms manufacturing industries and their role in a future South Africa"; and
- 608.3 that he gained an "Understanding of the defence industry's relationship between Military and Government and between Military and Industry".
609. During 1995 Chippy Shaik was appointed to the planning division of the DoD where he was instrumental in the Defence Review and its output, the so-called Force Design (the design recommended for the SANDF in the Defence Review and in which the core defence capability requirements of the SANDF and the nature and quantity of the equipment needed to fulfil those requirements were identified).

610. During May 1998 Shaik was appointed as DoD's Chief of Acquisitions, although he had been designated to take over this position at an earlier point in time. As Chief of Acquisitions Shaik was the Fund Manager of the Special Defence Account from which the SDPs were to be funded. He was also in control of policy matters and planning relating to all acquisitions by the DoD.

611. By virtue of his brother's interest in ADS, Shaik at all material times had a conflict of interest in relation to the corvette and submarine combat suites in performing his official functions as :

611.1 DoD's Chief of Acquisitions;

611.2 chairperson of the Naval PCB;

611.3 co-chairperson of SOFCOM;

611.4 senior member of the International Offers Negotiating Team (IONT); and

611.5 the secretary of the Armaments Acquisition Council (AAC) dealing with the SDPs; and

611.6 the secretary of the Cabinet sub-committee (MINCOM) dealing with the SDPs.

612. Kevin Hanafey states his memory of the nature of Shaik's conflict of interest and declaration of his recusal as follows :

Interviewer : The, while we are on the topic of the PCB, the conflict of interest disclosed by Mr Shake (sic), do you know what he disclosed?

Hanafey : I was at the meeting when he made the disclosure. I cannot remember the exact words he used, but it amounted to the

statement that he has family, what would I say, what is the word I am looking for, is it potential conflict of interest, because of family members being members of boards of some of the companies involved.

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613. Notwithstanding the said conflict of interest, Shaik did not recuse himself from the deliberations of the Naval PCB, SOFCOM, AAC and MINCOM and was allowed by the State to continue to perform all of his official functions pertaining inter alia to the acquisition of the corvettes in general and the combat suites of the corvette and submarine in particular.

614. In performing his official functions as aforesaid, Shaik actively promoted the interests of ADS.

615. Shaik actively promoted the interests of ADS as follows :

615.1 Corvette Combat Suite

615.2 Shaik was aware that GFC's offer of May 1998 failed to meet DoD's minimum DIP requirements and of the advice furnished in that regard by Armscor's legal division;

615.3 ADS was a member of the consortium proposed by GFC as the primary vessel contractor; and

615.4 in order to ensure that GFC (and thus ADS as a member of the proposed consortium) was not disqualified from further consideration, Shaik - in his capacity as chairperson of the PCB and co-chairperson of SOFCOM - decided to condone GFC's non-compliance and to invite GFC (after the closing date specified in the RFFO) to make good its non-compliance (which took the form of a failure by GFC to provide a

bank or sovereign guarantee to the value of 5% of GFC's proposed DIP commitment).

615.5 GFC thereupon made good its said non-compliance.

616. The PCB and SOFCOM were not informed by Shaik and were not aware :

616.1 of GFC's initial non-compliance;

616.2 of the advice furnished in that regard by Armscor's legal division;

616.3 that GFC had been invited, after the closing date of the RFFO, to make good the non-compliance in its offer; and

616.4 that GFC had provided the requisite guarantee only after the closing date of the RFFO.

616.5 On or about 26 May 1999 Shaik briefed MINCOM on the combat suite for the corvettes, during which briefing he inter alia gave a presentation concerning the combat suite.

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617. Shaik was present at (and chaired) Naval PCB meetings held on 8 June 1999 and 24 August 1999 when the combat suite was discussed.

618. Regarding the German investigators' suspicion of Chippy Shaik receiving a bribe payment from Thyssen and in particular with reference to the recordal in the bribery agreement with Christoph Hoening's this was in respect of "a group represented by him".

619. There is a copy of a memorandum written by a foreign investigator to the South African authorities where it was recorded that they have a list of persons who

received payments from the bank account of the company suspected of being used to launder the flow of funds, i.e. Meriam Ltd.

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620. In order to ensure that GFC (and thus Thomson-CSF and ADS as members of the proposed consortium) was not disqualified from further consideration, Shaik – in his capacity as co-chairperson of SOFCOM – decided to condone GFC’s non-compliance and to invite GFC (after the closing date specified in the RFFO) to make good its non-compliance (which took the form of a failure by GFC to provide a bank or sovereign guarantee to the value of 5% of GFC’s proposed DIP commitment).

In this regard, the JIT Report finds as follows :

“GFC did not comply with the minimum criterion specified in the DIP value system of providing a bank or sovereign guarantee to the value of 5% of the DIP commitment. GFC should have been disqualified from proceeding to the next round of evaluation.”

“There is no evidence from the minutes of SOFCOM that the memorandum directed to SOFCOM chairpersons had, at any stage, been submitted to the entire committee. In the absence of such evidence, it would appear that the chairpersons took a decision to condone the mentioned non-compliance without the approval of the committee. This decision had a far-reaching impact on the eventual selection of the preferred bidder for the Corvettes, which was GFC.”

621. GFC thereupon made good its said non-compliance.

622. The PCB and SOFCOM were not informed by Shaik and were not aware :

- 622.1 of GFC's initial non-compliance;
 - 622.2 of the advice furnished in that regard by Armscor legal division;
 - 622.3 that GFC had been invited, after the closing date of the RFFO, to make good the non-compliance in its offer; and
 - 622.4 that GFC had provided the requisite guarantee only after the closing date of the RFFO.
623. On 26 May 1999 Shaik briefed MINCOM on the combat suite for the corvettes, during which briefing he inter alia gave a presentation concerning the choice of a databus for the combat suite.

[\[DT1-0447.pdf\]](#)

624. In the course of his said briefing Shaik falsely claimed that the CCII Systems's IMS was merely a technology with potential rather than a developed product and he motivated the view that, because of the risks supposedly associated with CCII Systems's IMS, the GFC should be required to assume full responsibility for the databus (an arrangement which favoured the Detexis system by providing a pretext for the imposition by ADS of a substantial and unwarranted risk premium on CCII Systems's IMS).
625. Shaik was present at (and chaired) PCB meetings held on 8 June 1999 and 24 August 1999 when the databus for the combat suite was discussed, yet he did not disclose to the PCB the results of the technical assessment performed on 3 and 4 June 1999.

[\[DT1-0459.pdf\]](#)

[\[DT1-0462.pdf\]](#)

[\[DT1-0523.pdf\]](#)

626. Furthermore, at the PCB meeting of 24 August 1999 Shaik informed the PCB that the DoD supported the principle (promoted by Shaik himself) that the GFC carry the overall risk for the databus and Shaik insisted at the said PCB meeting that there should be adherence to this principle.
627. Shaik was a party to the decision to reclassify the databus and replace it with the Detexis, referred to above.
628. Shaik also promoted the interests of ADS in the award of the submarine contract, as is dealt with earlier.
629. I believe that it is valuable and informative to gain the view of the chief executive officer of Armscor at the time, Llew Swan, regarding Chippy Shaik involvement in the SDPs. In an Interview with the Auditor-General he states as follows :

“Gilbert Swats : Mr Swan, I am moving on to the issue of conflict of interest. Specifically eee (sic)) Mr Shaik's position to start of with briefly. The fact was disclosed (inaudible) conflict of interest earlier in December 1998 (inaudible) project control. Board (sic).

Llew Swan : Was it at the control board?

Gilbert Swats: Ja, I think that is. (inaudible) from the minutes that we were perusing, and I (inaudible) yesterday that despite his declaration of conflict he had remained in the meeting and (inaudible) handed over the chairmanship to the chief of the navy, (inaudible) no indication at all that he completely recused himself from the minutes. As a member of the PCB, what is your view on that position. . .

Llew Swan : Mr Shaik had at the first PCB meeting stated that he had a potential conflict of interest with ADS. He also stated that he was not in a position to recuse himself totally from the meeting, but that he would refrain from any discussions in the 1 meeting regarding ADS and the combat suite. Eee (sic), the reason that I (inaudible) was that it was up to the Department of Defence, they appointed Mr Shaik. He had to be in that meetings, and (inaudible) the information to the ministers as such, and he was the secretary, he was the **go-between relaying information**, and, and that was (inaudible) to say whether he should be in a meeting or (inaudible). The secretary of defence and that department should have made, in my view, and that is my personal view, should have made the decision on this (inaudible). (my emphasis in bold text)

Gilbert Swats: As a board member was it not of concern to you that he may have been privy to information relating to (sic)

Llew Swan : Yes, if it was proved to be a conflict yes, definitely.

Gilbert Swats: Just to clear the position Mr Shaik (inaudible) Although you have indicated that you personally did not (inaudible) in decision making on the combat suite. Would Mr Shaik or any of them would have had access to any of the documentation in relation to that project?

Llew Swan : Mr Shaik had access to all the documentation.

630. Clearly as Swan testifies, Shaik indeed had access to all the relevant documentation and therefore was privy to information relating to subject matter that were for him a declared conflict of interest. So on this basis alone this conflict of interest is so material that it invalidates any and all decisions in which Shaik anticipated where he had declared this conflict of interest.
631. In reality however, such access to information is only a small part of the issue: Shaik actively participated both in discussions and decisions where his conflict of interest was relevant, but far worse he clandestinely violated his supposed recusal almost at every turn by directly and relevantly communicating with the parties who were the reason of such recusal, i.e. Jacob Zuma, his brother Schabir, Pierre Moynot, Alain Thetard, Alex Dorian and Bernard de Bollardiere, the last five being executive directors of either or both ADS and Thomson-CSF.
632. As for Shaik's supposedly getting a deal opinion on his conflict of interest the following is recorded as has been evidence before the commission (Page 8865) :

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

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

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

Adv Sello : And does that opinion appearing on page 532 and 538?

Mr Shaik : Yes Ma'am, 532 and 533 from the State Attorney.

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

Mr Shaik : Yes, C J Dreyer at the time.

Adv Sello : And this opinion you sought only towards the end of 2000, that is after the selection of the Combat Suite had been concluded is that correct?

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

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

Mr Shaik : Yes, it was against the understanding of the Armscor procedures etcetera.

Adv Sello : Were you ever ...; was your attention ever drawn to any other legal opinion that based on your conduct in the PCB meetings that arrived at a different conclusion that in fact, yes, you were conflicted and

you ought to have left the room completely when these matters were being discussed?

Mr Shaik : No, I was not.

[\[sdpp-transcript-20141110-11_Shaik.pdf\]](#)

633. My analysis of Dreyer's faxed memorandum is as follows :

- 633.1 It was given nearly 2 years after Shaik himself formally declared a conflict of interest on 4 December 1998.
- 633.2 The opinion was qualified with it being given after only brief consultation with the Department's representative, Mr P. Rabie and a telephonic discussion with Mr Shaik.
- 633.3 The only documentation furnished for the formulation of the opinion was in respect of the procedures followed by Armscor when there is a possible conflict of interest.
- 633.4 It is incorrect that the German consortium was at liberty to select all and any subcontractors at the discretion. The documentary record show that nearly all of the equipment was actually selected by the Project Control Board, consisting of the DoD, SAN and Armscor.
- 633.5 It is not true that the DoD only then, i.e. later, requested a price bid for the electronic equipment to establish whether the costing thereof would meet the budget constraints. Firstly the budget for the combat suite had been issued right at the beginning of the acquisition process and secondly, the final contract amount for the combat suite was not constrained in any way by that budget.

- 633.6 The conflict of interest is not only in respect of Detexis, but is in respect of ADS and its French parent Thomson-CSF and therefore essentially the entire combat suite.
- 633.7 It is untrue that Mr Shaik recused himself from the Project Control Board when the decision was made in respect of the Detexis equipment, because the documentary record shows that this decision was never put before the PCB, at least not a formally constituted PCB. Indeed, the report done by the JPT on the Detexis product after the evaluation 3-4 June 1999 was never even served before the PCB.
- 633.8 At the same time when there was a Special Decision-Making Project Control Board on 8 June 1999 Mr Shaik not only did not recuse himself therefrom, but actually chaired the meeting where decisions were made (albeit irregularly in respect of the constitution of the PCB) regarding the corvette combat suite.
- 633.9 When the IMS vs Detexis matter was discussed at other PCB meetings Shaik is on the record of continuing to chair the meeting and participating in the relevant discussions on the matter.
- 633.10 When the issue of the choice of preferred supplier and risk was put to Cabinet (by Shaik himself either directly or indirectly through Jayendra Naidoo) this was on 26 May 1999 which was even before the evaluation was done by the JPT on the Detexis product on 3-4 June 1999.
- 633.11 It is not correct that the contracting parties for the corvette are the Government of the Republic of South Africa and the German Consortium. The supplier is actually the European South African Corvette Consortium (ESACC) which includes the German Frigate Consortium, Thomson-CSF of France and ADS.

634. In essence it is my view that this legal opinion is not only a matter of too little too late, it is so vastly incorrect in almost every respect that it has no legal value whatsoever.
635. In any case this legal opinion was provided on 17 October 2000 and was completely negated by the Joint Investigation Team in its JIT Report dated 14 November 2001 with the JIT making a key finding that Shaik's recusal was "no recusal at all".

[\[CDreyer-01.pdf\]](#)

Vice Admiral Robert Simpson-Anderson

636. While Vice Admiral Robert Simpson-Anderson is on the list of persons of interest to the German investigating authorities regarding the corvette acquisition, he is also suspected by them of receiving a bribe from Thyssen.
637. In this regard a memorandum written by a foreign investigator records that they suspected that Chief of the SA Navy, Vice Admiral Robert Simpson-Anderson received a bribery payment through the interlocutory services of one Vice Admiral Andries Putter, a former Chief of the SA Navy.
638. While this intrigued me at first, I was later advised that this indeed makes logical sense because VAdm Putter was then "working for the French", who were partnered with the Germans to provide the patrol corvette to the SA Navy.
639. Other than the involvement of VAdm Putter, the German investigating authorities' observation regarding Capt Kamerman is, I believe, particularly telling :

“HOENINGS to whom SIMPSON-ANDERSON made this remark later supposed in his internal report that this remark was made as self protection because other navy officials had been present, e.g. KAMERMAN (still Captain of the SAN at that time but

already involved in the procurement process). ” (Para. 8
Page 17)

[\[LNWReport-03 E.pdf\]](#)

640. This might also explain why Vice Admiral Simpson-Anderson gave untruthful evidence to the JIT Public Hearings regarding Chippy Shaik's conflict of interest and supposed recusal in respect of the combat suites for the Patrol Corvette and Conventional Submarine.

641. What is also noteworthy in this German investigation report is the following :

“Rear Admiral Jonathan Edwin Gold KAMERMAN

.....

- o now manager at TKMS AG responsible for acquisition and so-called successor of K.-J. MÜLLER since January 2006
- o took his employment with TKMS AG over whilst still member of the South African Navy (last payment slip from SAN for September 2006)
- o negotiated with ADS about an employment agreement after starting employment with TKMS AG in March 2006”

Abandonment of the Investigations

642. After the closing down of the Directorate of Special Operations (DSO) after a political decision taken at the ANC's national conference in Polokwane in 2007, the only surviving SDPs investigation was that regarding the LIFT and ALFA.

643. This investigation was transferred to the new Directorate of Priority Crime Investigation (DPCI) under the SAPS Commercial Crime Unit headed by Major-General Hans Meiring with the lead investigator being Colonel Johan du Plooy who had been transferred from the DSO.

644. I had in the meantime made written representations to Advocate William Downer SC of the National Prosecuting Authority (NPA) and copied these to then Senior Special Investigator du Plooy of the DSO in respect of a request for further investigations into the corvette platform, corvette combat suite and conventional submarine legs of the SDPs as a result of new evidence emanating from the Schabir Shaik trial and investigations in Germany. My requests went unheeded for a long time (over two years) until the DPCI started operations in mid-2009.
645. Certain information and evidence had in the meantime been passed to the DPCI regarding in particular the Chippy Shaik/Thyssen bribe and I was then approached by the DPCI to formally found the initiation of its formal investigation into what it terms the GFC Leg by submitting a formal complaint in the form of a comprehensive affidavit.
646. I agreed to doing this and on 27 October 2009 I subsequently submitted a comprehensive affidavit of 181 pages, including annexures, to the Knysna Police Station. It contains certain of the information which I have repeated herein.

[\[CCA Affidavit-02-041 scan all OCR.pdf\]](#)

647. After great intrigue, including SAPS in Knysna rushing down a copy of my affidavit to Cape Town at 04:00 CAT in order for it to be previewed by top provincial police officers before being sent to Pretoria (being sent directly to Pretoria had been my clear and specific request, indeed my instruction) the affidavit was then sent to Pretoria and Colonel du Plooy registered Case No. Brooklyn 914/11/2009.
648. I know that great strides were initially made with this investigation, mainly due to a great deal of successful, albeit informal interaction between the DPCI on the South African side and the German prosecuting authorities on the other.

649. The evidence that was at hand after the German investigators had on 19 June 2008 raided Thyssen in Dusseldorf and its sister companies Blohm+Voss in Hamburg and MAN-Ferrostaal in Essen, including the Christoph Hoenings memorandum was sufficient for the DPCI to initiate a formal Mutual Legal Assistance (MLA) request to the German authorities in order to get their official assistance, along with copies of the documentary evidence with official translations, the co operation of witnesses, etc.
650. I am advised that a formal MLA letter of request was indeed given to the German prosecuting authorities, but after they had been working on the request for several weeks (possibly months), unexpectedly the South African authorities, through the Department of Foreign Affairs and Department of Justice, withdrew the MLA request.
651. I understand that the German authorities were particularly piqued by this because they had spent a lot of time, effort and resources on complying with the request and only needed to complete official German to English translations of the documentary evidence, as well as a few other formalities, in order to complete their side of the MLA request.
652. I also believe that the South Africans' withdrawal of the MLA had severe repercussions for the Germans' own investigation against Thyssen. This was because without mutual South African assistance, their case against Thyssen was considerably weakened.
653. Eventually the German prosecuting authorities came to a plea arrangement with Thyssen whereby the latter pleaded guilty to some minor administrative irregularities while all the main bribery and corruption charges against the company and its officials were withdrawn.
654. Despite this setback however, the DPCI was still very confident of its case against Thyssen and Chippy Shaik in this country. This was because it was in

possession of copies of the required evidence to support both a full investigation and the formulation of charges.

655. The DPCI was also hopeful that a full investigation would lead to the re-opening of a formal investigative relationship with the Germans.
656. During the period November 2009 until September 2010 I was in regular contact with Colonel du Plooy and he was quite sure of his case.
657. However, it began to become clear that he started to get less and less support from his superiors and his unit.
658. It nevertheless came as a great surprise and disappointment to me when Colonel du Plooy telephoned me in around mid-September 2010 to advise me that the Head of the DPCI, Lieutenant-General Anwar Dramat had secretly closed down the investigation a week prior thereto.
659. It was only a week or so later after I had advised members of SCOPA of this that the press elicited an admission from Lieutenant-General Dramat that he had indeed closed down the entire SDPs investigation.
660. Despite being the prime complainant in the Thyssen / Chippy Shaik leg and having gone to very considerable lengths in this regard, I never received either a formal communication nor reasons from DPCI for the abandonment of the investigation. Indeed I understood the telephonic advisement by Colonel du Plooy to be a courtesy from him personally.
661. Only quite recently has it become publicly known that a six-page memorandum undated, but clearly authored circa September 2010, from Major-General Meiring to his superior Lieutenant-General Dramat recommended to the latter to end the investigations into the SDPs, including both the fighter aircraft and corvette legs.

[\[Meiring 2010-09-xx.pdf\]](#)

662. MP David Maynier then obtained the memo from SAPS under the Promotion of Access to Information Act. He had applied for "all documentation relating to the decision to cancel the investigations" after Dramat's decision in early September 2010. He was given no further documents. It should be noted in this regard that the Meiring memorandum is undated. It is most probable that the memorandum was issued under a dated covering page. In my view it is highly unlikely that this was the only documentary record regarding the decision to abandon effectively ten years of SDPs investigations.
663. In any case, in my view, Meiring's memorandum is plainly superficial and indeed illogical.
664. Some of the more questionable aspects of Meiring's memo include :
- 664.1 it is highly superficial when measured against the gravity of the decision;
 - 664.2 the memorandum does not refer to any specific suspects, witnesses, dates nor evidence;
 - 664.3 Meiring's grasp of the facts is tenuous; he calls BAE Systems "British Eurospace", presumably after its former name, British Aerospace; his claim that "the transactions relating to (the BAE) investigation refer back to the mid ninetens" (presumably mid-1990s), failing to mention that the SDPs contracts were signed in early December 1999 and that allegedly corrupt payments flowed until at least 2007;
 - 664.4 Meiring complains about the difficulty of getting foreign evidence, such as financial flows and company documents, while acknowledging that such information was already in the DPCI's possession after foreign investigators had shared it informally; although the evidentiary value of informally obtained evidence is decreased, the facts and evidence are known and formal channels remain potentially available;

- 664.5 Meiring complains about the difficulty of obtaining evidence after years have passed, while admitting the existence of about 4,7 million pages of documents, secured in a 2008 raid on BAE, Fana Hlongwane and others; but this positive aspect he turns into another negative, on the basis that it would require further effort to "peruse and analyse";
- 664.6 Meiring argues, contradictorily, that although "cost implications to conduct an investigation cannot be a consideration ... it should not be ignored"; he also complains that "a team of dedicate[d] (sic) investigators and prosecutors would be required" - although the appointment of such teams is presumably standard in important, complex cases;
- 664.7 Meiring claims that "the three suspects in the BAE leg have all passed away"; Modise, defence minister during the period of arms procurement and Richard Charter, one of BAE's local agents, have indeed both died, but the identity of the third dead suspect is a mystery; certainly, Hlongwane, who was regarded as a suspect, because he could have influenced the deal as Modise's official defence adviser and subsequently received more than R240 million in payments from BAE and its partners, is alive and well;
- 664.8 Meiring claims there is "no prima facie evidence against any person" in the BAE matter, even though a South African judge confirmed an offshore freeze on Hlongwane's funds as the "proceeds of crime"; although he has denied wrongdoing, Hlongwane has not denied receiving payments from BAE; and
- 664.9 Meiring dismisses the entire GFC investigation involving Chippy Shaik in three paragraphs tacked on to the end of the document, claiming that "the reason mentioned in the BAE case is also applicable to the German

Frigate Consortium case"; this flies in the face of firm evidence in possession of the DPCI and as demonstrated above by me.

665. Apart from being very thin on reasoning, Meiring's memorandum is also very thin on facts. Just one important fact that I know regarding this matter is that the SFO has interviewed as a possible suspect or possible witness a former very senior executive of BAe, this being Alan McDonald who was BAe's Regional Managing Director (RMD) at the time of the Hawk and Gripen deals. Indeed his name appears on the JIT's list of matters for its investigation.
666. In my view, the difficulty of a successful prosecution against the prime suspects and prime movers in this case is very substantially over-stated by Major-General Meiring.
667. In the corvette matter, Shaik's alleged R20-million bribe is documented in Thyssen company memoranda obtained in raids by German investigators and informally shared with the South Africans. As described earlier in these submissions, Thyssen is the lead company in the GFC. In one key memorandum Thyssen executive Christoph Hoenings recorded that Shaik :

"asked once again for explicit confirmation [of] the verbal agreement made with him for payment to be made in case of success, to him and a group represented by him, in the amount of \$3 million".

[\[DT1-0254.pdf\]](#)

668. Further corroborative documentation I understand to include an instruction to Thyssen in which Shaik allegedly nominates accountant Ian Pierce to receive the payment.
669. The German investigators reported in 2007 that Meriam Ltd, an offshore company represented by Pierce, received USD3 million in April 2000, the same

month that South Africa paid the GFC the first instalment on SA Navy vessels ordered from it.

670. The German investigators subsequently identified at least some financials flow, these being five payments totalling roughly R500 000, from Meriam Ltd to a South African bank account held by Pierce.

Nortjé's Evidence to the APC

671. I turn now to respond to Nortjé's evidence to the APC and reiterate that I have not been given the opportunity to cross-examine him prior to producing my own statement and giving my own evidence.

672. It is my intention to respond fully to Frits Nortjé's evidence when giving my own oral evidence.

673. On my position that we had a legitimate expectation in respect of our IMS being selected for the corvette combat suite, Nortjé tellingly testifies as follows :

“Mr Nortjé: Chair yes, **as long as the expectation of Project Sitron was there, there was something for the local companies to look forward to**, it should be borne in mind that as the South African government was investing less money into the industry, so **industry got a little bit nervous** themselves as to how much they should be investing, but a project like Suvecs which invested money into keeping the capabilities alive certainly assisted in giving meaningful work to the people and I say the people as opposed to companies, the people, to keep the people busy and keep them here, **but it also gave a certain signal to industry who then to a very large**

**extent co-invested in keeping the technologies
alive.” (Page 4915)**

[\[sdpp-transcript-20141-20 Nortje.pdf\]](#)

674. In particular I wish to address Nortjé’s evidence regarding the System Management System (SMS). As a preamble thereto I wish to draw attention to what he testifies in this regard :

“costs was a major driver of the whole negotiation process”
(Page 4901)

675. So clearly this was both their and our major starting point for the exercise in respect of the competitive quotations for the SMS.

676. Regarding the previous prices that ADS had quoted in this regard he states as follows :

“but also because we were bumping heads with ADS regarding
the price for these particular systems”

677. In support and application thereof Kamerman testifies as follows :

“Well in summary he was saying that we had gone out on tender for the SMS which was correct, ...(indistinct)... price was simply untenable and we did not accept it for it wasn't value for money. So we called their bluff and we said okay well we will go on tender for this, internal tender, ...(indistinct)... provide your offers to us by 16 April against a specification which we wrote and we subtracted out of that specification to make it a cheaper option for us, some of the non-essential items from what we had, either to consider to be part and parcel of the SMS in terms of technical scope.” (Page xx)

678. Nortjé states further :

“as I mentioned that was one of the lower level and the strategically less important items of the Combat Suite in the integration part”

679. In respect of our follow-up offer for the SMS he states as follows :

“unfortunately the problem areas that I have just identified in the previous offer were not clarified.”

The problem that I have with this is that is that the “problem areas” to which Nortjé refers above were never in any way communicated to us by any party with it was the JPT or the GFC and so we simply had no way of knowing this. If it had been communicated with us then it was very easy to remedy.

680. Nortjé also makes a number of important errors in his evidence which have a fundamental bearing on the matter. One is that he states as follows :

“I think during the Technology Retention Project C2I2 subcontracted to ADS on this project to some extent.”

This is completely untrue. The reason that it is important is that it gives the impression that having subcontracted to ADS on this project then there was some kind of conflict in this respect.

681. Very pertinently Nortjé fails in both his evidence and his report regarding the selection of the SMS that ADS changed its price after tender closing date.

682. In this regard Kamerman does state this fact but simply dismisses it as an administrative error on the part of ADS and its lowering of its price being acceptable to them.

683. In respect of Nortjé's explanation that one of the problems with our SMS quotation is that we included some items as Customer Furnished Equipment (CFE) in our quotation. I have two fundamental problems with that contention: the first is that ADS had already done a substantial amount of development work on the SMS at Armscor's and the SA Navy's expense. Other than the work itself a substantial amount of equipment would have been bought using project funds and this equipment would belong to Armscor. Having done such development, mainly in respect of software, the intellectual property of this would also belong to Armscor. If as Nortjé states this competitive quotation situation was all about price being quite naturally our Price would be lower if Armscor's property in respect of the equipment purchased with project funds and intellectual property developed with project funds had been made available to us. At the same time ADS would have had no further use for either of these. The second problem that I have is if it was so important then it should have been stated in the SMS report, but it was not an so clearly this is something that he is just thought up now. Furthermore our quotation states as follows :

“12. This cost estimate assumes that present SMS intellectual property will be CFI.”

CFI stands for customer furnished information and clearly my reference to SMS intellectual property is that owned by Armscor and not that owned by ADS (although I have difficulty in thinking of what SMS intellectual property was owned by ADS).

684. Regarding the issue of SMS spares, Frits Nortjé testifies as follows :

“Now console spares or whatever spares were explicitly asked to be quoted for, the formal quotation figure that we've seen at the beginning did not include a price for spares and therefore we either had to guess what the spares were.....”

Firstly, this is simply untrue our quotation states as follows :

“14. This cost estimate includes onboard spares (four systems) and ashore spares (two systems) for two years but excludes commissioning spares.”

As well as :

“14 Unit Log Cost (Spares per Sub-System for 2 Years)

646 028

15 Total Log Cost (Spares for Sub-Systems for 2 Years)

1 938 085”

The figures indicated above of the values of spares in Rands excluding VAT.

[\[DT1-0403.pdf\]](#)

685. Thus clearly not only is Nortjé entirely wrong in this regard it is also omitted from the SMS report and so again it is something that he has just thought up now some 15 years later.

686. Nortjé also states in his evidence for the commission that our SMS quotation did not provide for SMS console spares. This is true, but there was very good reason for that and that is that our SMS system was quoted as being based on ADS's VMC console frame and housings. The reason for that is that this had been a standard item in the entire project up until this time. In the operations room of Corvette where most of the combat suite consoles would be placed they would be as many as a dozen such consoles, most of them, or at least most of the friends and housings, being supplied by ADS. Naturally these would all be provided with spares and it would be largely redundant to duplicate the same spares for just one further console supplied by ourselves if we won the SMS supplier contract. But firstly of course we were never asked about this in any way and secondly yet again it is not mentioned in the SMS report, so yet again it is something that Nortjé has just thought of now.

[\[DT1-0406.pdf\]](#)

[\[DT1-1052.pdf\]](#)

687. This SMS report makes the following conclusion :

“ADS proved to be a lower risk than CCII of getting the task completed as outlined in the above points.”

688. Firstly the conclusion is only in respect of the stated points and therefore the issues of spares and CFE are entirely irrelevant. Secondly has to be questioned how these points prove how a ADS could be a lower risk than CCII and, more importantly, all of this was known to the JPT prior to issuing its instructions to the GFC to obtain competitive quotations. So if it was true then the question has to be asked why did the JPT waste our time and effort in asking us for a competitive quotation if they knew in advance that we constituted a higher risk than ADS.

689. The answer to these questions is simple, the JPT never had any intention of allocating the SMS contract to CCII Systems. As Nortjé states above the JPT was bumping its head with ADS regarding getting reasonable prices for the subsystems, while Kamerman stated even more clearly that they used CCII Systems to call ADS's bluff. And just as importantly it should be noted that the reason that the JPT was bumping its head with ADS was because the latter had an exclusive non-competitive position regarding the negotiations for the supplier of the corvette combat suite.

690. At the same time it is also particularly telling that the JPT was concerned about the relatively minor price items such as the SMS and NDS. While all of this was going on ADS's price for the Tavitac combat management system was over R350 million and to put this in perspective the systems which this replaced being the AIS and WCU had a pricetag of some (R95 million).

691. At the same time the pricetag for project management and system integration for the corvette combat suite was over R450 million.
692. Further to illustrate the ADS and Thomson-CSF position on its quoted prices it is informative to take note of a letter from Thomson Marconi Sonar :

“If I give our lowest & best price (input price to ADS/NCS) then we expose all of your mark ups. We, TMS, can only declare that this price excludes the finance factor, the others must remain hidden.

if we give your output price to B&V we are lost, as the STN price will be much lower than this because B&V will obviously have covered some of the STN factors. This would also expose the **imbalance in the ADS integration** for both sonar systems which will have to be explained to the SAN.

I heed you to be very clear and fax me your output price for the HMS to B&V (equipment and logistics) so that I can take the best route. If I am forced to put in a very low price **you will be at risk of exposing both us and yourself to the SAN**. I do not understand how this situation has occurred but the SAN will remove TMS from the competition if we do not comply.”

[\[DT1-0383.pdf\]](#)

Kammerman's Evidence to the APC

693. I turn now to respond to Kamerman's evidence to the APC and point out at this juncture that I was not able for various reasons to cross-examine him prior to producing my own statement and giving my own evidence. I will not deal with each untruth in his statement and evidence and will just deal with it sufficiently to show that his evidence cannot be accepted either as "the whole truth and nothing but" or as "stubborn" as has been stated in the proceedings of this commission.
694. Kamerman refers to "the myth of the influence of Mr Shaik in the workings of the JPT". My response thereto is that this was not just my own perception, but even the Joint Investigating Team made findings of "Chippy's considerable influence". Kamerman refuses to acknowledge that although there were various levels in the decision-making process, Chippy polluted this process by getting involved at virtually every level.
695. Certainly, the opaque dealings with the Thomson-CSF officials and Chippy Shaik as well as with Jacob Zuma could have been used to give them inside information and thus influence the outcome.
696. Kamerman also fails to realise the import of Chippy changing the nature of SOFCOM into a decision-making body, changing the scoring formula at a higher level thus procuring for a desired result. This, of course, is supported by the German bribery memorandum, which has been in the public domain for a considerable time without anyone disputing its validity.
697. Kamerman, when dealing with the issue of the ownership of ADS and my apparent concession that ADS was the only company capable of acting as naval partner (in Para. 17.5 of his statement) misses the point that I am making. In Item 51 of his bundle my reference to a "single" company was because the earlier documents spoke of a "consortium or grouping of SA companies" led by ADS; I would acknowledge that ADS with a grouping of such companies or in a partnership may have had the capability, just as CCII Systems in a partnership

could have done, but itself singlehandedly neither could ever have done this. ADS after being taken over by Thomson-CSF was no longer a truly South African company and so it could not in any case qualify as one.

698. Kamerman is incorrect when he says that we first met in 1993. We met at a naval technology symposium for naval surface combatants, where I gave a presentation on data buses and computer technology and he was acting as a SA Navy user specialist with the rank of commander. This was in circa 1990 at the Maritime Warfare School in Simon's Town. He and his colleague Cdr Dries van Heerden approached me at tea time with the question of "how many FLOPs one could fit on a Putco bus". A FLOP is a Floating Point Operation which is a measure of processing power of computers. He thought that was very funny.
699. Kamerman is also incorrect when he refers to my "personal hostility towards ADS" and how this had to be carefully managed to avoid damage to the execution of Projects SUVECS and Sitron. I had no hostility towards either ADS or its employees. Indeed both me and my colleagues had a very excellent professional and collegial relationships with our counterparts at ADS, at least from 1992 to until mid-1998.
700. This changed somewhat after Thomson-CSF's takeover of ADS in mid-1998, but we still managed to very successfully complete and install the NDS onboard the corvettes. This could only have been done in an utmost professional and cordial environment.
701. Kamerman's averment in this regard is not only incorrect, it is entirely bald.
702. His allegation of "historic bad blood" between me and Mr Duncan Hiles is also untrue. Again he provides no proof whatsoever of it. To the contrary, Hiles and I got on well from the time we first met in 1985 until he became MD of UEC Projects in 1991. Even thereafter there was no bad blood at all. However, as he and I were representing competing interests after Thomson-CSF took over ADS, it can be expected that there could be some kind of competitive feelings.

703. He was also incorrect in his evidence when he said I had an antagonistic relationship with ADS and had “short employment there”. I had a very professional engineering relationship with ADS, it was never antagonistic. I had worked for UEC Projects (the predecessor of ADS) and had worked there for close to 7 years and was the longest serving employee in the Cape Town Branch when I left. When I left I had just been appointed as a department manager. There was no acrimonious parting of ways. I resigned in order to pursue other interests, including finishing my master’s dissertation, as my projects (including Projects Winners and Falcon) had been cancelled.
704. During my nearly seven years at UEC Projects I was promoted three times, as well as my initial effective promotion from design engineer at Plessey to development engineer at UEC Projects. I was not selected as Branch Manager, but not only was I interviewed for the post, but was advised that it was a close call.
705. It is impossible for me to have had a bad record or employment relationship at UEC Projects. Not only did I receive three substantial promotions in under seven years, the records show that I received some 12 salary increases and a number of special performance bonuses during that time. Each is accompanied by words of commendation in letters signed by the Branch Manager (the very Mr Hiles) and the MD, Mr Johan Joubert.
706. For example Joubert says in his letter of 1990 :

“Dear Richard

The **Cape Town Department has performed well** during the past year, despite major set-backs brought about by cuts in the Defence Budget. I am very aware of the fact that **such successful levels of performance can be attributed to the efforts of a number of key people**. It is Group Policy to

award performance Bonuses, **not as a matter of course, but in recognition of exceptional contributions made by individuals** to the Company's **team effort**. It is with pleasure, therefore, that I advise you that you have been awarded a bonus of R8 850 for your efforts during the last financial year. Enclosed herewith please find a cheque for R5 040 which represents the amount of your bonus after a provisional deduction for tax. Your bonus will be recorded in your April 1991 payslip which will reflect the actual tax payable.

We look forward to your **continued support, dedication and commitment** as we face the challenges of a difficult year ahead.”

707. I had registered a company name to reserve its uniqueness, but I did not do a single day's work for CCII Systems before February 1992, after I left UEC Projects.
708. There was no mediation given because none was needed. I also know of no “sudden unplanned coffee break just to let things cool down”, which would apparently happen because ADS and I were present and attending the same meeting.
709. Again Kamerman's averments are both untrue and bald. If there were any truth whatsoever there would be some kind of written records to support them. Typically if there were any problems between sub-contractors it would be the task of Armscor to address them and this would have been done. If there were ongoing problems that affected projects, Armscor would certainly have addressed these in writing. If they were of a serious nature such as being suggested by Kamerman, then Armscor would have terminated or not renewed the relevant contracts that we were executing at the time.

710. Indeed, I can truthfully say that in the 13 or so years that I worked on Projects Winners, Falcon, Frizzle, SUVECS and Sitron that we (the SA Navy, Armscor and all the collaborating companies) were like a big happy family. Only Thomson-CSF's takeover of ADS in May 1998 changed all of that.
711. It is defamatory for Kamerman to suggest that I had stolen "Brown's" or ADS's intellectual property. I presume he must be referring to Doug Law-Brown. I am also not sure as to the relevant timeframe for such a alleged theft. Before I left UEC Projects in February 1992 Law-Brown was an engineer there and junior to me in position. After I left UEC Projects he became project manager for the corvette combat suite. Approximately halfway through the execution of the Project Sitron contract in about 2003 Law-Brown became programme manager. In none of these positions would he have had his own intellectual property regarding the corvette combat suite. Indeed I am not aware of any intellectual property regarding the corvette combat suite owned by his employer ADS.
712. Kamerman's is allegation simply untrue, let alone in the public interest, to make such an allegation, in any forum whatsoever.
713. It's also surprising that such an allegation is being made now, 24 years after I left UEC Projects and 15 years after the corvette contracts were signed. Furthermore, if these preposterous allegations were true, one would have to question why they would not have come out at the Baqwa public hearings of the JIT investigation.
714. It is also a lie that no one at UEC Projects or Altech Defence Systems related well with me. I got on well with everyone there including its managing director Johan Joubert and Projects Director Ismael Randaree, even with Duncan Hiles. I do not know the French directors except Moynot.
715. I also did not have input into Feinstein's submission. Other than two or three meetings where we had general discussions regarding the Arms Deal, the only

input I made was when he sent me a few sentences of his book about 5 years ago, to confirm that what he'd written about me and CCII Systems was correct.

716. It appears that Kamerman lost sight of the fact that he was looking at my witness statement that was then a draft and had been prepared for the cross-examination of Nortjé and would have included only those things around which I planned to cross-examine him and was not my entire witness statement. I trust he will be satisfied reading those allegations in this statement.
717. I dispute the allegation that we lost the IPMS Simulator on the grounds of performance, price and timescales.
718. It was three (3) years later in 2001 when we were asked for another quote and by then we applied about 30% price increase, which was quite normal and justifiable for that period of time.
719. One of my directors, Alastair Knight, who was overseas and paid a courtesy visit to Blohm-Voss, was bulldozed into attending a meeting with GFC at which he was forced to concede that we had not done any work on these type of simulators, which we had not. However, there was no concession that it was a deficient design.
720. However, we had been working on IPMS technology, software and consoles for several years and had even been selected by Armscor to lead the industry group on IPMS technology. Hence we were actually ideally placed to develop the relatively simple IPMS Simulator.
721. This meeting was followed by a letter from GFC cancelling the contract.
722. The allegation that we lost because of deficient design, higher price and late delivery is news to us as it was never communicated to us. The proposed late delivery was based on the fact that we could not deliver when the contract was

not placed. We had not yet designed the system and therefore it could never be said that the design was deficient.

723. It is surprising and I would say ingenious for Kamerman to say they could not place the risk in the hands of a 20 man company, when CCII Systems had been led to develop this system since circa 1993 and in December 1998 they identified CCII Systems's IMS by name, description and company in the RFI and RFO baselines.
724. In 1998 the baselined URS and Platform Specification stated that the corvettes would use "FDDI/SAFENET".
725. When they decided to change the requirement they should have re-issued for tender, but this was not done.
726. The SA Navy overplayed the risk issue. The IMS was Part C, there were multiple layers of risk, Thomson-CSF and ADS were meant to supply the combat management system and integrate the combat suite.
727. Indeed the ADS risk was high while the IMS risk was benign and was manageable.
728. The allegation that I was the only bidder that complained is not true as there was also a complaint from Joersten Marketing regarding the gear boxes.
729. Also, all the other South African companies got more-or-less what they had been promised.
730. Bell etc., did not complain because they could get the next contract anywhere in the world.

731. For CCII Systems it was different, it was our only opportunity and if our own country would not use our product it did not bode well for our credibility elsewhere.
732. I intend to deal more fully with the allegations by Kamerman regarding whether the South African companies were nominated or selected and whether there was a difference in the use of these terms, when giving my evidence. Suffice to say, for now, that from RFI stage to the RFBAFO stage we were referred to as either the **nominated contractor** or **candidate supplier**. We were exclusively indicated without any competitor.
733. Even our IMS price was disclosed to all bidders in the JPT's own costing spreadsheet which was attached as an annexure to the JPT's letter to GFC and ADS dated 1999-05-06 which in turn was attached to ADS's RFQ letter dated 1999-05-13.
734. It is my firm view that if an acquisition authority indicates a supplier as a nominated contractor or candidate supplier, does not indicate any other competitor nor potential supplier and also discloses the supplier's quoted price, then that effectively amounts final selection (Page 27).

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735. In any case it would be higher irregular and amount to an unlawful practice as it discloses the supplier's price to potential competitors, thereby advantaging them and severely prejudicing the nominated supplier.
736. It is simply unthinkable and is certainly unlawful for an acquisition authority to disclose a supplier price, whether the supplier is nominated or a candidate, unless it has actually made that selection.
737. Once such a selection has been made, only default conduct such as a clear inability to deliver, or major changes in price, can disqualify a selected supplier.

738. The choice of referring to the NDS which was given to us after it was taken away from ADS is opportunistic.
739. The allegations regarding my “active pursuit” of BAeSEMA are also untrue. I had been pursued by them because of my knowledge and what we could offer. The South African government had said it wanted to give the work to South African companies and by this stage ADS had been totally taken over and was no longer a South African company, even the name had been changed from Altech Defence Systems (when it was South African) to African Defence Systems (after the take-over).
740. Furthermore, I had left the employ of ADS’s predecessor in 1991, how could I, in 1998, have “deep insider knowledge” of their engineering work? I wrote to Kamerman in his capacity as leader of the Joint Project Team as soon as I was allowed to do so and we never kept it a secret from our South African industry partners what discussions we were having. The meeting with Kamerman on the 16 December 1998 was because that is when he said he was available. I can categorically say that he was not curt and that he never privately warned me as he alleges. I was also not aware of the hostility towards me.
741. As I have stated above, in December 1991, I was invited to deliver a paper at the Royal Institute of Naval Architects NAVTEC '91 International Symposium on Information Technology and Warships in London. My paper was entitled ***An Information Management Infrastructure for an Integrated Combat Suite Architecture.***

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742. There was nothing whatsoever untoward about giving this paper overseas or anywhere at all. The then project officer of Project Frizzle, which was the combat suite component of Project Falcon, Cdr Brian Blackbeard was the one to recommend that I just attend the symposium. There were two reasons for this:

one is that he had attended the previous year's symposium and gained some valuable insights therefrom, secondly this particular year's topic was "Information Technology and Warship Design" which was kind of my speciality at that stage and thirdly Project Falcon had been cancelled after contracts had been awarded, but without all the project funds being expended. It was his view that some of these funds could be gainfully use by attending the symposium and gaining insights for future projects which would surely come at some time. As it was I had no intention of giving a paper that when I telephoned the secretary of RINA he asked whether I could deliver a paper and at first I actually laughed because at that time of sanctions we kept a very low profile. However, he actually being and persuaded me to give the paper because at that stage it was quite a specialised topic and they did not have enough papers for the symposium. Eventually I did agree to give a paper, but at that stage things were so late that it put enormous pressure on me to prepare that paper which I did almost completely in my own time as I still had a normal job during the day. But there was one advantage and that was that RINA gave free entry to the presenters of papers and the entry fee was actually quite hefty being in the region several hundred pounds sterling. So in fact the costs of me delivering the paper overseas was limited to an airfare and two nights in a hotel, which was also discounted for the symposium.

743. As can clearly be seen from the copy of the slide presentation at the RINA symposium, as well as my application form, I gave this presentation in the name of CCII Systems. That was for very good reason. I was specifically forbade by Armscor from giving the presentation in the name of UEC Projects. In this regard the memorandum from Anton Jordaan of Armscor is even classified as secret.

[\[DT1-0003.pdf\]](#)

744. When getting Armscor's approval to present this paper overseas I wrote in my own memorandum to Anton Jordaan as follows

"In order not to link UEC Projects with work of a military nature, I intend present the paper in the name of a dummy company."

745. Although my overseas trip was funded by project it still had to be approved not only by UEC Projects right to the level of the managing director, it also had to go to the group head office of Altech Defence Systems in Boksburg. They was a detailed and comprehensive overseas travel request that have to be completed by me with a full explanation and justification of the trip. In this case I attached a copy of the completed RINA application form to the travel request. Clearly this gave full visibility of the fact that I was planning to present the paper in the name of CCII Systems. My travel request firstly had to be approved by the branch manager of UEC Project's Cape Town branch, and then the managing director in Mt Edgecombe and finally the group executive in Boksburg. I remember explaining this to the branch manager in Cape Town, Duncan Hiles. Indeed I can remember him receiving the approved travel request by facsimile and giving this to me before I had to complete all the other administrative preparations for an overseas trip such as getting foreign exchange, completing a leave form (which was a requirement for insurance purposes), getting tickets, etc.
746. There was absolutely nothing untoward in making this trip overseas to present a paper effectively at the Navy's behalf and at its specific request.
747. At that stage in August 1991 I had absolutely no idea that I would be leaving the employ of UEC Projects at the end of January 1992. And certainly while I had registered the name of CCII Systems I certainly had not done any work for it whatsoever and did not do so until 3 February 1992. Indeed, I could have used an arbitrary name for the entity in which I presented the paper, though specifically decided to use CCII Systems because it had a company registration number which I thought gave it greater credibility as a bona fide company.
748. And I can also say nearly two and a half decades later that while I learnt something valuable both from attending the symposium and probably more so from preparing my own paper, firstly that my company did not gain anything whatsoever in this respect and secondly whatever I might have learnt is effectively being given back to the Navy, which was the intention from the beginning.

749. Also as stated above, I delivered a paper in 1992 at the Armscor-sponsored industry workshop on New Generation Harsh Environment Computer Architecture, entitled ***Serial Communication Systems***.
750. It is relevant to note that I had been invited to give this paper by Armscor and had started preparing it while in the employ of UEC Projects. When I left the company at the end of January 1992 I advised Armscor that I would no longer be giving the paper, however Pierre Meiring, a senior manager in the command and control division insisted that I continue give the paper and to give it in the name of CCII Systems.
751. With regard to the revolving door issue and in respect of the letter from the Chief of the SA Navy VAdm Mudimo giving Kamerman permission to take up his employment with TKMS it is my view that the Chief of the SA Navy can deputise for the Chief of the SANDF, but does not do so as a matter of course, whether this applies to naval matters or to naval officers of flag rank. The Chief of the SA Navy would deputise for the Chief of the SANDF when the latter formally did so when on leave, out of the country or other such circumstances. In my view it is opportunistic for Kamerman to claim that he received the permission the Chief of the SANDF as is stipulated in the Umbrella Agreement.

Conclusions

752. CCII Systems had a substantive legitimate expectation to being awarded the IMS contract. Its price was lower than that of what became at the very end of the process its competitor, the Detexis Diacerto Data Bus (DDDB). It was technically superior in almost every respect, it was designed to meet US Navy standards and was fully conformant in all respects to the South African Navy's project baseline, including its Combat Suite User Requirements Specification (URS). The DDDB was almost in no respect conformant with any of the stipulated requirements of the URS. The IMS had been in development for six years and was almost at the end of its development phase and only awaiting a full-scale

contract to complete formal qualification. A substantial portion of the development costs was funded by CCII Systems itself giving further impetus to its legitimate expectation. The aspersions of risk with the IMS are patent as the documentary records show that all of the SA Navy, Armscor and even ADS itself held the risks as either low, benign, manageable, or acceptable. ADS and his parent company Thomson-CSF wanted, as the records show to exclude the IMS for the own self-serving and private purposes, i.e. that Thomson-CSF's own Tavitac Combat Management System should replace ADS's AIS and WCU systems and not only become the heart of the combat suite, but also thereby redefine the entire combat suite architecture. Giving further substance to substantive legitimate expectation the DoD and Armscor had indicated the IMS as a required system for the Corvette, suite and its developer CCII Systems as its nominated contractor in the initial tender baseline. Further to this, the DOD and Armscor confirmed its selection of the IMS at the request for best and final offer phase including the publication of CCII Systems quoted price for the IMS. Additionally, documentary evidence shows that ADS as nominated system integrator did not keep the price of the IMS to itself, but also shared it with Thomson-CSF in France, the owner of the IMS is competitor Detexis. This amounts to unlawful competition.

753. CCII Systems's quoted SMS initially had a lower price than ADS's third quotation for the same system and ADS was allowed the following day to reduce its quotation to slightly below the price of CCII Systems's SMS, but only after a substantial margin was added to the latter's price without it being advised that that would happen. Although the DoD called for these so-called competitive quotations and made the resultant decisions, the process was administered by the GFC, which was by this time a formal contracting partner with both ADS and Thomson-CSF, thereby creating a conflict of interest. Not only did ADS submit its price a day after the closing time for the competitive quotations thereby clearly creating the possibility for the disclosure of CCII Systems's SMS price to ADS, a senior naval officer who was part of the acquisition process testified that this is indeed what happened. This also amounts to unlawful competition.

754. CCII Systems's Integrated Platform Management System Simulator (IPMS Simulator) was nominated by the DoD to the GFC as part of the corvette platform element. CCII Systems's IPMS Simulator was thereafter selected by the Naval Project Control Board and the GFC was formally advised of this fact in writing by the Chief Executive Officer of Armscor, the statutory authority responsible. For reasons unknown, other than CCII Systems's complaints at that time regarding the non-selection of its IMS and SMS, some four years later the GFC is still not placed a contract on CCII Systems for the IPMS Simulator and then simply terminated the matter.
755. The acquisition of the Hawk was a contrived affair with a pre-determined outcome.
756. It was unnecessary to commence with the acquisition of the Gripen to replace the Cheetah C in 1997 firstly because the latter aircraft had only formally been taken into service in the SAAF in that same year and secondly it had a remaining lifespan of at least 15 years that could have been extended to 20 years or even 25 years.
757. The acquisition of the MEKO 200AS corvette, including its platform combat suite were contrived affairs with pre-determined outcomes.
758. The acquisition of the Type 209 conventional submarine was a contrived affair with a pre-determined outcome.
759. The Hawk contract was pre-destined to be awarded to British Aerospace through the dealings of Joe Modise.
760. British Aerospace saw the opportunity in respect of the ALFA and purchased 30% of Saab in order to win the Gripen contract.

761. The corvette platform and submarine contracts were pre-destined to be awarded to German companies while the corvette combat suite contract was pre-destined to be awarded to ADS and its French owner.
762. Being so pre-determined would have been because of bribes being due when the contracts were awarded.
763. Even though the contracts were pre-determined, systems were in place to give a semblance of due process to the selections. However, these secondary processes actually had different initial outcomes to those pre-determined.
764. It required very skilful manoeuvring by the upper echelons and their lackeys like Chippy Shaik in order that the final selection processes resulted in the same selections as the pre-determined outcomes.
765. This involved firstly the deployment of Modise's own chosen righthand man, Chippy Shaik, into the all-powerful and ubiquitous position of Chief of Acquisitions, operating throughout the multiple levels of the selection processes. Shaik was able to use this position to ensure that necessary information was selectively channelled in such a way as so not only finally cause the selection of the pre-determined winners, but in such a way so as to preclude the watchkeepers from being aware thereof. In certain instances it is clear from the evidence that they elected to look the other way.
766. In addition to Shaik's role, there are clear instances of the manipulation of quantitative scores and scoring systems to force the numerical results supporting the pre-determined outcomes.
767. In both the cases of the corvette and the submarine acquisition process a forensic analysis shows that both the scoring systems and the scores were manipulated and abused. This constitutes not only acquisition irregularity of the highest order, but criminal fraud.

768. The joint investigation into the SDPs was manipulated by government to ensure that it gave a clean bill of health. Yet the draft investigation reports preceding the final JIT Report and preceding MINCOM's review of the draft joint report indicate, even in those early times, very material irregularities in most of the legs of the SDPs.
769. The heads of the Chapter Nine institutions heading the joint investigation, in particular Auditor-General Shauket Fakie CA(SA) and Public Protector Selby Baqwa SC, not only allowed the reports drafted by their subordinate investigators to be materially changed at the behest of MINCOM, they lied openly to Parliament and on affidavit in this regard when questioned directly and on numerous occasions. Their conduct needs to be investigated.
770. The closing down of the final investigations into the SDPs, specifically the military aircraft and corvette platform legs, is entirely illogical and unwarranted, especially the latter where the documentary evidence was quite fresh as well as very clear and compelling.
771. The issue of Frigate Utilisation is important in respect of two of the APC's terms of reference **Rationale** and **Utilisation** and I would like to address this in the context of RAdm Higgs's and RAdm Shoultz's evidence after giving my main evidence .
772. Much of the evidence to the APC of Nortjé is faulty, both it would seem with respect to his memory as well as to certain facts. When his evidence is at odds especially with the documentary record, it serves to be rejected.
773. The evidence to the APC of Kamerman is mainly not only riddled with outright lies, but clearly in many instances is simply concocted, as well as much of it being gratuitous in the extreme. Indeed it contains many instances of gross defamation. Other than some new historical facts which are of interest to these SDPs, most of Kamerman's evidence serves to be rejected.

774. Much of the evidence of Shaik is merely about process and especially, because he was not cross-examined at all, completely avoids anything to do with bribery or corruption. His evidence regarding his conflict of interest is both entirely self-serving and at completely odds with inter-alia the JIT investigators' key finding in this respect. The so-called legal opinion he received from Caroline Dreyer of the State Attorney's Office has no value whatsoever as firstly it was a qualified opinion and secondly she was not given any relevant material with which to formulate a proper opinion.
775. In accordance with the above facts and supporting information, the APC should make appropriate findings and recommendations specifically to address, inter alia, the following :
- 775.1 to investigate and report upon the possible involvement of Thabo Mbeki, Chippy Shaik and Thyssen in the selection of the German Frigate Consortium as preferred bidder for the corvettes;
 - 775.2 to investigate and report upon the possible involvement of Thabo Mbeki, Chippy Shaik and Thyssen in the awarding of the corvette contract to the European Corvette Consortium of South Africa (including the GFC, Thomson-CSF Naval Combat Systems and African Defence Systems);
 - 775.3 to investigate and report upon the possible involvement of Thabo Mbeki, Chippy Shaik, Pierre Moynot, Alain Thetard, Jean-Paul Perrier and Thomson-CSF in the awarding of the corvette combat suite contract to Thomson-CSF Naval Combat Systems and African Defence Systems);
 - 775.4 to investigate and report upon the possible involvement of Joe Modise, Chippy Shaik and Ferrostaal in the awarding of the submarine contract to the German Submarine Consortium;

- 775.5 to investigate and report upon the possible involvement of Joe Modise, Chippy Shaik, Fana Hlongwane and Richard Charter in the awarding of the LIFT contract to BAE Systems;
- 775.6 to investigate and report upon the possible involvement of Joe Modise, Chippy Shaik, Fana Hlongwane and Richard Charter in the awarding of the ALFA contract to BAE Systems and Saab;
- 775.7 to investigate and report upon the possible payment of bribes to Jacob Zuma and the ANC in the awarding of the corvette combat suite contract to Thomson-CSF and ADS;
- 775.8 to investigate and report upon the possible payment of bribes to the ANC relating to in the awarding of the corvette combat suite contract to Thomson-CSF and ADS and in order to induce the abandonment of corruption charges against Zuma and Thomson-CSF and the withdrawal of warrants of arrest for Thomson-CSF's Jean-Paul Perrier and Alain Thetard;
- 775.9 RAdm(JG) Kamerman's resignation from the SA Navy as its Projects Director of the Corvette and Submarine Projects and his joining as its Vice President of International Sales at Thyssen Krupp Marine Systems (TKMS), which in effect was an amalgamation of the German Frigate Consortium and German Submarine Consortium which supplied the corvettes and submarines to the SA Navy;
- 775.10 to investigate and report upon the manipulation of the JIT Report both by MINCOM as well as by the Auditor-General and Public Protector;
- 775.11 to investigate and report upon the averments of the Auditor-General and the Public Protector regarding changes from the draft investigation reports to the final JIT Report;

775.12 to investigate and report upon the abandonment of the LIFT and ALFA legs of the investigation by the DPCI;

775.13 to investigate and report upon the abandonment of the Thyssen/Chippy Shaik leg (GFC leg) of the investigation by the DPCI.



Richard Michael Moberly Young

2015-03-02

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Appendix A

Publication : ANC Today
Issue : Volume 3, No. 21
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Title : ***Our Country Needs Facts, Not Groundless Allegations***
Author : Thabo Mbeki

The same stereotypical conviction about our **government being corrupt**, unless it proves itself innocent, has **re-surfaced with regard to the defence procurement** decided by our government in 2000. The fishermen (and women?) have recast their fishing nets, convinced that they will bring in a rich haul of **corrupt government luminaries**.

This epistle was authored in 2003 and refers to recasting of fishing nets; the very fact that it is now 2015 and the net is being recast yet again has, in my view, substantial significance.

If the defence procurement to which reference is made had been entirely above board then a dozen years later it would not be subject to a three-year commission of enquiry.

So convinced are they of the outcome of their fishing expedition that they regularly describe the defence procurement as "the arms deal scandal" or "debacle". They say "a deepening shadow of allegations is threatening to engulf the highest reaches of government".

Triumphantly, they proclaim that "the publication of **details of an earlier (investigative) draft confirmed long-held suspicions by opponents of the arms procurement exercise that changes were made before publication, possibly at the instance of senior members of government**".

Without doubt on the documentary evidence substantial changes were indeed made to this draft investigation report, both in terms of deletions and inclusions, both of which without any doubt whatsoever to the substantial advantage of the audited parties, that being the government itself, as well as senior members of government.

They say "there was a crucial 'nondisclosure of facts' to a body tasked with evaluating products", and that "draft reports released in court show evidence that **passages detailing possible corruption were edited** from the report before it was presented to parliament".

It is beyond any doubt whatsoever that these passages detailing possible corruption were edited from the report before it was presented to Parliament.

The fishers of corrupt men happily construct doom scenarios that serve their purposes. They speculate about the possibility of **a senior official being shown to be corrupt**, and how this might lead to the conclusion that **the whole procurement process was**

corrupted, resulting in the "the whole edifice of the arms procurement exercise" crumbling. The reality is that the wish is father to the thought.

My evidence above presented in this witness statement shows conclusively that Chippy Shaik who was the government's Appointed Chief of Acquisitions was corrupt. Additionally, the investigation reports of the German investigating authorities indicates that the elected official of the governing party to the all-powerful position of chairman of the Joint Standing Committee on Defence, Tony Yengeni, was equally corrupt. Both these officials swung the award of the corvette contract from the Spanish bidder to the German bidder.

The Auditor-General's own draft report provides a strong inference of corruption if not, undue interference in the acquisition process by the Ministry of Defence, Joe Modise, in the award of the Lead-In Fighter Trainer contract to British Aerospace.

My evidence above, as well as documents emanating from the only successful prosecution of someone in the Strategic Defence Package, show in the clearest terms undue interference in the acquisition process by the Vice President of the country, Thabo Mbeki himself, in the award of the corvette combat suite contract to Thomson-CSF of France.

But it all sounds terribly dramatic and pregnant with the potential to expose horrifying facts about massive corruption by our government, involving billions of rands To prepare the public mind, words such as "scandal" and "debacle" must be, and are used!

To add to the sense of impending horror, "senior members of government" must be implicated, including **"the highest reaches of government", which means the President**. Further to whet the appetite for the expected catch that will be brought in by the fishers, the threat is made that a "shadow of allegations might engulf" these "highest reaches".

The highest reaches of government indeed means the Vice President from 1995 to 1999 and the president from 1999 onwards.

Quite how shadows rather than substance, and allegations rather than facts might engulf the President, or anybody else for that matter, is somewhat difficult to fathom. The point however is that **neither substance nor facts are important to the fishers of corrupt men** in terms of their project to substantiate the stereotype of which the ANC spoke, when it made its presentation at the HRC hearings on racism in the media.

Just as then in the 2002 to 2003 era when these allegations were first made and this article written, to now in this evidence of my before the commission, both substance and facts have been important and indeed formally presented in every manner possible, from the 2001 Joint Investigation, to a particulars of claim in a directly related damages action in the High Court, to formal complaints to the Directorate for Special Operations, to formal complaints to the Directorate for Priority Crime Investigation and finally to this Arms Procurement Commission. Other than nuances evolving through the passage of time and access to information by various legitimate means, the substance of both the

allegations and the facts has remained essentially the same in a period of one and a half decades.

What is central is that the stereotype must be sustained and entrenched. For this purpose, precisely because of this entrenched stereotype, shadows and allegations will serve as well as anything else. Carefully chosen words with no factual information to substantiate them, such as "scandal" and "debacle", also come in as useful devices, to give the shadows and allegations the appearance of substance.

In this no-holds-barred campaign, anything and anybody who **stands in the way** of the fishers, including and **especially the truth**, must give way. In the current fishing expedition, the **Auditor General (AG) has been targeted as one of the possible big fish** that the fishers hope to catch.

The evidence proves that despite a raft of bona fide concerns and allegations culminating in firstly a Special Review and later in a full-blown joint investigation, Auditor-General proved himself to stand in the way of the truth. It is clear he changed his report, that he lied to Parliament and did his utmost to prevent access to information regarding this matter, so much so that they was even a High Court contempt of court finding and suspended jail sentence against him (albeit the latter overturned by the Supreme Court of Appeals, but only with regard to court process and not materiality of the issue).

Accordingly, they accuse the **AG of doctoring the report** he presented to Parliament, by omitting some details contained in an earlier draft. The AG has taken strong exception to this **charge of fraud**. In barely disguised language, the fishers have said that they are **convinced that the AG is lying**. Naturally, they will not bother to supply facts to disprove what the AG said.

As part of this campaign against the AG, they charge him with having "sanitised" and "heavily edited" the final report, "possibly at the instance of senior members of government". They say nothing of the fact that the AG is required by the law to show his draft reports to any institution he may be auditing, for **any comments it may wish to make. The AG is free to accept or reject any comments made by those he has audited.**

This is not quite so, firstly input made by those being audited can only be rejected by those doing the auditing based on reasonableness and application of mind. In this instance it was clearly not reasonable to change the findings as there are no explanations whatsoever for such changes other than they were at the behest of the audited party. Secondly the Auditor-General clearly stated that the only changes that were made were in respect of readability of the JIT Report and not as regards the findings themselves, as well as that the only input that the government was allowed to make was in respect of issues of national security and the confidentiality of Cabinet proceedings, neither of which were applicable.

This happens regularly, is required by law, and carries no imputation whatsoever of corrupt behaviour on the part of the AG. Precisely because he had absolutely nothing to hide by following this procedure, the AG attached an official letter to the draft report he

gave the Cabinet sub-committee that approved the primary contracts, citing the provisions in the law requiring him to abide by this procedure.

The fishers have focused especially on the Thomson (Thales) element of the prime contract entered into by the government with the **suppliers of the corvettes, the German Frigate Consortium (GFC)**. The government has explained this very clearly before, that it entered into a contract with the GFC to supply the required number of corvettes, meeting all the stipulated specifications.

The government did not enter into a prime Contract with the German Frigate Consortium, it entered into a prime contract with the European South African Corvette Consortium (ESACC), which included both Thomson-CSF of France and ADS as prime contract. All of the government and representatives of these parties signed the Umbrella Agreement regulating the corvette contract.

The government has no contracts with the companies retained by the GFC to supply the various component parts of the corvettes. **Similarly, it never had occasion or need to determine who the partners of the GFC should or should not be, including Thomson (Thales).**

The DoD, representing the government, directed in its very initial Request for Information, its subsequent Request for Offer and request for final offer (RFFO) that the GFC should include ADS as the supplier and system integrator of the corvette combat suite.

The proposition that the **government influenced the choice of Thomson by the GFC as one of its sub-contractors is both a blatant falsity concocted** by the fishers, and a logical absurdity. In its statement of 15 September 2000, the government announced those with whom it had entered into contracts. These are British Aerospace/SAAB, the **German Frigate Consortium** and Augusta. **It had no primary contract with Thomson (Thales)**, as the supplier of the electronic combat suite of the corvettes, which matter, of the supplier of this suite, **remained in the exclusive domain of the GFC.**

The point above applies equally.

Additionally, the author of this epistle was Vice President of the country and chairman of its Ministers Committee responsible for the SDPs personally promised Thomson-CSF the award of the contract to supply the corvettes combat suite and its senses nearly two years before the final contract was signed and one year before negotiations in this regard commenced.

In the Background Notes issued on **12 January, 2001, the government said: "It should be pointed out that the Procurement does not deal with subcontractors.** This has to be the contractual obligation of the prime contractor as it is they who must deliver reliable equipment and undertake the performance and delivery obligations. This is standard practice in major contracts. To insist that the Government must be held to account for minor subcontracts is to misunderstand procurement. The prime contractors

are major international corporations and we are confident that they would ensure the quality of the subcontractors and this is their responsibility."

This myth that the government's procurement did not deal with subcontractors is a lie repeatedly propagated by the author of this epistle as well as his ministers and the Government Communication Information Service (GCIS). The evidence that I have provided above clearly proves that in respect of at least the corvettes and its combat suite the acquisition authorities representing the government clearly not only dealt at the sub-system level, were involved with all the details of the contract negotiations in this respect as well as formally (albeit irregularly) made the supplier selections in this regard.

But of course this does not matter to the fishers, who are intent to prove or otherwise entrench the stereotype of a corrupt African government. This is why **their fond scenario visualises a determination that an official acted corruptly**, leading, according to them, to the collapse of the "arms procurement exercise", even as they exclude the fact that the final recommendations to the deciding authority, the Cabinet, had to be, and were made by a Cabinet sub-committee, and not officials.

The evidence I have given clearly shows that more than one very important official acted and unduly and irregularly. Indeed it shows the inescapable conclusion that such undue and irregular influence was for corrupt motive and that such conduct started at the top.

An **aggrieved potential and unsuccessful sub-contractor** has taken his grievance to our courts. For this reason, we will not comment on the matters he raises, which the fishers nevertheless use triumphantly and wilfully to justify their campaign. But this gentleman decided to raise, in the media, **the matter of an earlier process to acquire corvettes for our Navy**.

This aggrieved potential and unsuccessful subcontractor is clearly me - I accept that.

An extremely interesting point the author brings up is in respect of this earlier process to acquire corvettes for our Navy.

The gentleman concerned makes the **false allegation** that during the life of the Government of National Unity, formed in 1994, a **contract** for four corvettes to be built by Bazan of Spain **"was cancelled after being awarded"**. This is not true. The preceding apartheid Cabinet had not approved this contract. **The GNU Cabinet decided not to enter into this contract.**

It is not a false allegation that I made that Bazan received a contract that was cancelled after being awarded. I never made such a allegation. What I alleged was that after due acquisition process Bazan won the evaluation that should have led to a contract being awarded.

Bazan entered the later competition to supply the four corvettes, and lost to the GFC. This issue is of relevance and interest only because of the controversy that some have

brought into the current defence procurement. **It is an interesting coincidence that this controversy has focused so intensely on the corvettes.**

There is no coincidence whatsoever that the controversy has focussed so intensely on the corvettes. It is the intensity of my personal focus after 15 years that this should be so. This intensity and this focus only arise out of what I believed to be irregular acquisition processes and unlawful competition that led to the failure of some of my company's products from being awarded certain subcontracts for both the corvette platform and corvette combat suite and my consequent investigation in this regard which has yielded a raft of corrupt and irregular conduct.

In time the details of the truth will come out about how the controversy concerning the 2000 defence procurement emerged and persisted. **The gentleman litigant, who has raised the matter of Bazan of Spain, may be proved to have been justified in raising this issue,** even if **he made false claims about a Bazan contract that never was.**

It is now a dozen years since this epistle was written and in the meantime the controversy has emerged and persisted to such a degree that a multi-million Rand commission of enquiry has resulted.

Regrettably, it would seem that despite the opportunity for the truth eventually coming out, that many of the witnesses representing the government have not only persisted in the truth not coming out, but far worse have actively lied and misled this commission.

This detailed truthful account would tell our country interesting things about such matters as defence procurement during the apartheid years, and the promotion of political careers and fortunes in contemporary South Africa. It would tell a story about the political uses of the racist stereotypes that are part of our daily menu of information and perception, and the formation of popular consciousness.

Despite that this commission of enquiry is not about defence procurement during the apartheid years, this epistle touches on it in that it refers to and makes aspersions regarding the corvette acquisition, which started in 1993 which was indeed in the death throes of the apartheid years, but at the same time makes it relevant to this commission of enquiry. Yet the author of this epistle elected to share nothing with either the commission or the country in giving such a detailed and truthful account, this despite having every opportunity in doing so both in the last dozen years and his own appearance before the commission.

It would inform us about the impact or otherwise of the domestic and international apartheid networks on our democratic order, and the moral integrity of those who correctly claim that they fought for the victory of this order, and therefore seek to position themselves as its true representatives.

The sooner this fascinating story is told the better, so that we can improve our performance with regard to the achievement of the critical objective of building a truly people-centred society.

I would wholeheartedly agree with this.

But personally I know nothing about that particular fascinating story. What I do know about is a little what transpired in rounds one and two of the corvette acquisition process and tried to share that fascinating story with the country via my evidence before the commission.

As an important part of the struggle to realise this objective, we should not, and will not abandon the offensive to defeat the **insulting campaigns further to entrench a stereotype that has, for centuries, sought to portray Africans as a people that is corrupt, given to telling lies, prone to theft and self-enrichment by immoral means**, a people that is otherwise contemptible in the eyes of the "civilised". We must expect that, as usual, our opponents will accuse us of "**playing the race card**", to stop us confronting the challenge of racism.

It is equally insulting to be accused of limiting one's allegations of corruption to Africans. I am an African myself. As insulting is being accused of playing the race card, because races simply got nothing to do with it. Presumably the author means Black Africans, but my allegations include White Africans as well as Black Africans and Indian Africans who I allege to be telling lies and whose conduct is that of self-enrichment by immoral means.

The fishers of corrupt men are determined to prove everything in the anti-African stereotype. They rely on their capacity to produce long shadows and innumerable allegations around the effort of our government to supply the South African National Defence Force with the **means to discharge its constitutional and continental obligations**. They are confident that these long shadows and allegations without number will engulf and suffocate the forces that fought for and lead our process of democratisation, reconstruction and development.

However, what our country needs is substance and not shadows, facts instead of allegations, and the eradication of racism. The struggle continues.

Thabo Mbeki.

Hopefully the evidence that I've given is indeed substance and not shadows and is credibly backed up not only by allegations, but by facts. While I support the eradication of racism, my investigations that have led to my evidence before commission stem from my own views of personal loss, as well as ones of right and wrong and have nothing whatsoever to do with race. This country is acknowledged by almost all and sundry to be confronted with the scourge of corruption. I also subscribe to this position and believe that if this is not substantially checked will eventually lead to the failure of our democracy and indeed to anarchy.

Having been faced with what I saw and endured I actually had no alternative either moral or legal, but, as it is said, to blow the whistle on corruption.

I hope now after first being confronted with this situation nearly 17 years ago that my own struggle is now over.

Appendix B

Shaik's Evidence to the APC

776. I turn now to respond to Shaik's evidence to the APC.

Hlongwane's Evidence to the APC

777. I turn now to respond to Hlongwane's evidence to the APC.

Grobler's Evidence to the APC

778. I turn now to respond to Grobler's evidence to the APC.

Shoultz's Evidence to the APC

779. I turn now to respond to RAdm Shoultz's evidence to the APC.

Higgs's Evidence to the APC

775. I turn now to respond to RAdm Higgs's evidence to the APC.