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CHAIRPERSON: Good morning everybody. Advocate Aboobaker.

ADV ABOOBAKER: Good morning Mr Chairman and Commissioners. I'd just like to place on record the team of
5 evidence leaders that are present here today and will be
conducting this stage of the hearings. It is Mr Barry Skinner
SC, Ms Carol Sibiya and myself T N Aboobaker. Chair, I've
taken the liberty of making available an opening address which
I understand you and Commissioner Musi now have. Mr
10 Chairman that opening address simply broadly defines the
matters that will be raised at this stage of the hearings and
hones into some of the issues that will arise. I'll read the
opening address into the record:

*"The current phase of the hearings of the
15 Commission is concerned with paragraphs 1.3 and
1.4 of the Terms of Reference. These paragraphs
provide as follows;*

*1.3 Whether job opportunities anticipated to flow
from the SDPP have materialised at all, and;*

*20 1.3.1 If they have, the extent to which they
had materialised, and;*

*1.3.2 If they have not, the steps that ought to
be taken to realise them.*

*25 1.4 Whether the offsets anticipated to flow from the
SDPP had materialised at all, and;*

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1.4.1 *If they have, the extent to which they have materialised, and;*

1.4.2 *If they have not, the steps that ought to be taken to realise them”.*

5 *The programme sets out the list of witnesses to be called. These witnesses are either current or former employees of the Department of Trade and Industry and include Mr Alexander Erwin, the former Minister of Trade and Industry. In order to*
10 *establish what job opportunities and offsets were anticipated to flow from the Strategic Defence Procurement Package (“SDPP”) the logical starting point is an address to Parliament by the-then*
Minister, the late Mr J Modise on the
15 *9th of March 1999 in which he spelled out to Parliament what the expectations were. The relevant portion of his address reads as follows:*

‘In return for our expenditure our economy will benefit by an estimated R110 billion of new
20 *investment and industrial participation programmes and the creation of approximately 65 000 jobs. The sceptics have suggested this is wishful thinking, the following breakdown has been very carefully calculated with the*
25 *Department of Trade and Industry. After R110*

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billion over R26 billion is made up of direct investment into the project, R25 billion is estimated revenue from local sales stemming from the business projects that will be established and R59 billion will be derived from export sales’.

On the basis of Mr Modise’s address to Parliament the expectation raised was that the economy would benefit by R110 billion of new investment and industrial participation programmes and that 65 000 jobs would be created. What was actually delivered by the SDPP in terms of said offsets and jobs has therefore to be tested against this benchmark. The SDPP offsets were divided into two components:

(a) The National Industrial Participation Programme (“NIP”), which was administered by the DTI, and;

(b) The Defence Industrial Participation Programme (“DIP”), which was administered by the Department of Defence and ARMSCOR.

The DIP component of the offsets will be dealt with at a later stage when the ARMSCOR witnesses will be called to give evidence. The question as to whether the offsets contemplated by the SDPP had been realised is not one which is without difficulty,

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a National Industrial Participation Programme administered by DTI was already in existence at the time when the SDPP process commenced. The policy applicable thereto and the operating guidelines of the programme had been approved by Cabinet by the 30th of April 1997.

The issue of offsets or National Industrial Participation as it is referred to in the local context was one of three criteria in the final scoring of tender submissions and attracted an overall rating of 33% towards the final scoring for bidders. The other two criteria were the suitability of the arms purchased and the financing terms. It is extremely important to note that SDPP NIP terms did not include an obligation to deliver on job creation to earn credits.

Accordingly although numerous business plans of the various projects gave an estimate of the number of jobs that were created this was not monitored and supervised by the DTI because it was irrelevant to the function of assessing the NIP credits to be awarded, whether the obligors had accordingly complied with the obligations.

It will be necessary to draw a distinction between the ordinary NIP programme and the NIP

programme under the SDPP and to avoid confusion reference will be made to the former in the evidence as ordinary NIP and the latter as SDPP NIP. DTI effectively ended up administering both the ordinary
5 NIP programme as well as the SDPP NIP programme, notwithstanding that the agreements with the obligors contemplated that an agency called the NIP Implementing Mechanism would in due course be formed and administer the NIP SDPP
10 programme.

Although there are large degrees of overlap between ordinary NIP and SDPP NIP in terms of which the NIP obligations were administered and implemented there are certain
15 very important differences to which brief reference would be made in this address but which will be more extensively canvassed in the evidence.

Both ordinary NIP and SDPP NIP had similar objectives, they both in effect sought to
20 impose an obligation upon foreign obligors who had been awarded lucrative contracts to invest in the South African economy as a quid pro quo to offset the negative effects of these purchases upon the economy and the balance of payment accounts and
25 to help grow the economy.

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The National Industrial Participation Programme was therefore a scheme through which these offset obligations were implemented and administered. In the context of SDPP NIP it was also a way of ensuring that the company could afford to purchase the armaments by the boost to the economy generated by the various projects.

The evidence will demonstrate that there were inter alia three critical differences between the ordinary NIP Programme and the SDPP NIP Programme. These were the following:

(a) The ordinary NIP Programme was regulated by a policy and operating guidelines and therefore had a degree of flexibility. The terms of the SDPP NIP Agreement were the product of an agreement negotiated over an extended period between an agency of state created for that purpose namely the International Offers Negotiating Team (IONT) and the obligors and had fixed provisions in respect of categories for awarding credits and the credit methodology.

(b) The NIP obligation under the ordinary NIP Programme was calculated in accordance with the NIP Policy which provided that all

state purchases with an imported content of \$10 million or more attracted an obligation equal to 30% of the imported content value. In the case of SDPP NIP the extent of the NIP obligation was also negotiated between the IONT and the obligors.

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(c) The allegation of NIP credits under the NIP programme was determined in accordance with whether the project met one or more of 9 criteria including job creation, historically disadvantaged individuals, SMME's, research and development and technology transfer. Projects could obtain credits in more than one of these categories, some of which themselves allowed for two credits to be awarded for each unit or currency invested. For the SDPP projects only three categories counted for credits, investments, exports and local sales.

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(d) The allocation of SDPP NIP credits (NIP Crediting Methodology) is significantly different to that under ordinary NIP. Essentially the contracts with obligors with minor variations some of the contracts, made provision for the allocation of NIP

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credits as follows;

i. One NIP credit is awarded for each Euro or Dollar of net export revenues earned by any of the projects in the NIP Project

5 *ii. One NIP credit is awarded for each Euro or Dollar of investments by the investor in the course of establishing and progressing any projects.*

10 *iii. One NIP credit is awarded for each Euro or Dollar earned in respect of local sales or products produced in any project in the NIP Projects.*

In summary under the SDPP NIP Programme credits are allocated to only three of the 9 scoring criteria. Furthermore the rate of credit was limited to one NIP credit for each Euro or Dollar in respect of all three categories and no multipliers were applicable. Evidence will be presented that these changes in the NIP credit allocation system were initiated by the International Offers Negotiating Team whose objective was to get the maximum benefit for the country and who decided pursuant thereto to eradicate the multipliers which the existing NIP Guidelines provided for.

25 *This new system of NIP credit allocation and*

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the fact that there would be no multipliers whatsoever was according to the evidence which will be led expressly discussed with and reluctantly accepted by each obligor in turn.

5 *The evidence will reveal that the SDPP NIP obligations undertaken by the obligors were far in excess of the contract price of the armaments they had undertaken to supply. This was because an obligor was entitled in terms of the (indistinct) to*
10 *obtain credit for all investments and sales of a project even though it only contributed as little as 10% of the investment in a project.*

15 *This will be explained in some detail in the evidence with reference to the contract provisions of causality and additionality. The evidence will demonstrate that as a matter of fact the DTI applied multipliers in awarding NIP credits to a number of*
20 *the projects submitted by obligors which assisted these obligors in discharging their obligations. These multipliers ranged from a factor of 2 to 192.*

The justification which will be advanced by some of the DTI witnesses for the use of multipliers is that strategic considerations warranted multipliers be used such as:

25 (i) *Projects that are too risky and*

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commercially unattractive and which were highly unlikely to be funded by the market.

(b) Projects which contributed towards the development of essential skills especially needed in the economy, particularly in the poorer areas of South Africa, and;

(c) Projects promoting economics transformation and promoting the participation of historically disadvantaged individuals.

Much of the inquiry at this stage will therefore be concerned with the question as to whether those responsible for the implementation of SDPP NIP had the power to override the provisions of the contract.

Finally it is pointed out that it is only after the ARMSCOR evidence has been led on Defence Industrial Procurement (DIP), that an analysis can be made as to the extent to which the offsets contemplated to flow from the SDPP had materialised”.

I just want to raise two further things Mr Chairman, the first thing that I want to place on record that all the witnesses who were subpoenaed are present, except for Minister Alec Erwin who is not yet present. Then secondly I want to place on record that the contracts which were concluded between the

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state and the obligors, all of these contracts except the contract details have not yet been declassified, the Affordability Report also has not yet been declassified and it may be necessary at some stage to go to *in camera* in relation to those contracts and the Affordability Report. Thank you Mr Chairman.

CHAIRPERSON: I wonder if it is not possible to try and work together with DTI to see if the contracts cannot be declassified. I think the question of *in camera* hearings, we must use it as a real last resort, or alternatively, I'm not sure if at all your witnesses are going to refer to all the provisions of the contract, if not, and maybe you might want to look at the possibility of using or asking them to declassify only those portions of the contracts that you are going to utilise when you lead your evidence.

ADV ABOOBAKER: Mr Chairman I'm respectfully in agreement with your approach, we will continue to try and engage the DTI and see what more we can achieve. We have tried to engage them in the past, there are some difficulties because there is a question of also the obligors and they can also raise the issue of confidentiality as well, but we will continue those discussions and we will see where we can take it.

CHAIRPERSON: Thank you.

ADV ABOOBAKER: Mr Chairman, the first witness will be led by Mr Barry Skinner and his name is Mr Paul Jourdan who has

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indicated that he would rather instead of ..., who has indicated that he would rather take an affirmation rather than an oath. Thank you Chair.

CHAIRPERSON: Yes. And maybe another issue, you said
5 that all the DTI witnesses are here. Do you think that it's necessary for us to keep them here or do you want to make some type of arrangements with their legal representatives?

ADV ABOOBAKER: Chair, we propose to make some
10 arrangements with the individual witnesses because their time is also valuable, except that we are going to keep one or two of the witnesses here so that there is no lack of continuity, after one witness finishes the next witness can start, but most of the rest of the witnesses, as soon as the short adjournment takes place we will make the arrangements with them and give them
15 some kind of time indication as to when they would be called.

CHAIRPERSON: Thank you.

NOTE: Caucus.

CHAIRPERSON: By the way, who is going to be the first
witness?

20 ADV ABOOBAKER: Mr Chairman, the name of the witness is Mr Paul Jourdan and he is the witness that is seated at the witness point.

CHAIRPERSON: Is there a difference between Mr Paul
25 Jourdan and Dr Jourdan because the statement that I have here is the statement of a certain Dr Jourdan and it says he's got

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also a doctorate, so I thought he was (indistinct).

ADV ABOOBAKER: Chair I must apologise for not indicating his stature, it is in fact Dr Paul Jourdan.

CHAIRPERSON: Maybe let me just ask the witness to
5 confirm that what he is going to tell us is the truth.

(Witness affirmed.)

CHAIRPERSON: Thank you.

ADV SKINNER: Thank you Mr Chair and Commissioner Musi, I will be leading the evidence of Dr Jourdan. May I
10 enquire, you both have copies of his statement before you, do you?

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WITNESS NUMBER 1 (DTI) : DR PAUL JOURDAN (Hereinafter referred to as "DR JOURDAN"), AFFIRMED

EXAMINATION IN CHIEF:

5 ADV SKINNER: Dr Jourdan, you deposed to a statement in the form of an affidavit on 14 January 2014, is that correct?

DR JOURDAN: It's correct.

ADV SKINNER: You have a copy of that affidavit before you?

10 DR JOURDAN: I have.

ADV SKINNER: I'd like to take you through that statement highlighting certain areas. You describe yourself in paragraph 1 as being in private practice as a public sector consultant. Can you explain what that is?

15 DR JOURDAN: I consult to governance, mainly in Africa, on developmental issues.

ADV SKINNER: You've set out in your statement a copy of your *Curriculum Vitae*. Can you confirm that as well as the contents of your statement?

20 DR JOURDAN: I do.

ADV SKINNER: I don't propose to take you through all of your *Curriculum Vitae* but briefly you have set out that you hold various degrees such as a Bachelor of Science, a Bachelor of Arts, a Post Graduate Diploma in Mineral Exploration
25 Geophysics, a Doctoral Philosophy and a Master of Science.

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DR JOURDAN: Correct.

ADV SKINNER: You indicate in your statement that in 1995 you became an advisor to the-then Minister of Trade and Industry Mr Trevor Manuel.

5 DR JOURDAN: That's correct.

ADV SKINNER: And as such you then launched the Maputo Development Corridor in 1997 and this was followed by several other spatial development initiatives across the country.

DR JOURDAN: Correct.

10 ADV SKINNER: You then further set out that during this period you conceptualised the Industrial Developments Loans Strategy and established these, including the Koega Development Zone.

DR JOURDAN: Correct.

15 ADV SKINNER: You then indicate that in 1997 you became the deputy director general in the Department of Trade and Industry.

DR JOURDAN: Correct.

ADV SKINNER: How did that come about?

20 DR JOURDAN: It formalised my position as an advisor and made me part of the civil service while an advisor was a contract linked directly to the minister.

ADV SKINNER: Once you joined the DTI, Department of Trade and Industry, what would have fallen under your control,
25 what would your responsibilities have been?

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DR JOURDAN: Special Projects was a very broad brief and it was wherever reinforcement was needed within the Department in general, but my statement outlines some of the issues that the Minister and particularly the DG deployed me to
5 which was restructuring of state-owned enterprises, some of the sectoral trust clustering strategies, the spatial strategies and then also during 1999 the Negotiating Team on the arms offsets.

ADV SKINNER: The Negotiating Team, that's what's often
10 referred to as "IONT", the International Offers Negotiating Team?

DR JOURDAN: Correct.

ADV SKINNER: And then just to complete your brief history you set out that you left the DTI in 2000 when you were
15 appointed CEO of Mintek.

DR JOURDAN: Correct.

ADV SKINNER: And that since 2007 your services have been utilised by the African Union Commission, the African Development Bank, United Nations Economic Commission for
20 Africa, the World Bank and numerous other institutions and several African governments.

DR JOURDAN: Correct.

ADV SKINNER: You referred a little earlier to the fact that you were appointed as part of the International Offers
25 Negotiating Team. Can you tell the Commission how and when

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that came about?

DR JOURDAN: I can, may not recall it, but it was the Minister of the DG who informed me. I think it was the Minister and I can't remember the date but it was very early in 1999 ,
5 January or February.

ADV SKINNER: And by the "minister" who are you referring to?

DR JOURDAN: Alec Erwin.

ADV SKINNER: As you understood it what was the reason
10 behind your appointment?

DR JOURDAN: Because of my other activities, particularly around the spatial development initiatives and IDZ's I was dealing with a lot of investment projects or trying to get projects, investors, potential projects and I believe that part of
15 the reason though this question may be better put to the DG, was to try and get projects we had identified as being promising or important for our country trying to see if we could get an alignment of those with the obligors.

ADV SKINNER: You further indicate in your statement that
20 as a member of the IONT you worked extensively with Mr Jayendra Naidoo who led the team.

DR JOURDAN: I did.

ADV SKINNER: You say also that as deputy director general you worked closely with Dr Rustomjee.

25 DR JOURDAN: I did.

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ADV SKINNER: What capacity was Dr Rustomjee at the time, do you recall?

DR JOURDAN: He was the DG but not for the whole year. I can't remember the date but in the second half of the year his
5 contract came to an end. He was obviously in charge of the whole department and he had been the main architect of the generic NIP Programme, but there's a confusion of terminology, NIPP, the two "P's" refers to the National Industrial Participation Programme and NIP with one, is the Non-Defence
10 Industrial Participation and sometimes there's some confusion, so he was in charge of NIPP with two P's and that framework and obviously this was a subset of that programme.

ADV SKINNER: Thank you, we'll bear that distinction in mind. Your statement then continues that you were not part of
15 the team which evaluated the arms purchase proposals by the bidders.

DR JOURDAN: Correct. Though I do put in my statement my opinion may have been sought on some of the specific projects that were in the pipeline.

ADV SKINNER: So, it is merely a minor correction of some
20 of the evidence that's already been led by Mr Giesel where he had set out, and the pages are annexed to your statement, that you were part of the team which evaluated the bidders, you became involved at a slightly later stage.

DR JOURDAN: The first time I saw the full spreadsheet of
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the NIP's was once the Negotiating Team had been formed and it was supplied by the office, Mr Vernon Pillay in the first half of 1999.

ADV SKINNER: You refer in your statement to the fact that
5 the International Offers Negotiating Team (IONT) considered the structure of the existing National Industrial Participation Scheme.

DR JOURDAN: Correct.

ADV SKINNER: I'd like to refer you to a bundle of
10 documents that you have in front of you. Chair and Commissioner Musi, this is the bundle which is called "General Bundle" and in particular I'm going to refer the witness to the document which commences at page 118. Thank you Mr Chair. The document commencing at page 118 is a document that was
15 supplied to the Commission by Mr Jayendra Naidoo and which he indicated had been in the public domain for some 12 years being part of his briefing to the public phase of the Joint Investigation Team into the Strategic Defence Packages procurement conducted some years ago. You have a copy of
20 that document in front of you Dr Jourdan?

DR JOURDAN: I do.

ADV SKINNER: I want to refer you to certain passage contained therein and ask for your comment on that. The first is at page 129 in paragraph 5. Mr Naidoo sets out there that
25 the Terms of Reference of the IONT provided that under the

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leadership and coordination of the chief negotiator, namely himself:

“The Negotiating Team members would each concentrate on their own sphere of responsibility”.

5 Namely the Department of Finance representative would concentrate on Finance, the DTI representative on Non-Defence Industrial Participation and so on, but he then continues to say:

10 *“The full Negotiating Team became the vehicle for the bulk of direct negotiations with the preferred bidders except for the technical area which was largely left to ARMSCOR and Department of Defence”.*

Can you comment on it?

15 DR JOURDAN: Correct, that was generally what happened.

ADV SKINNER: So, would I be correct then that the entire Negotiating Team with the exception of the technical area would be aware of all the investigations that were taking place
20 through the team?

DR JOURDAN: In general yes, the leader Mr Jayendra Naidoo did have some one, as he puts in his, he had one-on-ones sometimes with different stakeholders, both on government and ..., but he would then report to our meetings on
25 what had transpired.

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ADV SKINNER: In that same paragraph towards the end of it Mr Naidoo says that the whole negotiation of the NIP, the Non-Defence Industrial Participation terms was conducted by the full Negotiating Team rather than separately by the DTI.

5 Can you comment on that?

DR JOURDAN: Correct. Sorry, I should also add that obviously as a civil servant in the DTI I was reporting to DTI on an ongoing basis, so they, in generally they were in the loop.

ADV SKINNER: Still on that same page in paragraph 6 Mr
10 Naidoo refers to you and one other person becoming *de facto* members of the Negotiating Team.

DR JOURDAN: Correct.

ADV SKINNER: At the time this statement was drawn he indicated that you were what he says is currently president of
15 Mintek but we know from your history that you have certainly moved on since then.

DR JOURDAN: Correct.

ADV SKINNER: If I can ask you to look at the following page, page 130 paragraph 9, Mr Naidoo says in April, this
20 would have been 1998 as I understand it?

DR JOURDAN: 1999.

ADV SKINNER: Sorry, can you just repeat that?

DR JOURDAN: It would have been April 1999.

ADV SKINNER: Thank you. He says that:

25 *"After consideration of a report by the Negotiating*

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Team the Ministers Committee agreed to establish a separate team to investigate issues relating to the affordability of the packages”.

5 And in paragraph 10 he then sets out what this was referred to as the Affordability Team.

DR JOURDAN: Correct.

ADV SKINNER: And the following page, page 131 in paragraph 11 he reflects that the Affordability Team comprised four members, that is himself, Mr Roland White of the
10 Department of Defence, yourself and Mr Chippy Shaik of the Department of Defence.

DR JOURDAN: Correct.

ADV SKINNER: You refer in your statement to certain difficulties as I understand it with the structure that was then
15 in place regarding the National Industrial Participation and you referred to an example that was discussed and came from Mr Naidoo. Can you deal with that a bit more fully?

DR JOURDAN: Yes, he showed that if the multipliers were not on an investment that was a real investment that was
20 already in play and therefore one would try and maximise R&D training, affirmative action, (indistinct) or PDI as it was called then, that if someone was quite ...

CHAIRPERSON: I'm sorry Advocate Barry Skinner, talking
for myself I find it very difficult to follow the evidence of this
25 witness. He's already talking about multipliers, I don't know

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what multipliers are, there has been no foundation laid to make us understand what he is talking about. I've noted his statement twice, thrice, trying to understand what multipliers are, I couldn't and I would have thought personally that a foundation should first have been laid down so that we can all of us follow exactly what the witness is saying. He's a real specialist witness, he's talking about multipliers, I've never come across that word before, I see it for the first time when I'm looking at his statement, and there's been no foundation which tells us exactly what the witness is testifying about. I'm not sure if at all is there any way in which you can try and help me understand what multipliers are.

ADV SKINNER: Certainly Mr Chair, I will deal with that in some detail. If I can take you Dr Jourdan to the position under the existing National Industrial Participation Scheme prior to the SDPP's, are you familiar with how credits were awarded under that scheme?

DR JOURDAN: Yes.

ADV SKINNER: Can you explain in a bit more detail?

DR JOURDAN: Well, I shouldn't say yes, I should say I was familiar but a long time ago, but they are in the annex, I'm trying to find the page number, here on page 52 of my pack, and the credits are shown there and how the credit would work like \$1, one credit for revenues accumulated, export revenues at face value, salaries and wages over the period, \$1, one

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credit, training and development outsource into SMME's, outsource into PDIS MME's, PDI ownership, the (indistinct) times. Revenues would be the Dollar value of that percentage, capital outlay or capital injections, \$1 would be two credits. 5 R&D expenses \$1 two credits, and finally technology transfer \$1 one credit.

ADV SKINNER: Now just to clarify these, this is taken from the document commencing at page 38 of your statement which is the National Industrial Participation Programme of the 10 republic of South Africa as published by the Department of Trade and Industry.

DR JOURDAN: Correct.

ADV SKINNER: And as you've referred to the schedule which appears at page 52 one can see in summary that most of 15 the objectives or the various categories have under their heading "Factor" one for one, but certain of them have \$1 equals two credits.

DR JOURDAN: Correct.

ADV SKINNER: As I understand it, it is that effect where it 20 is not getting one credit for \$1 of investment but getting more credits per Dollar than is referred to as a multiplier?

DR JOURDAN: Correct.

ADV SKINNER: Now under this system that had been 25 operating you were giving an example as to what would happen if somebody wished to maximise the credits.

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DR JOURDAN: I was, and I was saying that Mr Naidoo looked at it from a point of view of someone who was trying to work with the system and I for some reason, this remains in my memory, he came up with a hypothetical investment in 20 sowing machines for women in a poor area and I can't remember the figure but you know from maybe a R20 000 investment the credits would be, and it was something like, I'm not saying but it was like a R150 000 that if one played if the investor was just trying to maximise the credits where you could get these kind of enormous multipliers and what he then recommended was to simplify it down to real investment, exports and local sales.

ADV SKINNER: If I can take you back to page 4 of your statement after referring briefly to the example you have given, in the middle of that paragraph you have a sentence commencing: |"The existing NIP guidelines". Do you have that reference?

DR JOURDAN: I do, and that should be NIPP, not NIP.

ADV SKINNER: And you set out there that those guidelines provided for multipliers in certain categories, in other words a project falling into a particular category would receive more than one credit for each unit of currency invested.

DR JOURDAN: Correct.

ADV SKINNER: And that's what you're referring to by the use of the word "multipliers"?

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DR JOURDAN: Correct.

ADV SKINNER: I had commenced this area about asking you what the IONT was considering. What was its attitude towards that existing structure?

5 DR JOURDAN: We felt that it was both complicated and could lead to unintended outcomes to projects that were designed around multipliers rather than designed around economic fundamentals.

10 ADV SKINNER: And did the IONT come to any consensus as to what the attitude was towards the scheme that had existed up until then?

DR JOURDAN: That it should be amended as per the statement and Mr Naidoo's statement of 12 years ago to a one-to-one ratio on investments and then a commitment around exports and local sales but each would be a separate commitment, investment, exports, local sales.

ADV SKINNER: And when you refer to the statement you're referring to the passage in your statement which says:

20 *"It was then agreed by all the members of the IONT and the obligors that credit should only be given to investments at a one-to-one ratio and for export sales only given proof of causality and additionality".*

25 DR JOURDAN: Correct, that should also include local sales.

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ADV SKINNER: You say in the following sentence this was later expanded to include domestic sales.

DR JOURDAN: Correct.

ADV SKINNER: If I can ask you just to consider that
5 sentence. You say it was agreed by all the members of the IONT and the obligors. How did it come about that the obligors not only were aware of it but agreed to this?

DR JOURDAN: Well, clearly it was a move from the earlier NIPP system and that agreement, my recollection is that
10 agreement was obtained by Mr Jayendra Naidoo from them. Clearly we needed agreement on how would we, what the architecture would be before we could get into trying to improve and expand the offsets.

ADV SKINNER: You refer in that same sentence to the
15 phrase "given proof of causality and additionality". Now there will be further evidence led on those topics but just for the enlightenment of all of us can you briefly explain what you mean by causality and additionality?

DR JOURDAN: Causality is the easiest, that's showing
20 that the obligor has caused this to happen, what we did not want happening was that they would hitchhike on investments that were already in process that as a nation we were going to get. We wanted them to show that they were bringing to the table new investment, growth and jobs for South Africa.
25 Additionality was that it would be additional to what was, it

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wouldn't be, it wouldn't be what was already happening in an investment. Additionality also implied, that was tied down in the wording of the contracts, it would be areas where we wouldn't have expected investments in the normal course of events, so we excluded things whereas South Africa was highly competitive, like Ferro Alloys we were the second producer in the world, we have the major resources and in those days we had cheap electricity, so we tried to exclude things that would have happened all the same, therefore we wanted them to come to the party with additional wealth creation for our country.

ADV SKINNER: You say in that same section of your statement that these, in other words the investments export and domestic sales were the only areas where credit would be given.

DR JOURDAN: Correct.

ADV SKINNER: So, if a project had factors such as job creation or the assistance to previously disadvantaged individuals how would that be considered in relation to the giving of credits?

DR JOURDAN: The credits were only given on investment, export sales and domestic sales. The other issues would be using other instruments of the state to try and encourage them to use PDI subcontractors *et cetera* and those were at that time happening in parallel.

ADV SKINNER: You conclude that portion of your

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statement by saying:

“After considering these possibilities the approach of the IONT was that the projects themselves had to be real rather than adapted to achieve credits”.

5 Can you explain what you mean by that?

DR JOURDAN: It’s what I said earlier where you create a project to maximise credits or you first look at what’s a viable project that gives additionality to our economy and then you try and get the credits, you try and maximise like PDI
10 subcontractors, R&D and so on. That’s what we tried to say there, what we wanted was real projects that then would be enhanced rather than a project purely designed around maximising credits that would maybe not be particularly viable.

ADV SKINNER: Chair, I’m told this is about the time that
15 the Commission normally takes a short adjournment.

CHAIRPERSON: Okay thank you, maybe let’s adjourn until 11h30. Thank you.

(Commission adjourns.)

(Commission reopens.)

20 CHAIRPERSON: Dr Jourdan, do you confirm that what you are going to tell us will be the truth?

DR JOURDAN: I do.

CHAIRPERSON: Thank you.

ADV SKINNER: Dr Jourdan before the adjournment we
25 were dealing with your statement. Can I ask you to look at

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page 4 of your bundle on paragraph 10 of your statement.

DR JOURDAN: Yes.

ADV SKINNER: You say there:

5 *“The focus of the IONT was predominantly on investment because the understanding was that sales would generally follow if the investment was viable without anything additional having to be done if the investment was into a manufacturing process”.*

Can you just explain more what you say in that paragraph?

10 DR JOURDAN: We realised that, well let me take a step back, there were three things, there was investment, export sales, local sales, so we looked at what an average CAPEX of, say a R100 million would give and we found it was roughly one-to-one that an average investment, we used the IDC database,
15 an average investment would have sales of roughly what the CAPEX was and therefore if we got the investment into viable good industries the exports and local sales would pretty much happen all the same, therefore what was key for us was the investment.

20 ADV SKINNER: Correct me if I'm wrong, as I understand what you are saying is that provided an investment is made into a viable industry and particularly a manufacturing business, the business will flourish and therefore sales will in due course materialise?

25 DR JOURDAN: That is correct.

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ADV SKINNER: And you say that is why the focus of the IONT was predominantly on investment?

DR JOURDAN: That is correct.

ADV SKINNER: Can I refer you again to the briefing
5 document from Mr Naidoo in the General Bundle of documents
and in particular from page 134 going on to page 135.

DR JOURDAN: Yes?

ADV SKINNER: In the first paragraph at page 134 Mr
Naidoo says that the DTI's Industrial Participation System for
10 non-defence projects was a relatively untested system
established during 1998 unlike the DIP system which had been
in operation for some time, upon closer examination it was
clear that there were serious problems with the NIP system that
needed to be remedied. Now I accept this is Mr Naidoo's
15 statement but I'm just asking you are you able to comment on
that or is that something we should raise with him?

DR JOURDAN: I fear Dr Rustomjee and Mr Naidoo, Dr
Rustomjee who is, who was the architect of this system pre the
arms offset, he'd give a better idea and I think you should
20 speak to Mr Naidoo.

ADV SKINNER: Then over the page, page 135 of the
General Bundle, at the end of the first paragraph on that page,
paragraph number 3 Mr Naidoo says:

25 *“Furthermore the administrative requirements of
such a system in the context of a programme as*

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large as the Defence Procurement would place a high level of stress on Department of Trade and Industry while it was also likely to have limitations in respect of transparency and public oversight”.

5 And then it continues in the next paragraph with:

“The consent of DTI, the NT (Negotiating Team) amended the NIP System for the purpose of the defence procurement to avoid such exaggeration of benefits. For the Defence procurement only investments, exports and sales were included in the NIP credits”.

10

That’s what you were referring to earlier in your evidence.

DR JOURDAN: Correct.

ADV SKINNER: And Mr Naidoo continues in paragraph 5

15 that:

“The Negotiating Team targeted a one-to-one ratio between NIP plus DIP investments and the contract (equipment purchase price) with exports and sales additional”.

20 Can you explain what’s being referred to there?

DR JOURDAN: The same as the previous paragraph.

What ... Oh, the target we’re trying to, if we were going to spend R4.3 billion on arms we wanted investments, pure CAPEX

of R4.3 investment into South Africa into civilian non-defence

25 industries and those industries were limited in the contracts,

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that resource industries were excluded because we needed no help in getting investments into our resource industries and it was manufacturing only and then we also limited the scope of the manufacturing, so we wanted additionality, we wanted
5 investments that wouldn't have happened all the same.

ADV SKINNER: In that same paragraph page 135 Mr Naidoo says:

*"In some contracts a portion of the export commitments were front loaded into the first four
10 years in order to improve the overall balance of payment situation during that phase of the procurement".*

Can you explain what's being referred to there?

DR JOURDAN: Elsewhere in this document it is made
15 clearer where the phasing of what bits of armaments would come at various times was changed and thereby consequently the commitments to try and get immediate balance of payment relief, presumably because we were in a balance of payment constraint at the time we needed exports as a nation.

20 ADV SKINNER: Returning to your statement you say at paragraph 11 of your statement that:

*"A further benefit of limiting credits to investments and exports was in simplicity of the administration of a process assessing factors such as job creation,
25 technology transfer, SMME promotion, outsourcing*

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5 to previously disadvantaged individuals, SMME's,
research and development, skills development and
affirmative action and the like in determining the
extent of credits to be awarded was considered to
be somewhat complicated and could have led to
unintended outcomes".

What are you meaning there?

DR JOURDAN: I'm repeating what I said earlier that if an
investor came in with the idea of playing the system you could
10 end up with very weak investments that pressed all the right
buttons, that maximised the multipliers but what we really
needed was viable, solid economic investments to grow our
economy.

ADV SKINNER: You conclude that paragraph by saying:
15 *"The focus was on efficacy and dilution was to be
avoided"*.

What do you mean by the reference to dilution?

DR JOURDAN: Dilution would be to dilute the actual
CAPEX, what they were going to invest by adding other things
20 on it, but the earlier point was more important. Because in fact
my statement there is a bit unclear because if there was, if
there had been multipliers then the targets would have been
set appropriately much higher. So, we wanted the targets as
they were, investment, exports and sales to be kept to without
25 being diluted in any way but in a way that's not true because

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had there been multipliers the targets would have been ten times higher.

ADV SKINNER: Jumping somewhat ahead you deal with that in paragraph 16 of your statement and since you've raised
5 the topic maybe we should deal with that aspect now. You say in paragraph 16:

"My attention has been drawn to the fact that the NIP contracts provide ...".

CHAIRPERSON: I'm sorry Advocate Skinner, just for my
10 own understanding why does the witness say that if at all there were multipliers then the targets would have been much higher? Why are you saying so, where, or where does that idea come from?

DR JOURDAN: If one is looking for investment of say R4.3
15 billion as we did, and then you have multipliers for all kinds of things right, then you would look at a much higher target. If they are going to get extra credit for all those things I listed earlier then you would set the overall target much higher than if it's just pure investment because they are also going to get
20 credits for R&D, for outsourcing, they are going to get credits on their turnover, they are going to get credits on ..., I don't have the list but I could back to it, and then clearly R4.3 billion, if you are going to have these multipliers is, would be very low, so if you wanted your R4.3 billion to be R4.3 billion
25 with multipliers you would have to have a target of most

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probably 10 times that, that's a guess.

ADV SKINNER: As the Chair please. You do refer to that in passing in paragraph 16 which we'll come to now, you commence by saying that the NIP contracts provide for one credit for each unit of currency invested, and you say:

"My recollection is that early in 1999 the IONT had agreed that all multipliers under the old National Industrial Participation Programme System would be scrapped".

10 That's what you were referring to earlier.

DR JOURDAN: Correct.

ADV SKINNER: And you say:

"This was particularly after a discussion I have referred to regarding how projects could be set up to maximise the benefit of multipliers".

15

DR JOURDAN: Correct.

ADV SKINNER: You say you do recall that Dr Rustomjee was concerned at the removal of the multipliers, can you recall what his concern was?

20 DR JOURDAN: Well of course the, as a state in various policy documents, at the time various strategies White Papers *et cetera*, we had a range of things, we were a new government in a new democracy, so first of course we want to grow some development but we wanted equitable growth and development,
25 so we also wanted corrective action as per the constitution, so

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we wanted all of those other, we wanted PDI, what's now called BEE to be enhanced, we wanted science and technology and tech transfer to be enhanced and my recollection is that Dr Rustomjee felt we still needed some way of hitting those other
5 targets beyond growth and development, and that's what the NIP System provided, albeit quite cumbersome and complicated.

ADV SKINNER: Then you say, which is the section I was wanting you to look at:

10 *"The view of the IONT, however, was that the targets set for the obligors were fairly onerous but manageable. If multipliers were to be utilised, however, the targets would require little effort to be achieved. Accordingly if multipliers were to be
15 used the target would have been considerably higher".*

DR JOURDAN: Correct, I've explained that.

ADV SKINNER: I'm not sure whether that answers the Chair's query about what the witness was saying?

20 CHAIRPERSON: It have been answered.

ADV SKINNER: Thank you. If I can then take you back to your statement at paragraph 12, you refer to the fact that there was a great deal of pressure from other government departments to finalise the process as expeditiously as
25 possible and you talk about Ferro Staal as one of the obligors

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cancelling a major project just before signature of the contracts, can you explain more about what you are referring to there?

DR JOURDAN: Ferro Staal who were the submarine
5 contract had put forward a very fancy project with a full pre-
feasibility study done, I remember it was a full lever arch file
and then near the end they suddenly said a piece of technology
that they had in their feasibility study, the supplier SMS
Dimarck wasn't willing to guarantee it. My attitude at the time
10 was well that was a new technology, they could still do the
project using the standard technology. My feeling, and this is
my feeling, me at the time, was that we did not need the
particular equipment in a hurry and of course I can be
contradicted by the defence people who know better than I do,
15 and that we should have not signed for that until they had an
alternative project, but we were under pressure from various
departments as I put there to conclude. And as you can see in
Mr Naidoo's statement it was envisaged that we'd only take six
months, so this was already 12 months but my feeling was that
20 if we can get more for our nation time is on our side, not
theirs, that was, but that was me and I'm not saying that
everyone agreed with my ... My position was to keep them at
the table until we got everything tied down.

ADV SKINNER: And you record in paragraph 12 that you,
25 by referring to the fact that there was pressure from various

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sources to finalise the contracts as quickly as possible you are not suggesting that there was anything sinister in that, you were merely recording that IONT was under pressure to complete as quickly as possible.

5 DR JOURDAN: Absolutely. The Defence people of course, they understood the Defence needs, I'm not a defence person, so I was looking at it only through my narrow window which was how do we maximise the economic impact for South Africa. They were also looking at issues around how quickly they
10 needed certain pieces of equipment in terms of our national defence and security which I cannot talk to because I'm not aware of all the facts.

ADV SKINNER: In paragraph 13 of your statement you indicate that you have been referred to the speech by the late
15 Minister Modise in Parliament when he announced the SDPP and you would have heard my colleague Mr Aboobaker SC refer to that this morning as one of the indications of a starting point and the expectation as to what benefits would be generated. You say in your statement you cannot say precisely what
20 information had been supplied by the DTI because this was shortly after you had become involved in the IONT but you do refer to certain spreadsheets that you've annexed at page 31 and following of your statement, that you believe would have contributed towards the expectation of the investments and job
25 creation, is that correct?

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DR JOURDAN: That's correct, I can't say for sure, I don't have what he said in Parliament but given the numbers that you gave me they seem to correspond with the promises made by all of the bidders as per those spreadsheets on the offsets and clearly it had nothing to do, we had only just started our
5 negotiating, it had nothing to do with what we finally negotiated because that was eight months later.

ADV SKINNER: Yes, that's the point you make at ...

CHAIRPERSON: Sorry Advocate Skinner. Dr Jourdan, do
10 you know why the minister made that statement? Don't speculate, if you don't know, you don't know.

DR JOURDAN: No, I don't know.

CHAIRPERSON: That's right.

DR JOURDAN: I do not know.

ADV SKINNER: Thank you. Dr Jourdan, moving on to
15 paragraph 14 of your statement you talk there about the view of the IONT. Can I put it this way, how important as far as the IONT was concerned was the whole topic of the NIP investments and the programmes linked to that?

DR JOURDAN: Theoretically as I put in my statement the
20 fiscal take from R4.3 billion investments in terms of corporate income tax, Pay as You Earn, taxes, duties, VAT could have gone some way in paying, in giving government the ability to pay for the package, however, within the team there was also a
25 lot of dissent, I remember clearly that Roland White from

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Treasury was very sceptical about whether they would be realised, so with the big caveat that if they were realised yes, they could be important, but clearly if they weren't realised the fiscus would never get those revenues.

5 ADV SKINNER: You refer also in that paragraph to a summary compiled by you in approximately 2001 which appears at page 37 of your statement. Can I ask you to look at that document and just explain to us what is being reflected on that page?

10 DR JOURDAN: Right, this is a spreadsheet that I have to admit I can't remember why I did it but I went into the properties of the file on my computer and it was created in 2001 but I can't remember why, or maybe when I changed from computers it got re-dated and it was an earlier document,
15 however, to explain it the first, it's divided into three groups, the first is the final deal what we got, then is what was bid in 1998, that's what we referred to earlier, that group of spreadsheets, and then the third is to what extent we managed to improve investments and exports and it, inside the cells
20 which doesn't show obviously on this printout there is a corrective for currency because we're dealing with both Dollars and Euros.

ADV SKINNER: The document also shows under a heading "Period" 7 for Corvette, 7 for submarines, 7 for helicopters, 11
25 for Gripen/Hawk. That I understand is the number of years that

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the obligor had to produce the offset requirements.

DR JOURDAN: Correct.

ADV SKINNER: Then you have a heading of "Investments",
"Export" and then "Currency" which is self-explanatory as to
5 what it is. The amounts that are reflected in the column under
"Investment" and "Exports", for instance the first one R508.33,
is that expressed in thousands or in millions, or what is that?

DR JOURDAN: Yes, they're all millions.

ADV SKINNER: And then where you have "Total" for the
10 first portion, the final deal you have a figure of 4300. Is that
the \$4.3 billion that you were referring to earlier in your
evidence?

DR JOURDAN: Correct, \$4 300 million.

ADV SKINNER: So, as I understand it the effect is what
15 you're saying is that by the time the final deals were concluded
in the contracts that is the expectation as to what was going to
be generated by the NIP.

DR JOURDAN: That is correct.

ADV SKINNER: And then as you've said below that you
20 have the amounts that were reflected in the bids in July 1998
and you set out in the third portion on that page the percentage
improvement that had been achieved during the duration of the
IONT.

DR JOURDAN: Correct.

25 ADV SKINNER: Returning to your statement you conclude

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in the last sentence of paragraph 14, the second last sentence you say:

“... also reflects the anticipation was that the SDPP would generate \$4.3 billion in investments from the NIP projects”.

That’s what you’ve just commented on. You say:

“The fiscal effect of these investments once operational would probably have gone a long way in paying for the arms purchases”.

Can you comment on that?

DR JOURDAN: Yes, I’ve said that before I don’t have precise figures but clearly an investment of that size at a normal return on investment of, say between 12% and 15%, the, if you take the corporate tax and all the other taxes, the Pay as You Earn, the employees, the VAT payable *et cetera*, it could have been significant, I’m not saying it would have been everything but it would have had an impact.

ADV SKINNER: Mr Naidoo in the briefing document we’ve been referring to talks about what he describes as an economic impact modelling exercise, are you familiar with that?

DR JOURDAN: Yes, though it’s a long time ago I do remember the models. I think it was the DER in Stellenbosch.

ADV SKINNER: What was the purpose of this exercise, what was it aimed at showing?

DR JOURDAN: That I wasn’t directly involved with the

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model, I've, I see that you got it in this, in these annexures and I must say it's all coming back to me but it is 14 years ago. It was to look at the affordability in terms of a variety of scenarios, different exchange rates, different interest rates for the loans that were coming from the export guarantee, credit guarantee from the national governance, and obviously to try and build in some of the investments that they would start generating, but my recollection is that in general the investments would only ..., there was a timing problem that investments normally get depreciation on the CAPEX *et cetera*, so they only moved to paying full tax something like there to five years after start-up because they have all of their tax incentives, the national ones, this was nothing, these were the standard ones coming into play, therefore we would be paying before we would be getting the revenue, so there was a timing and my recollection is this modelling was looking at what the macro-economic impacts would be, but as I say I've only just seen this now when I came in, I'd have to look at it in detail to give you a clearer answer.

ADV SKINNER: Yes, I'm not wanting you to comment on the economic implications but simply the relevance comes in if you will refer again to the general bundle at page 149, it's an extract from Mr Naidoo's report.

DR JOURDAN: Yes.

ADV SKINNER: And he says in paragraph 4 on that page

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that:

“Two types of non-defence industrial participation risks were identified, contract risk and market risk”.

He goes on to talk about contract risk being the failure of
5 offset commitments to materialise due to suppliers’ inability or
failure to deliver on their commitments. What I wanted to ask
you is in that paragraph he says that the Affordability Team of
which we know you were a part undertook a careful
investigation of the experience of other countries in this
10 respect, examining a voluminous literature as well as
contacting relevant officials in several countries to obtain
information.

*“It emerged from this research that the record of
delivering on offset commitment is in fact rather
15 mixed and includes both significant success as well
as significant failures”.*

Can you comment on that?

DR JOURDAN: Yes, just to say yes that’s what we found,
we found that some countries had been very successful, we
20 also, we met with the team, I think it was from the United Arab
Emirates, a Mr Amin, and also we were in contact with others
like I was in contact with the Finnish office on their offsets, but
yes.

ADV SKINNER: And on that aspect you refer in paragraph
25 15 of your statement to contact that you had with your

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counterparts in Finland. Can you explain what you're referring to in that paragraph with regard to the performance guarantees option as opposed to blacklisting?

DR JOURDAN: Yes, to make it ... This paragraph is not
5 clear. I have been in contact with, during the negotiations, then right at the end when we finalised and signed, I think it was early December I then sent in what we go, this is the, I think he was near retirement, the Finnish guy, and he said on paper we had most probably the best deal ever because they
10 had also looked at international, however, our problem was going to be execution and he said that in Finland at that point they had just decided to scrap the guarantees because they found that the guarantees were just built into the price and therefore they would, they could walk away because they had
15 already built the 5% into the price.

So, I then asked him well, how come you have over a 100% execution, so where they had said a R100 million on average the Fins had over a 100% fulfilment and they said that's because we've made clear that the companies, the total
20 companies, their defence and their civilian, everything about that company, any branch or subsidiary would be blacklisted from government purchases and he further said also because we are members of EU we would try and block their business in the EU as well and that they said to me they felt was a much
25 more powerful lever to get them to comply.

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5 However, this is after the boat had sailed, so it was too late then to bring in some form of a blacklisting clause in the contracts, they were signed and that's when I contacted some parliamentarians to say can't we have some sort of a
10 declaration or something, motion or something saying that this is what will happen, that as a nation if you do not keep your promises we will blacklist you for, say 20 years, and that would have been in my opinion extremely powerful if we look at this whole infrastructure spend we're doing right now. I can, there
15 may have been many companies that wouldn't have been able to tender if they hadn't done their offsets.

20 So, it would have been a very real threat to them and I think that, this is just my opinion but I think that we might have got a higher level of compliance and maybe if we're
25 going to learn from, we all make mistakes, we were a brand new government at the time, if we're going to learn from what happened on that maybe this is something we could look forward to in the future that we have, that it's made clear to the suppliers that they can't make empty promises to South
30 Africa.

35 ADV SKINNER: Returning to your statement, and we've dealt with paragraph 16 of that, in paragraph 17 you comment on a suggestion that was put to you that it was understood by all persons involved, and particular by the DTI that multipliers
40 would be used and you say you dispute this, in your view it's

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overwhelmingly clear that multipliers would not and could not be used as per the final contracts. Can you explain more what you are talking about there?

DR JOURDAN: Well, I don't know if there is anything to explain, it was clear we changed the system and that we were only working on investment exports and local sales and it's clear in, as I say it's clear in the contracts as well, so from my point of view it's very clear on how they would comply, they would comply through achieving their investment target, their export target and their local sales target and that was it.

ADV SKINNER: In paragraph 18 of your statement you talk about the provision that projects could be changed by way of a project being abandoned and another project being substituted for that. Can you explain how that came to be part of the contracts?

DR JOURDAN: Yes, I think that's self-evident that we're in a dynamic global economy and a project that might seem good, the markets can change, we can have a toxic debt crisis like we did in 2007 and maybe something else needs to be done, so you can't force someone to go ahead with a non-viable project, it's not good for them and it's not good for us.

ADV SKINNER: You have referred in your evidence to the fact that the IONT had agreed on a one-to-one ratio, in other words one credit for each unit of currency invested. Now that certainly would then apply to the projects that were initially

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contemplated. If a project was substituted what would your view be, would the same ratio necessarily apply?

DR JOURDAN: Clearly. In the end because of the time factor I don't think any of them have the total array of projects
5 tied down, there were lots that were still undergoing feasibility, that they were still, that were floating, so what was important was to get the quantum tied down, which we did, the quantum of the investment, the quantum of exports and the quantum of local sales but primarily the investments.

10 If they then substituted projects they would obviously have to still get that quantum of investment. If it was a project with a lower CAPEX, capital expenditure, then it wouldn't fully substitute for the project drop, they would have to come up with another project or a very big one they might
15 have to substitute an array of projects, array of smaller projects, but what's important was the quantum of the investment.

ADV SKINNER: You also say in paragraph 18 of your statement that:

20 *"The anticipation of the IONT was that obligors would not undertake the full investment of the projects in that there would be contributions from parties such as the IDC".*

DR JOURDAN: Correct.

25 ADV SKINNER: And you say consequently it was not

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expected that an obligor would fund and necessarily be the main investor in a non-defence company or project.

DR JOURDAN: Correct.

ADV SKINNER: In the following paragraph, paragraph 19
5 you asked your view on what was referred to as “upfront credit”
and let me explain that by saying that there will be evidence
subsequently that in certain projects there would be a package
deal and it’s referred to as a package deal, granted before the
project commenced or at the outset where credits would be
10 granted there and then before the projects had been completed.
If, on that understanding how do you say that relates to where
the IONT was coming from in the drafting of the final
contracts?

DR JOURDAN: From what you are saying this happened
15 subsequent and I can’t really comment on how those were
done, all I can say is what we had in mind. I cannot second
guess what someone else had in mind a year or two later, and
for us is that the DTI would sign off upfront on whether it was
eligible or not, did it fall within an eligible sector, but that the
20 credits would only be awarded once the investment was made.

ADV SKINNER: And you refer in that regard to a copy of
the National Industrial Participation Programme, the page you
had referred to earlier in your evidence, page 52 of your
statement which is the page which had set out what was the
25 position relating to the various credits that could be obtained

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before the SDPP and in this connection that we're dealing with now you refer top of page 52 to the words:

“Business Plans/Proposals will be evaluated and possible credits will be indicated. Credits will only awarded upon successful performance”.

5

DR JOURDAN: Correct, so there is some, there is a grey area there. My understanding or my recollection is that it's when the investment is made, while successful performance could, depending on the context mean that the project is successful. Now whether the credit is given on the investment being made i.e. the factory is built, it then starts operating and then maybe goes bankrupt, that issue wasn't dealt with and I cannot give you an answer. You know, not all investments in the private sector are successful and I, my recollection is that it was more than the investment, it would have to be a viable investment, viability meaning making a profit, but as I said that is my recollection, it is a bit unclear because they could say successful performance in terms of the NIP, not of the investment.

10

15

20

ADV SKINNER: The final point you make in your statement is at the top of page 9 of your statement where you say ...

CHAIRPERSON: Advocate Skinner, can you just hold on for a minute.

NOTE: Caucus.

25

CHAIRPERSON: My colleague also has got a problem. I

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5 didn't quite follow what the witness was trying to say, I've seen that page 15 that he refers to, it clearly says that credits will then be awarded once the project was finished, that's what it says, it says that the credits will be granted once the project is operational. Now you are trying to give some other explanation of his understanding of that paragraph and that's what got me lost. Does his understanding differ from what is contained in that policy guideline or not?

ADV SKINNER: Thank you Chair, I'll clarify that. You followed that question Dr Jourdan?

DR JOURDAN: Yes. Once operational, that is my understanding as well. What I was referring to was what if it operated for six months and went under, and that's what I can't recollect what would happen because then clearly they have done the investment but now they are going to fail on the exports in local sales and I assume that's what would have happened, they would have then still, if they invested, say a R100 million in a project expecting sales of a R100 million per year and it went under, then they would still have to do the exports and local sales, they would have to find other projects for that.

ADV SKINNER: And your reservation was that, as I understood your evidence you said that it wasn't contemplated as far as you were concerned that credits would be given in advance of the project actually commencing?

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DR JOURDAN: Correct.

ADV SKINNER: Chair, does that answer ... Thank you.

And Dr Jourdan, I was then raising with you the final point in your statement where you deal with the fact that you believe it was clearly understood by the IONT that multipliers were not going to be used and that the approach of the IONT was well-known and was made clear to the Department of Trade and Industry. Can you comment on that?

10 DR JOURDAN: That is correct, and more importantly it's what was in the final contracts.

ADV SKINNER: You do conclude by saying there were, however, numerous changes in personnel from 2000 to 2002 which could have resulted in a loss of institutional memory. What are you referring to there?

15 DR JOURDAN: Other than that period there was a, like Dr Rustomjee left at the end of 1999, I left in 2000, Mr Sibisi I think left in 2002, a lot of, and Mr Pillay also left in that period. A lot of people left and I, it was in response to a question from you on these discrepancies and I was, that sentence I'm just trying to say why there should be
20 discrepancies and it could be that there was a loss of continuity in the personnel at DTI, it was quite a dramatic turnover of personnel. When the new DG came in there was quite a lot of changes.

25 ADV SKINNER: Thank you Dr Jourdan. I have no further

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questions at this stage, thank you.

CHAIRPERSON: Thank you. Is there anybody who wants to cross-examine the witness? Thank you. Any re-examination of the witness?

5 ADV SKINNER: Chair, may I raise one aspect? During the short adjournment it was indicated to me by Lawyers for Human Rights that they were still in the process of being given the statement of Dr Jourdan and that they were not in a position at the moment to indicate whether they would like to ask
10 questions or not. I see they are present and maybe they can explain further to the chair what their attitude is.

ADV SNYMAN: Thank you. Mr Chairperson, we have received the statement this morning, we don't wish to cross-examine the witness. Thank you.

15 CHAIRPERSON: Did I understand that you were saying that you don't have an intention of cross-examining the witness?

ADV SNYMAN: Yes, that's correct.

CHAIRPERSON: Thank you.

ADV SKINNER: Thank you Chair, I just wanted to clarify
20 that.

CHAIRPERSON: Thank you. Any re-examination?

MR CHOWE: Chairperson, Commissioner Musi, from the DTI we also do not have any re-examination from the DTI's side. Thank you Chairperson.

25 CHAIRPERSON: Dr Jourdan, thanks a lot. You are

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excused. Thank you.

DR JOURDAN: Pleasure.

CHAIRPERSON: Yes Advocate Skinner?

5 ADV SKINNER: Thank you Chair, that is the end of that
witness, the second witness will be called by my colleague Mr
Aboobaker SC.

ADV ABOOBAKER: Mr Chairman the next witness is Dr
Zavareh Rustomjee. That's the witness I call, Dr Zavareh. I
take it that you have seen the statement which has been
10 submitted?

CHAIRPERSON: Can the witness take the oath?

(Witness is sworn in.)

CHAIRPERSON: Thank you.

15 **WITNESS NUMBER 2 (DTI) : DR ZAVAREH RUSTOMJEE**
(Hereinafter referred to as "DR RUSTOMJEE"), GIVES
EVIDENCE UNDER OATH

EXAMINATION IN CHIEF:

ADV ABOOBAKER: Dr Rustomjee, have you submitted a
20 written statement to the Commission and is that statement
there before you now?

DR RUSTOMJEE: Yes, it is.

ADV ABOOBAKER: Do you confirm that the signature
appearing on that statement is in fact yours?

25 DR RUSTOMJEE: I do. I do, yes.

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ADV ABOOBAKER: Now that statement, was it drawn by thee with the assistance of DTI personnel?

DR RUSTOMJEE: It was drawn up by me and it was reformatted by the DTI.

5 ADV ABOOBAKER: Yes. I want you to give the Commission an idea of your background, your professional qualifications Dr Rustomjee.

DR RUSTOMJEE: Yes, I have a Bachelors Degree in Chemical Engineering, a Masters Degree in Industrial
10 Engineering, a Masters Degree in Development Economics and a PHD in Economics.

ADV ABOOBAKER: When were you appointed to the post of director general of the Department of Trade and Industry?

DR RUSTOMJEE: I was appointed on the
15 1st of November 1994 and my term expired on the 31st of October 1999.

ADV ABOOBAKER: In other words your term expired before the contracts were actually signed?

DR RUSTOMJEE: That is correct.

20 ADV ABOOBAKER: By contracts I mean the contracts entered into between the state and the obligors.

DR RUSTOMJEE: Yes, that is correct.

ADV ABOOBAKER: What was your interaction with the DTI?

DR RUSTOMJEE: Sorry?

25 ADV ABOOBAKER: What was your interaction with the DTI

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after you left the DTI?

DR RUSTOMJEE: My term came to an end, I was then engaged as special advisor to Minister Alec Erwin. That role involved a specific set of activities which I had listed in the witness statement. I won't repeat them here but I think the main points I wanted to raise in that list was that one of the issues, none of those issues involved the Defence Procurement Programme.

ADV ABOOBAKER: At this point in time is there any interaction between you and the DTI in terms of work or consultancy?

DR RUSTOMJEE: Yes, there is.

ADV ABOOBAKER: What is the nature of that work?

DR RUSTOMJEE: It's a specific contract relating to the impact of electricity pricing on the industry.

ADV ABOOBAKER: Thank you. And what is your present occupation?

DR RUSTOMJEE: I'm an independent consultant focusing mainly on areas of public policy around industry, trade, mining, energy and economic development.

ADV ABOOBAKER: Now you've been present at the hearing of this Commission this morning and you would appreciate that the chairman and the commissioners have very little background about NIP and how it came to be formed. What I'm going to ask you now is to help us because it seems that you were

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instrumental at the initial phase in putting the NIP Programme together. Is that right?

DR RUSTOMJEE: I was director general of the Department, the department was instrumental in putting this together, there were a team of people, I oversaw the process.

ADV ABOOBAKER: Now what was, and I'm dealing here particularly ...

CHAIRPERSON: I'm sorry Advocate Aboobaker, can we just ask the witness to pick up his voice, at times I struggle to hear him.

ADV ABOOBAKER: Dr Rustomjee, that has been a problem, so please assist us there, it's difficult to hear you. Now if you look at paragraph 5 of your statement you talk there about the NIP Programme leveraging government procurement. Now what was the thinking at the time about the question of leveraging government procurement? Is that something new to our country?

DR RUSTOMJEE: Leveraging public procurement was a central component of our industrial policy. At that time and even today the state is the single largest purchaser of goods and services in the economy and at that time there was no coherence, programme, strategy or policy that was in place that leveraged state procurement in any meaningful way and from the DTI's perspective I mean for where it would have related to industrial and economic development.

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ADV ABOOBAKER: Now in paragraph 6 of your statement you talk about a “watchdog role” played by the DTI on the State Tender Board. Just tell us what this role was?

5 DR RUSTOMJEE: Yes. Notwithstanding the fact that there wasn't a comprehensive approach towards leveraging state procurement there were components of that instruments present in the tendering processes of government, so the State Tender Board did have a preferential system for locally manufactured goods as well as a preferential system for ... Oh okay sorry, I
10 was trying to speak louder by having the mic closer to me, apologies for that.

There was a procurement sys..., there was a preferential system for the favoured SMME's that favoured previously disadvantaged individuals and that favoured local
15 procurement but it was fairly loose and not entirely comprehensive. Nevertheless the DTI's role in state procurement involved it having a representative on the State Tender Board to oversee contracts that came in and adherence, to oversee adherence to the extent to which these preferential
20 components were applied.

ADV ABOOBAKER: The sound quality of your voice seems to drop from time to time, so just keep an eye on that. Now can you just give us an idea of what attempts were made to leverage benefits for state institutions from procurement
25 tenders for goods with significant imported content. That's

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what you referred to in your paragraph 6 of your statement.

DR RUSTOMJEE: Yes.

ADV ABOOBAKER: Tell us of some of the ... Sorry yes, go on.

DR RUSTOMJEE: As I've indicated one component related to
5 the processes of the State Tender Board, some of the state-
owned enterprises I'm not sure that it was formalised but some
of them did try to localise their purchases. The most
comprehensive programme that was in place within the state
was the programme, the offset programme that the Department
10 of Defence had in place and I'm not sure of the actual history
of it but I think it goes back to the sanctions era where
localisation of arms procurement was highly prioritised and so
they developed an offset programme which was practiced in
that period. And that was probably the most comprehensive
15 localisation, the most comprehensive programme that leveraged
state procurement towards local content.

ADV ABOOBAKER: Yes. Can you give us some idea of what
that programme incorporated?

DR RUSTOMJEE: I have no knowledge of the detail of the
20 offset programme, but I believe that they would attach
conditions on the procurement of arms. Many of those
conditions related to growing defence related industries within
South Africa, to support economic activity around servicing,
around assembly of aircraft and other military equipment so
25 that the isolation that the country faced at the time was

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addressed by those kinds of activities and by the existence of a defence related industry within South Africa.

ADV ABOOBAKER: Yes. Were there any other programmes that you were aware of where procurement was leveraged by government, at least overseas procurement, foreign procurement?

DR RUSTOMJEE: I'm not aware of, there may have been but I think the major ones are the ones that I've listed in my statement that I was aware of.

ADV ABOOBAKER: Now in paragraph 8 you talk there about the thinking of the DTI in relation to having won industrial policy and not as separately defined and managed industrial policy with defence and security related industries. Can you just give us a bit more insight into that?

DR RUSTOMJEE: Yes. The context we're talking about 1994, 1995, democratic government elected with a very explicit shift of priority of the budget which led to a significant decline in the defence budgets and military expenditure. Those industries that I had spoken about earlier that had been protected by the Department of Defence's offset programme were the first casualties of a declining Defence budget and because of the security environment of apartheid around those particular industries, the secrecy around those, those industries tended to be protected by the Department of Defence and were not really regarded as industry in the broad sense,

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they were strategic industries, they saw their protector within government and their financier to be the Department of Defence and the associated budgets that the Department of Defence had, and from that perspective they saw themselves as special and continued even in the post-1994 period to lobby for the privileged position that they had occupied previously to continue.

From the Department of Trade and Industry's perspective we had looked at industrial policy in its broadest sense and our policy position at the time was that there is no such thing as a defence industry, there is a defence-related industry because if you hold on to the perspective of a separate defence industry in the context of increasing peace and stability within the global environment and within South Africa in particular then defence industry expenditure is going to go down and those industries have two choices, one is to close down or to export solely on the basis of defence-related industry.

So, the idea of diversification and using the very significant capabilities, industrial capabilities that have been built up during the apartheid period by this privileged position that this enclave set of industries enjoyed, our position was we needed to try to find ways of leveraging those advantages, I suppose the phrase is turning swords into ploughshares, that's conceptually where we were in our thinking and in order to do

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that, to perpetuate the idea of a defence industry was a recipe for the death of those industries. And that was one of the battles that we had at the time, to be allowed to influence the course of events through industrial policy instruments that the DTI had in that period, so that's why my statement, my witness statement at item 8 I talk about the DTI being determined to ensure that there was only one industrial policy because at the time those industries felt that you know, they needed to be given special privileges.

10 By the same token many of them were not willing necessarily to shift their activity, to look at the competitiveness of what they were doing and so on, and by the same token we had similar problems with other sectors of the economy in the context of their competitiveness and one of the big challenges of industrial policy at the time was to improve the competitiveness of an industrial base which was very diversified but was protected by high tariff barriers and by practices that were an outcome of apartheid through security expenditure and so on.

20 ADV ABOOBAKER: Yes.

DR RUSTOMJEE: So, we were not against the defence industries, defence-related industries as we call them but we wanted to find ways of integrating them into our support programmes that we were developing to help industries to improve their competitiveness, to improve human resource

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development, technology enhancement and so on, the suite of policy programmes that the department was putting in place at the time.

ADV ABOOBAKER: In paragraphs 9 and 10 you talk about
5 development of the new policy. Just tell us about these developments and what happened.

DR RUSTOMJEE: Yes. The NIP Policy was an attempt to provide a single umbrella programme that covered all of the state's expenditure and to provide guidelines and a mechanism
10 for procuring agencies and entities to leverage that procurement. So, there was a process, there was an investigation, we looked at international experiences of a variety of kinds. At that stage people talked about offsets and these were quite often very crude types of leverage instruments
15 where you would you know perhaps on a type of a barter trade, trade oil for arms for example and many of these programmes were implemented within the defence industries of the world rather than in civilian procurement, but there were a few countries that had begun to apply these principles in civilian
20 procurement and we looked at them, I think one of them was Australia, the other one and the one that I think provided the greatest basis for our NIP Programme was the programme that the United Arab Emirates had put in place which resembled but not exactly, similar to the architecture that we finally came up
25 with the NIP Programme.

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ADV ABOOBAKER: Now in paragraphs 11 you talk about some of the difficulties being encountered. Could you just give us a brief idea of these difficulties? Sorry, the difficulties I'm talking ... Sorry, the difficulties I'm talking about is difficulties
5 in leveraging the procurement power wielded by government entities.

DR RUSTOMJEE: Yes. I'm sorry, I just noticed there's a typo in my witness statement, there are two paragraphs 11's, hence my hesitation.

10 ADV ABOOBAKER: I'm referring to the second paragraph 11.

DR RUSTOMJEE: Yes. Okay, the second paragraph 11 refers to a specific procurement process that ARMSCOR had embarked on in 1994 around patrol Corvettes, notwithstanding the fact that we had initiated discussions with Department of
15 Defence and with ARMSCOR around leveraging and around the Industrial Participation Programme they ... Sorry, just give me this again, because I'm confused about some of the examples. They did not involve the DTI in the negotiations and I think this was the concern that we had about the defence offset
20 programme because from ARMSCOR's perspective they would leverage in favour of those particular defence-related industries as opposed to leveraging what might be greater national benefit outcomes and leveraging obligations that might apply to non-defence industries for example which from our
25 perspective may have higher benefits for the economy than

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would have been the case.

5 So, that was our main issue in the way in which they were implementing their offset programme. Fortunately the tender for those Corvettes were postponed because at that time I think the viewpoint of government was that there needed to be a thorough exercise of reviewing our defence requirements and that was in the form of the Defence Review which the DTI didn't participate in but the idea was only once that Defence Review was completed would there be a basis for
10 justifying the acquisition of equipment, in this particular case patrol Corvettes, so my understanding is that that was why, one of the reasons why those (indistinct) was deferred or cancelled at that stage.

15 To answer your question about the difficulties we had, so we had put in place the NIP programme which according to a Cabinet decision was obligatory on all organs of state and the architecture was that if you procured items with an import content of more than \$10 million 30% of the import content was the obligation and you could fulfil that obligation
20 through generating industrial participation credits in whatever form, but it had to be in the form of a legally incorporated company and you would read off the ... I think I'm jumping ahead in terms of the way in which that (indistinct) worked, but let me go back to your question. The ...

25 ADV ABOOBAKER: Well just wait there, sorry. Just wait there

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Dr Rustomjee. There were too many thoughts put into place there, I think in all fairness these are new ideas and we got to explain them in greater detail. You spoke about the extent of the industrial participation obligation, is that right?

5 DR RUSTOMJEE: Yes.

ADV ABOOBAKER: And your reflected to that as being 30% of the imported content of the goods purchased in terms of the contract, is that right?

DR RUSTOMJEE: That's right.

10 ADV ABOOBAKER: To give a practical example if the contract is worth R100 million, 30% would then be R30 million. Is that right?

DR RUSTOMJEE: Not necessarily. If the contract was a R100 million and the import content of that is more than \$10 million, then that particular contract would be subjected to industrial participation obligations.

ADV ABOOBAKER: Yes.

DR RUSTOMJEE: So, if that R100 million was procured entirely locally there would not be, with no import content or with import content of less than \$10 million, then it would not necessarily require to be subjected to the Industrial Participation Programme, so to a concrete example if it was a \$100 million contract, say \$50 million was the value of the imports, the contract firstly would be subject to the Industrial Participation Programme and secondly it would have to

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generate offset obligations or industrial participation obligations to the value of 30% of the import content, so if the import content was \$50 million, \$15 million would be the value of industrial participation credits that that project, that that obligor would have to generate.

ADV ABOOBAKER: Yes, that explains it much better. Sorry thank you, that explains it very well. Okay you were going on to say something before I interrupted.

DR RUSTOMJEE: Yes, I apologise for running ahead, I was trying to answer your original question which is to explain the kinds of difficulties that the department had in implementing the Industrial Participation Programme. I talked about the difficulties that we had in respect of the defence-related procurements with the example of the four patrol Corvettes in 1994.

By enlarge we found that procuring agencies of the state were very reluctant to get involved in any activities associated with increasing economic activity, unless it was a core requirement of theirs where for example they may have needed local supply for security perspective or for security reasons, so notwithstanding the fact that the Cabinet had endorsed the Industrial Participation Programme the department quite often would read about tenders in the press and had to then go to those particular procuring agencies and say but have you included in your tendering process the

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obligation on the purchaser that they have to comply with the Industrial Participation Programme, so we were actually chasing after state entities to implement the programme in their pre-tendering process because if you come in later they've
5 already signed the contract and there's no way you can then impose an industrial participating obligation on the supplier.

So that was a problem that we encountered, a difficulty that we encountered but that came after the Industrial Participation Programme was put in place. Prior to the
10 Industrial Participation Programme being put into place the DTI still tried to involve itself in large tenders that it was aware of, one of which was the Aircraft Replacements Programme of South African Airways in 1995 and I detailed this item 12 of my witness statement to give a sense of the kinds of issues that
15 we were grappling with.

When we looked at the extent to which they were leveraging the procurement on that aircraft we found that it was relatively mild, that we believed that, I think in this case it was Boeing that was favoured, that Boeing could actually provide a
20 far greater degree of industrial participation commitments than SAA had negotiated. But we were kept out of that negotiation and we then went to our counterpart department, the shareholding department of SAA which fell under Transnet, which fell under the Department of Public Enterprises and we
25 said to them look you know, it's government policy to leverage

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industrial, to leverage state procurement but your SOE is not playing the game here, they want to do their own thing.

Public Enterprises Department supported our position and subsequently for a variety of other reasons the tender was relooked at by the Transnet Board who found that it was actually unaffordable from Transnet's perspective. So I put that example in because it was quite, it was quite a useful description of the kind of difficulties that the department faced in furthering what was an accepted industrial policy objective of government of leveraging public procurement and it also then underpinned the need for a more comprehensive programme like the Industrial Participation Programme which was being developed around the same time.

ADV ABOOBAKER: So what you were saying was that initially there was resistance to involvement of the DTI in contract negotiations of a substantial kind?

DR RUSTOMJEE: Yes.

ADV ABOOBAKER: Yes, then in paragraph 13 you deal with the criteria in which the NIP Programme worked. Now there will be other witnesses who will deal in detail with NIP Policy and the NIP Guidelines, but I want you to give us some indication of the architecture of the NIP Programme as indicated in paragraph 13 of your statement.

DR RUSTOMJEE: Yes, sure. Okay, so the example that we spoke of earlier, a \$100 million purchase, \$50 million of which

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is imported content requiring a \$15 million industrial participation obligation, so the firm concerned would have to generate \$15 million of credits by essentially involving itself in economic activity within the borders of South Africa and from the NIP Programme's perspective this would have to be carried out through a legal corporate entity, South African corporate entity which had audited financial statements on an annual basis and from the audited financial statements you would read off on an annual basis and provide credits for activity that was taking place within that, within that investment, so I think my former colleague Dr Jourdan earlier on talked about an investment, so essentially we were looking at leveraging investment in economic activity incorporated in South Africa, so say suppose the investment was, I don't know, R2 million or R3 million they would get two credits for each Dollar of investment, so in this hypothetical example that we were talking about they would get, the investment was worth R2 million, they would get \$4 million of credit ...

ADV ABOOBAKER: Just before you go on I think take us into your confidence about what you are talking about there, you are talking about that table in front of you which has got nine categories under the heading "Objective" and you are talking about the seventh category there under the heading "Investment" are you?

DR RUSTOMJEE: Yes, let me maybe take a step back. So,

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the Industrial Participation Programme's architecture was aimed at providing absolute discretion to the obligor to involve itself in economic activity that made sense for it, so if it was, I mean so the firm could decide to invest in anything in any sector provided the DTI approved the investment and that investment would on an annual basis produce items, sell them, domestically sell them, export them, it would employ people, it would spend money on training and development, it would procure from small, medium and micro enterprises, it would procure from black-owned firms, women-owned firms, it would expend money on research and development and it were a foreign company that was involved in the investment it would transfer technology into South Africa.

So, these criteria, the 9 criteria, essentially capture the main policy objectives of the DTI and if you look at them, staying with economic growth, export promotion, job creation, training (indistinct) and so on, these were the main policy objectives of the department and we incorporated them into the Industrial Participation Programme in the form of specific credits that would be given for each activity.

So, that's an explanation of the table and the architecture of the Industrial Participation Programme. So, we were trying to cover all of our policy objectives at the same time, taking into account the fact that we were talking about the totality of state procurement, you would be talking about a

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range of industries, some of them might be capital intensive where the investment would be very high, some would be labour intensive where job creation would be fairly high, some, and so each of those investments would need to some greater or
5 lesser extent, one or more of the objectives of the DTI, so that was the rationale for this list of 9 criteria which were incorporated into the programme.

ADV ABOOBAKER: It's just been drawn to my attention that it's 13h00 now and perhaps we should take the long
10 adjournment.

CHAIRPERSON: Thank you, we'll adjourn until 14h00.
Thank you.

(Commission adjourns.)

(Commission reopens.)

15 CHAIRPERSON: Thank you. Do you confirm that you are still going to tell the truth?

DR RUSTOMJEE: Yes, I do.

CHAIRPERSON: Thank you.

ADV ABOOBAKER: Thank you Mr Chairman. Dr Rustomjee we
20 are looking at the table on page 8, now can you confirm that this table refers to ordinary NIP and not to SDPP NIP?

DR RUSTOMJEE: Yes, I ...

CHAIRPERSON: I'm sorry Advocate Aboobaker, I'm missing your question, I didn't quite hear you properly?

25 ADV ABOOBAKER: I'm going to go through these questions

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slowly Mr Chairman, so I'm going to elaborate on them as I go along to elaborate on the understanding of it but I'll go through it again. Dr Rustomjee, this table that is at page 8, it applies to the ordinary NIP process, is that right?

5 DR RUSTOMJEE: Yes, that is correct. It applies to the NI..., and I can't remember if it's, I think it was two P's that the way which Dr Jourdan described it.

ADV ABOOBAKER: You will have to speak louder because I couldn't even hear that. Just make sure your loudspeaker is
10 on.

DR RUSTOMJEE: Yes, I confirm that this table applies to the NIPP Programme as approved in 1997.

ADV ABOOBAKER: Yes.

DR RUSTOMJEE: Or 1996.

15 ADV ABOOBAKER: Yes. To put it in another way this table would not have application to the NPP, SDPP NIP process, is that right?

DR RUSTOMJEE: That's correct, yes.

ADV ABOOBAKER: Right, now let us look at this table. On
20 the first row under the heading "Objectives" we have nine different objectives, is that right?

DR RUSTOMJEE: That's correct, yes.

ADV ABOOBAKER: Yes. Now is it correct that under each objective an obligor was entitled to accumulate the credits?

25 DR RUSTOMJEE: That's correct, yes.

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ADV ABOOBAKER: So, in theory if each of those objectives had been fulfilled by an obligor he would under the ordinary NIP system receive credits under each of those objectives?

DR RUSTOMJEE: Yes, that is correct.

5 ADV ABOOBAKER: And say if he did that then if you look at the last column, the "Factor" he would get credit for each of those factors and if you add up all those factors the maximum credits he would have got is 12 credits.

DR RUSTOMJEE: Yes, that's correct yes.

10 ADV ABOOBAKER: Beyond there was no hope of him getting any more credits is there, was there?

DR RUSTOMJEE: No, this was how the ...

CHAIRPERSON: I'm sorry Advocate Aboobaker, I don't quite follow you. Let me just find out from the witness are you
15 saying that in any given moment, at any given moment the maximum credits that an obligor can receive is only 12?

ADV ABOOBAKER: Yes, that was under the ordinary ...

CHAIRPERSON: Just hold on, I'm asking the witness.

ADV ABOOBAKER: As ...

20 CHAIRPERSON: Are you saying to me that it's only 12 that any of the obligors can receive at any given moment?

DR RUSTOMJEE: Not 12 as an aggregate but 12 x the value of ...

CHAIRPERSON: The investment (indistinct).

25 DR RUSTOMJEE: Yes. Can I maybe explain it slightly

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differently to the way in which the question was posed to me?
So, if an investment was made of say \$1 million, in terms of the
table that investment of \$1 million would receive 2 million
credits. Now in addition to that over the seven year period of
5 the life of that investment the obligor would receive one credit
for every Dollar of local sales, that would be the first item on
the table, it would also receive \$1 for every Dollar of export
sales.

CHAIRPERSON: Thank you, I understand that, it's just that
10 I was a bit worried by your statement when you say you can
only receive a maximum of 12 credits.

DR RUSTOMJEE: Apologies for that.

CHAIRPERSON: Thank you.

ADV ABOOBAKER: Now just so that whilst we've got this table
15 in front of us, is it so that under the SDPP system, under NIP
under the SDPP the number of objectives under which credits
could be gained was only 3?

DR RUSTOMJEE: Yes that is correct. The IONT reduced the
criteria or objectives as is listed in this table to only 3, the 3
20 being, the one that says here "Sustainable Economic Growth"
for that you can read as a proxy it means local sales. The
IONT allowed that as the criteria for evaluating the SDPP
Projects. It also allowed export promotion as listed here, so
export sales were counted and the third one that was counted
25 was the investment line. And if I'm not mistaken the IONT had

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a one-to-one factor for each of those in the contractual obligations.

ADV ABOOBAKER: So, in other words the seventh category being "Investment" having a one-to-two factor was no longer applicable under SDPP NIP?

DR RUSTOMJEE: Yes, that's correct.

ADV ABOOBAKER: And the same for "Export Promotion" which seems to say "\$1 = 1 + LC". Now what is this "LC" about?

DR RUSTOMJEE: The "LC" relates to the local content associated with the export, so for example if a product was produced using 80% imports and then it was exported the credit would only apply to the value of the local content, not the export item, otherwise you could have ended up with a lot of screwdriver assembly operations using imported components as an example.

ADV ABOOBAKER: But all that became, all that was sorted out in the SDPP NIP on a one-to-one ratio, straight?

DR RUSTOMJEE: Yes, that's correct.

ADV ABOOBAKER: Yes.

DR RUSTOMJEE: May I just elaborate a little bit on that, because I also found myself a little bit confused on the interchangeable use that the word "multiplier" is, has been accorded by different parties. My understanding of multiplier is effectively that, I mean if you are taking the base as an investment Dollar, anything on top of that is a multiplier and so

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here you would have investment with a credit multiplier of 2 but with additional multipliers for job creation, for export promotion and for local sales and so on, so I just want to clarify and also suggest that there be a little bit more clarity in the definition of multiplier as used by evidence provided here because in my view even the SDPP criteria, I would see those three items that were allowed under the SDPP to also be multipliers on top of the investment, so you had the investment Dollar, multiplied by local sales, multiplied by what was allowed for exports. So, I just wanted to make that clarification because you know later on you may ask me about multipliers and I want to express my understanding of what the term "multiplier" means in this context.

ADV ABOOBAKER: Alright, so let's then get onto paragraph 14 of your statement. Now here you talk about, and I want you to deal with this quite briefly, about opposition from potential bidders to the imposition of Industrial Participation obligations. What was the nature of this opposition?

DR RUSTOMJEE: Bidders for state projects were, particularly the civilian projects, were unaccustomed to having to involve themselves in industrial participation, so many of the transnational corporations that supplied goods and services to the South African government initially took a position that this Industrial Participation Programme was cumbersome for them and they would rather it didn't exist. The basis of their

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approach was also overlapping with an ideological battle that we had around that time, we're talking about the mid-1990's when even the very idea of an active industrial policy was regarded from an ideological point of view as incorrect, that the correct approach should have been a total free market approach and we found this particularly that was the position of the World Bank and the IMF, and by some corporations where it suited them where they weren't necessarily dependent on state support.

10 So, those were the kinds of oppositions that we faced, in particular reference to the Industrial Participation Programme in having to implement that programme we had opposition from for example General Electric who were wanting to bid for the engine contracts for South African Airways and their initial stance was to rubbish Industrial Participation Programme. At that time General Electric had a very, in fact a non-existent position in our economy, they had divested during sanctions and so didn't have a very strong presence and didn't really have an understanding of the capacity of the South African economy and its relevance to their business as a source for components for inputs into their diversified businesses.

20 And so in discussion with them around how they were going to fulfil their obligations were they to be successful in bidding for the South African Airways engine contract we

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said to them look, you say on the one hand there's nothing that you can source from South Africa, how do you justify that, have you actually sent a procurement team to have a look and see what's possible, and they said no, so we invited them and we facilitated by putting them in touch with industry associations and various industries that we were aware could supply into their value chains and they then came back to us, and this was in the middle of us finalising the architecture of the Industrial Participation Programme, they came back to us to say look, the engine contract is coming up next year but our procurement investigation team has come back and pointed out to us that there are a whole range of business opportunities that exist right now and so what we would like to do is we would like to make that investment now and not wait until the engine contract comes about, but in order to do that we would like you to consider giving us credits in the rules for what we do now, which we can then use to fulfil our industrial participation obligations when the engine contract comes up and should we be successful in winning the engine contract.

And so, that was where the component called the Strategic Partnership Agreement that is in the rules of the Industrial Participation Programme came about and we, it was a, we took a flexible approach in structuring the rules and in implementing the programme because it was a relatively new experimental programme which we felt could give value to our

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economy and we were to a large extent, I personally as well, was quite pleased that GE took that position because it kind of vindicated our almost solitary position on the merits of a programme like this in opposition to our own spending agencies
5 within the country and from an ideological point of view from vested interests outside of the country that didn't really want to get themselves involved in our economy.

ADV ABOOBAKER: Yes. Now Dr Rustomjee we often hear terms such as "countertrade, industrial participation, offset".
10 Can you help us understand these concepts and how they interrelate with each other?

DR RUSTOMJEE: Yes. I have in item 15 of my witness statement I have reproduced a table that I think is helpful in explaining what is involved in, within the term "offset" and
15 "countertrade" and really relates to different types of activities that are the counterparts to a tender that you might be involved in fulfilling, so the table is in three parts, direct and indirect and indirect offsets, and it shows that you could involve yourselves in co-production, in subcontracts on the direct side,
20 indirectly you could involve yourself as a bidder in technology transfer, in training, in licence production and so on, I won't go through each one individually.

This is, the intention here was really to show that some of the critics of particularly the Industrial Participation
25 Programme have tendered to subsume the programme within the

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general term of offset and in many cases that offset term has been mainly used in very crude types of barter type of arrangements in particularly arms deals, and so I felt it useful to outline this also coming out of the discussion that I'd had, the consultation that I had had with the evidence leaders just to enrich the debate and also to counter the idea that as has been alluded to by, or what I've read in the public domain relating to the value of leveraging public, sorry, the value of the leveraging state procurement where people argue well, offsets have been discredited internationally and I just wanted to show here that there's a lot within offsets and indeed I think even the record of the programme, the Industrial Participation Programme itself shows the validity of the programme itself.

ADV ABOOBAKER: In the South African context offsets and National Industrial Participation have been used anonymously, is that right?

DR RUSTOMJEE: It has by some people, I think the DTI has tended to talk about Industrial Participation obligations rather than offsets, but I think in many cases it's interchangeable and that was another reason why I thought it useful to lay out this table because there's a lot within the term "offset" that gets lost when the term is used.

ADV ABOOBAKER: So in other words "offset" is a much broader term than National Industrial Participation?

DR RUSTOMJEE: Exactly, yes.

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ADV ABOOBAKER: Now in paragraph 16 you talk about the obligatory nature of the NIP Policy.

CHAIRPERSON: I'm sorry, maybe I got a bit lost. Did the witness say offset is a much broader term than Industrial Participation, did I understand the witness to be saying that?

ADV ABOOBAKER: Yes, that is so. Now ...

CHAIRPERSON: Now if at all that is the position what is the difference between Industrial Participation and offsets because when I read your statement I thought it was the reverse, I thought you were saying that that industrial participation looks at a much longer term, a period of about seven years, (indistinct) offsets which can be a once-off type of thing, that's how I seem to have understood your statement, unless if I've made a mistake.

DR RUSTOMJEE: No Sir, you're correct. I think you have introduced another dimension which I hadn't talked about and the comparison is the timeframe, the Industrial Participation Programme was to be fulfilled over a period of seven years and if I compare, if I ask you to compare the table on item 15 with the table on page 8 you can actually link some of the components of the Industrial Participation Programme with some of the components that have been part of offset agreements, technology transfer for example, co-production relating to local sales, exports and so on, so I apologise if I'm creating confusion, I think if I said offsets is another term for

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industrial participation both encompass a range of specific components which are fairly similar, so.

CHAIRPERSON: Maybe just to follow up again, both industrial participation and offsets they might contain the same components, and then the point that I'm trying to make is that my understanding from your statement is that industrial participation can be fulfilled over a seven year period, and if it can be fulfilled over a seven year period it means that it lasts longer than an offset which can be a once-off type of thing which is not sustainable, in most cases not sustainable. Now if that is the position I didn't quite understand a statement when you say that you know offsets are much more lasting than industrial participation, that is why I've raised that question.

DR RUSTOMJEE: Then my statement was incorrect, the intention was for the Industrial Participation Programme to be sustainable whereas many offset arrangements were not.

ADV ABOOBAKER: I'm indebted to you Mr Chairman.

CHAIRPERSON: Thank you.

COMMISSIONER MUSI: And then what about countertrade, how does it differ from your offsets?

DR RUSTOMJEE: Countertrade would be one form of offsets, usually related to barter-type arrangements, the one that comes to mind would be the, that component of the arms for oil arrangement between the UK and Saudi Arabia as an example where they sold aircraft and other weapons and were paid in oil

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and there have been numerous examples, particularly in defence-related transactions where that kind of valuation of commodities for weapons was made and trade taking place in the form of the commodities rather than the monetary value of each item, be it the commodity or the armament.

COMMISSIONER MUSI: Is it some kind of bartering, some kind of swapping of commodities?

DR RUSTOMJEE: Yes, it is.

ADV ABOOBAKER: Thank you Dr Rustomjee. Now if you look at paragraph 16 you talk there about compliance by state entities with the NIP Programme. Did the level of compliance increase in the course of time?

DR RUSTOMJEE: Yes, during my tenure it did but it was mainly confined to tenders at a national level and I did try later on in item 16 to list the specific contracts that we were able to secure industrial participation obligations for, but during my tenure we were not able to get to the provincial level of procurement and the local government level of procurement, it's quite likely that because of the threshold of the programme relating to \$10 million of imported content that many of the items procured at the provincial and local level would not have qualified in any case, but it needs to be recognised that a very significant proportion of state expenditure is under the control of provinces and of municipalities and so the intention of the programme was to cover all spheres of government, but during

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my tenure we were only able to influence the contracts, most of the contracts at a national level by either state departments, national departments or by some of the SOE's such as Telkom and South African Airways as I've listed here.

5 ADV ABOOBAKER: In other words some of the contracts which normally would have qualified at a provincial level bypassed the system, the NIP System?

DR RUSTOMJEE: Yes, I have no doubts that there would have been some contracts that we've missed.

10 ADV ABOOBAKER: Yes. Now in paragraph 17 on page 12 you referred to a number of contracts there or projects which you described and what is this about Dr Rustomjee?

DR RUSTOMJEE: Sorry, could you just repeat that? I missed that.

15 ADV ABOOBAKER: Sorry, I say on paragraph 17 on page 12 you identified a number of projects in 1997 and 1998. What were these projects, and I just want to understand whether they were of a strategic nature or otherwise and how you came to that conclusion.

20 DR RUSTOMJEE: Okay, these were projects that were subject to NIP obligations because of their size, in each case the imported content was higher than \$10 million and agreements were entered into with the bidders to fulfil their obligations. What I haven't listed here are the actual projects
25 that were associated with the procurement, so the list here is

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the contracts that was put out by the respective departments, so here you have Department of Transport went out for, on a tender for a drivers licence card and the bidders had to subject themselves to industrial participation programmes, the same for
5 Telkom, but I think that was a call centre platform that Telkom went out on. On SAA it was the engines and so on, I haven't listed the specific ..., I think the fourth or fifth bullet was the air traffic navigation systems company, a state-owned company that went out on a tender for presumably some communication
10 equipment.

The purpose of me listing this here was just to show the increasing traction at a national level that the Industrial Participation Programme managed to obtain in its early years of life in 1997 and 1998 prior to the Arms Procurement tender,
15 because the programme was never crafted with the intention to apply to the Arms tender, it was crafted with the intention to apply to all state procurement. So, this was just a list by example of the types of activities of the programme prior to the Defence Package.

20 ADV ABOOBAKER: So in other words these contracts went out to foreign obligors did they?

DR RUSTOMJEE: In most cases yes, in some cases the obligors may have been local, so for example a big electronics company like Altech I think was the bidder for some of these,
25 some of the Telkom projects, they would have done it with

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foreign partners, they may have been the, so it may have been a local, I'm saying it may have been a local company that was the obligor but their bid involved imported content of more than \$10 million.

5 ADV ABOOBAKER: So as a *quid pro quo* they had to enter into a National Industrial Participation agreement, is that right?

DR RUSTOMJEE: They and their partners, yes.

ADV ABOOBAKER: Now on, in paragraph 18 you talk about the criteria which would have (indistinct) specifically in the SDPP
10 and you deal a little bit with the background. Could you just expand a little bit on that background?

DR RUSTOMJEE: Yes. So, in parallel with developing the Industrial Participation Programme as an instrument to impact on all state procurement there were a few other processes that
15 were taking place which have relevance to the SDPP and that was the process around the White Paper on Defence and then the Defence Review. I alluded earlier to a patrol vessel contract that came through from, I think around about 1994 which was then put in abeyance pending the outcome of the
20 Defence Review which would have given a better basis for defining the arms needs of the country.

And the DTI was involved in this process, partly in respect to increasing the leverage available to government through such procurement processes but partly also to ensure
25 that the industrial policy approach that we had taken for

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industry as a whole applied equally to defence-related industries because there would have been a lot of lobbying in this process around the Defence Review, around the Defence White Paper by some of the domestic and foreign vested interests, firms involved in defence production, and we wanted to ensure that the DTI's view was also included in this process so that we could indeed structure policies which maximise the value of those defence-related industries.

So, a bilateral ... Part of this involved direct interaction with the processes around the review, part of it involved bilateral discussions with the Department of Defence and with ARMSCOR, and I've said here that it was during these interactions that the Defence Industrial Participation Programme evolved as part of the NIP Programme. Really what it's saying is that we respected the position of the Department of Defence and of ARMSCOR in terms of the security considerations that they applied in ensuring that there was local sourcing of critical components, of weaponry that would be needed to defend the country if the country needed to be defended, so while we didn't, so we didn't take a passive ...

The DTI's position on industrial policy towards defence-related industry was not a pacifist position, we fully recognised the value of having some of those industries, we were comfortable with exporting weapons of destruction, comfortable because we also in parallel with that had the

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National Conventional Arms Control Committee which managed the process on an ethical and on a transparent basis, so we were trying to accommodate those strategic aspects of defence requirements that were very much part of the Department of Defence's policy and associated with ARMSCOR, and so what I've outlined here is the way in which what emerged ultimately as NIP requirements and DIP requirements, Defence Industrial Participation and National Industrial Participation, how that evolved, it evolved in the context of the development of the White Paper on Defence and the subsequent Defence Review and subsequent to that was a process which I think culminated in 1999 around a White Paper on defence-related industries, so I just tried to allude to a parallel process as background to how credits, whether they were for defence-related or for civilian-related programmes evolved.

ADV ABOOBAKER: Yes. And then on the following page in paragraph 9, actually on page 14 you talk about SOFCOM. Well, what was this all about, the Strategic Offers Committee?

DR RUSTOMJEE: Yes. Once the Defence Review was completed the force requirements flowed from that and at that stage the Department of Defence then defined the requirements around military equipment and tenders or enquiries went out to bidders for aircraft, tanks, submarines and frigates, so to manage that process which was a Department of Defence process they consolidated all intergovernmental interactions

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within the structure called the Strategic Offers Committee.

ADV ABOOBAKER: I'm not at this stage interested in exactly who formed part of that, of SOFCOM, but I'd rather take you through to paragraph 20 where the 1998 NIP Evaluation Process referred to, and what I want to know particularly in relation to that is what is the, the third sentence of that paragraph where you say:

"From late 1997 and during 1998 the DTI IP Directorate was drawn into discussions with the potential suppliers to clarify the NIP Programme and to identify projects that could qualify for IP credits".

What I particularly want to know was, was there any method that was followed in trying to identify projects? Were there, was there anything special about these projects or were they just simply any project?

DR RUSTOMJEE: Yes, so here, the context here was you've got this new Industrial Participation Programme, you have bidders for defence equipment that have responded to the enquiry from the Department of Defence and have been told that there is a new programme in place which you have to confirm with and that is the Industrial Participation Programme and it's made up of two parts, there's the defence part which presumably those companies would have been aware of because they would have been part of the previous offset-type

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arrangements that the Department of Defence and ARMSCOR would have applied in any case, but there's this new part called the National Industrial Participation Programme which is administered by the Department of Trade and Industry and you as bidders need to go and talk to the DTI to see how you are going to fulfil your obligations should you be successful bidders, that's the context that we have here.

At the same time the NIP Programme has been put in place and as I've indicated has started to gain traction with Telkom and with other SOE's. There's a third process which I haven't alluded to here but which is partly talked to under point 21 but that same process was the process within the Department of Trade and Industry that was looking at the development of specific sectors, so we had a structure in the department where we had sector desks, looking at different parts of industry and sector strategies were in place or were being developed and reviewed and out of that process emerged within the DTI a sense of where there was a need for investment or where projects were latent and so what we did within the DTI in terms of managing this process was as the bidders came to us we explained the programme, how the programme worked, how the table that I've also tried to explain to the Commission worked, how they could generate credit and fulfil their obligations, that was the one part of the discussion with them.

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The other part was to say to them well, here's our strategy, broad industrial strategy, here's our sector strategy approach and we think there are opportunities for investment, for real investment, profitable investment in these particular sectors, and so within the Department we had the Industrial Participation Secretariat that was responsible for the Industrial Participation Programme, we had them talking to the sector directorates within the Department to try to draw up a list of projects which could then be made available to the bidders and thereafter the bidders were put in touch with sector associations, industry associations and potential firms that were interested in investing and so on and so forth, so that was the process and as I've indicated here by around February 1998 as DTI we had identified 22 project areas which I had listed, some were broad project areas, some were specific projects and these were shared with the bidders and where we were able to assist them to firm up some of these programmes we did, and the main activity then was trying to get them to be more specific about what were the specific projects that they would propose as part of their bid in order to convince us that there was a meaningful project and associated with that were schedules of, if they came with a particular project we would work out what was the jobs, what was the exports, what were all of those 9 criteria in that table because we at this stage were using those 9 criteria to assess the different projects.

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ADV ABOOBAKER: Thank you for that Dr Rustomjee but what I'm trying to establish is in choosing these projects was there, were these important to the country, were they of a strategic nature or what was the position, what was the criteria used to
5 choose the projects?

DR RUSTOMJEE: The criteria, the projects came out of assessments that the DTI had done or was doing or that industry associations had done or that researchers in the previous period from 1994 and perhaps even before 1994 had
10 done in looking at different sectors, looking at the competitiveness of those sectors, looking at the gaps in investment, so some of them you could say, I'm not sure how one would define what's strategic and if you look at the titanium value chain for example we produced titanium bearing,
15 titanium oxide through the Mineral Sands Project at Richardsbay and I think at Namakwa, but that's just exported, some of it is converted into paint but I don't think we make ...

So you know there were gaps there and the idea here was also where do we want to take this, we've got the
20 titanium but we're not producing titanium metals, we're producing aircraft which use titanium in the airframes, can we not find a way of bridging that gap. So, this is just one example of how some of these came about, but by enlarge they came out of research, interaction with industry associations
25 and out of strategies that were already in place within the

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department which were targeting certain sectors, and then feeding that information to other parts of the department, so we had investments promotion where significant machinery within the departments that would go out on trade missions, investment, soliciting inward investment and some of these would be put to potential investors, so it's multifaceted, I can't answer your question specifically, there were a range of processes that throughout these, that (indistinct) these particular projects and sectors.

10 And again if I can draw your attention to the architecture of the NIP Programme, we were not at this stage wanting to be prescriptive, we wanted the bidders to find projects that made sense to them, that they would facilitate because it was profitable and not because, not necessarily because we said this is strategic.

15 ADV ABOOBAKER: But now at the first level is it correct that the DTI identified projects and in identifying those projects they took into account gaps in the manufacturing sector where there was a crying need for such projects, a number of factors, there's no one size fits all, is that correct?

20 DR RUSTOMJEE: Yes, that's correct. And by the same token we did not rule out the bidders coming with projects that fell outside of this.

ADV ABOOBAKER: Yes.

25 DR RUSTOMJEE: We would still have had the right in terms

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of the rules of programme to approve or disapprove the projects, so it was fairly open architecture.

ADV ABOOBAKER: Yes. Now I want to take you through to paragraph 22 where you talk about business gravitating around
5 a number of specific NIP Project proposals which were subject to further interrogation by the DTI. Can you just expand on that and tell us what that process involved?

DR RUSTOMJEE: Well, that was the culmination of this process where we were pushing the bidders to say give us the
10 project, give us the business plan for the project, give us the seven year projection of the operation of the project so that we can actually calculate and score your bid in terms of the Industrial Participation offering that you were making, and so that's, so by the middle of 1998 most of the bidders had at
15 least a few projects which they were looking at more seriously and that was then scored by the Department and provided the basis for further evaluation as the projects firmed up or as projects were discarded and new projects were brought onto the table.

ADV ABOOBAKER: Yes, and in paragraph 23 you talk about
20 the role of SOFCOM in the process of evaluation of projects and scoring of projects.

CHAIRPERSON: I'm sorry Advocate Aboobaker, can I just try and find out from the witness one thing which I don't seem
25 to understand. In paragraph 22 he's saying that:

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“In evaluating the NIP Projects proposed by SDPP bidders the DTI utilised the 9 scoring criteria applied in the NIP guidelines”.

5 And I mean from there it says paragraph 30. When they were evaluating the projects, the NIP projects, did they use the same criteria that they used for granting credits or not because if I recall your evidence when they were granting credits only three criteria were used, now you are talking about 9 criteria during evaluation, does it mean that when they were evaluating
10 they were using different criteria from the ones that they used in order to give credits?

DR RUSTOMJEE: At the time that we were evaluating the projects that the bidders were proposing we used the 9 scoring criteria. At that stage the IONT, I don't think the IONT was in
15 existence and at that stage the IONT hadn't said that we will score projects just on three of the nine. At that stage we had the Industrial Participation Programme, the criteria were 9 and we scored according to the 9 at that stage.

ADV ABOOBAKER: Thank you Dr Rustomjee, that was a very
20 important clarification. The process had already started, the SDPP process at that stage, is that right?

DR RUSTOMJEE: Yes, I think it had.

ADV ABOOBAKER: And it was a stage before the IONT had been formed, is that right?

25 DR RUSTOMJEE: Correct.

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ADV ABOOBAKER: So both business and the DTI would have been working with the assumption that the normal DIP processes would apply at that stage, is it right?

DR RUSTOMJEE: That's correct, yes.

5 ADV ABOOBAKER: Yes. So once the IONT came into the picture they had to now review their stance altogether because these proposals were now very different in terms of NIP credits, is that not so?

10 DR RUSTOMJEE: Not necessarily. The projects that were on the table before the IONT decided to only include scoring on three criteria would have been the same projects that were on the table immediately after that, the only difference is that the bidders would not have been given credits for employment, research and development, technology transfer and the other
15 six that were excluded, that would have been the only immediate difference.

ADV ABOOBAKER: Yes. Thank you. Now let's just get to paragraph 23, I don't want to go to the technicalities of how SOFCOM worked but just could you broadly tell us their scoring
20 method?

DR RUSTOMJEE: Well, as I've indicated there were three indices that were ultimately drawn together as one score, there was the Military Value Index which related to the specifications that had been set for the specific military hardware that was
25 being tendered for, there was a Financial Support Index which

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related to the extent to which the bidders were prepared to put a financial package that supported the acquisition and then the third was the Industrial Participation Index which itself was made up of two indices, the one was the NIP score and the other was the DIP score.

CHAIRPERSON: I'm sorry Advocate Aboobaker, I hope that is the last question that I ask this witness. Let's look at that page 23, I'm not quite sure if I understand what you are saying, one, two, three, the third line from the top you say that:

10 *"The SOFCOM scoring method was based on the sum of three indices ..."*

And then you continue. What scoring was done at the SOFCOM level?

DR RUSTOMJEE: As I understand it SOFCOM integrated the various components of evaluation associated with each of the bids, the part that I was more familiar with was the industrial participation component which we've talked about, so for example if we start there the Industrial Participation score for the projects would have been pulled together in comparison with the different bidders in some form of index. A similar exercise would have been carried out by the Department of Defence in evaluating the Defence Industrial Participation part of the process and those would have been combined into a single index relating to industrial participation, defence and non-defence. SOFCOM then would evaluate, was evaluating ..\

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A different team within SOFCOM was evaluating the, ag how can I put this, the technical, it's called Military Value but it's really the extent to which the bidders' product met the technical specifications, that would have been the Military
5 Value Index. And then there was a third part which related to the support that the bidders would bring in the form of export credit guarantees and others for the supply of their package, so there was a financial component, a technical component and Industrial Participation component and SOFCOM integrated all
10 of those scores and that then went up to the next level of decision making.

CHAIRPERSON: Would I be correct to say rather than scoring SOFCOM is simply consolidating the results which come from the value (indistinct) not doing any scoring at all,
15 will that be a correct understanding?

DR RUSTOMJEE: I can say that would be the case in respect to the Industrial Participation Programme, the scoring would have been done by the Department of Trade and Industry, that would have been fed into SOFCOM and SOFCOM would have
20 integrated that, so you are correct yes.

ADV ABOOBAKER: Again I'm indebted to you Mr Chairman.

CHAIRPERSON: Excuse me?

ADV ABOOBAKER: I'm indebted to you Mr Chairman. So you find at the end of that paragraph by saying:

25 *"Ultimately Cabinet took the final decision of the*

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preferred bidders”.

So, all the information was then transmitted to Cabinet was it, or was there any other processes in between that you know of?

5 DR RUSTOMJEE: I believe there was a Ministers Committee that would have intermediated between this process and Cabinet.

ADV ABOOBAKER: Yes. Now on, in paragraph 24 you raised a very important issue of affordability. Can you just give us the background against which this issue arose? You say:

10 *“Around the same time National Treasury raised the issue of affordability of the SDPP”.*

What was the problem?

15 DR RUSTOMJEE: As I understand it once the total cost of the package emerged from the bids and was compared to what was on the budget of the Department of Defence there was a mismatch which would have required the defence budget to be increased, so it was not affordable within the budgeting envelope that existed at the time and my understanding is that’s the context in which Treasury said look, it’s all fine but
20 the country can’t afford this, and so I think at that stage the detail of the financing, the sequencing of payments and so on had not, the financial engineering associated with the bid had not been carried out and so I presume rather than stopping the process the logical thing to do would have been to go and cast
25 a BBI on the actual detail of the financing and the options

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around the financing to see if it could be made affordable through various means and that was the context in which the negotiating team came about. I think also the context was that these were bids and they still needed detailed discussion and negotiation, so there was still room to manoeuvre in this, but I think Treasury just looked at it from an aggregated level and indicated that there was an affordability issue.

CHAIRPERSON: I'm sorry, can we just stick to what you know? Please don't presume anything. If you don't know how this body came about, say so. Don't speculate, I'm sure the evidence leaders will try and get somebody who knows because if you speculate you are not helping us in any way whatsoever. The evidence leaders if they do lead their evidence I'm sure they will try and get some other witness to do that okay? Thank you.

ADV ABOOBAKER: Thank you. But to, I want to, if this is within your knowledge Dr Rustomjee then tell us about it, at the time when the International Offers Negotiating Team was formed had the preferred bidders already been identified?

DR RUSTOMJEE: I think so.

ADV ABOOBAKER: Yes. And was one of the objectives of the IONT, was it to make the SDPP more affordable?

DR RUSTOMJEE: My understanding is yes.

ADV ABOOBAKER: And even though you were not a member of IONT was one of the objectives ..., was one of the objectives of

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IONT to get sufficient NIP's to assist in the affordability of the SDPP?

DR RUSTOMJEE: The DTI's role in this process was to assess the value of the Industrial Participation offerings and to
5 interrogate those and to firm them up in hard project numbers and that's what we did through our participation in the IONT.

ADV ABOOBAKER: And were the two persons who represented DTI and the IONT, were they Dr Paul Jourdan and Vernon Pillay?

10 DR RUSTOMJEE: Yes, that's correct.

ADV ABOOBAKER: And was Dr Paul Jourdan then, did he become part of the sub-team of the IONT called Affordability Team?

DR RUSTOMJEE: I believe he did, yes.

15 ADV ABOOBAKER: Yes. Now these two individuals, were they the only two individuals involved at an operational level with the IONT?

DR RUSTOMJEE: I'm not sure how to answer that, they would have been at the apex of processes within the
20 Department, there was Industrial Participation Secretariat, there were a number of officials there that were also working on the process but they would not necessarily have interfaced at the IONT level.

ADV ABOOBAKER: So there would be a lot of others who were
25 there at the supportive level, is that right?

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DR RUSTOMJEE: Maybe not a lot of others but there was, yes.

ADV ABOOBAKER: Yes. Alright, let's get on to paragraph 25 of your statement where you talk about negotiations with each
5 of the preferred suppliers which tends to indicate that at that stage the preferred suppliers had been identified, is that right?

DR RUSTOMJEE: Yes, that's correct.

ADV ABOOBAKER: Yes. Now were you at all involved in any of these discussions or negotiations?

10 DR RUSTOMJEE: I was, but not on a consistent basis, I participated in some of the discussions that took place in the UK and in Italy, I think I've given the dates on which I participated in it, but the main work was done by Dr Jourdan and Vernon Pillay in respect to the Industrial Participation
15 aspects of the bids.

ADV ABOOBAKER: So was the position that Dr Jourdan was the main representative of the DTI and that he reported back to you and others within the DTI, of IONT policy?

DR RUSTOMJEE: Yes, that's correct.

20 ADV ABOOBAKER: So, would he then be the best person to articulate the policy of the, the NIP Policy devised by IONT insofar as the SDPP was concerned, NIP Credit Policy?

DR RUSTOMJEE: He was, I think the aspects of NIP Policy and its modification only relate to this, as far as I recall only
25 related to the criteria that were used for evaluation and that

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discussion would have taken place within the IONT, there would have been a subsequent, there was a subsequent discussion within the Department as to whether the Department was comfortable with excluding the other six criteria from the evaluation and hence the Department agreed with that for the reasons that I think were outlined earlier this morning.

ADV ABOOBAKER: So, you agreed with the reasons outlined by Dr Jourdan, do you?

DR RUSTOMJEE: No, I meant the rationale that the IONT articulated which is to simplify the adjudication process, to remove discretion and unnecessary argument over what would be given credits for if it related to, for example technology transfer or whatever, so I think the Department agreed with that. There was, I've said here the DTI was comfortable with the change, there was a slight discomfort in that the one important industrial policy objective which is employment creation had been left out and that in terms of the dialogue that took place within the Department it was pointed out that one potential undesirable consequence of narrowing down the criteria was that you could end up with a lot of capital intensive projects that still met the obligations but didn't necessarily create a lot of employment, so that was the only, as I recall it that was the only concern but I think at the end of the day the rationale of trying to simplify things which wouldn't then lead to legal argument later over whether the conditions

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were fulfilled one day and we agreed with the IONT to narrow down the scope of criteria to three.

ADV ABOOBAKER: But as I understood the report of Jayendra Naidoo one of the prime objectives was also to increase the NIP obligations of the obligors, or how do you understand that?

5

DR RUSTOMJEE: I'm not sure that I do.

ADV ABOOBAKER: Well, once you limit the number of categories under which credit can be obtained then the obligors have to work much harder and invest much more to achieve their credits?

10

DR RUSTOMJEE: Yes, I ... I hear what you are saying but I'm not sure of how that would have worked.

ADV ABOOBAKER: Well, once you ... Dr Rustomjee, once you exclude all those other categories realistically to three categories then there will be a number of categories in respect of which no credits would be given and all the credits have to be achieved within three categories, that's all I'm saying.

15

DR RUSTOMJEE: No I understand, I understand yes.

ADV ABOOBAKER: Now ...

CHAIRPERSON: I'm sorry, do you understand or do you agree with the proposition? It's different to say "I understand" than to say "I agree with the proposition" because it was put to you the proposition and that proposition came from the statement from Mr Pillay.

20

DR RUSTOMJEE: Yes. No, I understand and I agree.

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5 ADV ABOOBAKER: Now you were part of the teams that went to Sweden and you went to the UK and you went to Italy in February 1999. What was these discussions going on with the bidders, what was the nature of these discussions in broad outline?

DR RUSTOMJEE: In respect to the Industrial Participation Programme and the projects I recall them being fairly detailed technical discussions around the parameters of the project, the risks and so on, and that's what I recall.

10 ADV ABOOBAKER: And at this stage had the SDPP NIP terms been finalised by the IONT?

DR RUSTOMJEE: I don't believe that they were.

15 ADV ABOOBAKER: I see. Now in paragraph 27 you talk about the interrogation of each NIP project business plan. Was this a further exercise or what was happening at this stage because in terms of the chronology I thought the business plans had been interrogated? Could you just explain to me or to the Commission?

20 DR RUSTOMJEE: Yes. I think because of the large size of the (indistinct) projects there were some discomfort and this led to a further check being done, an independent check being done on the project proposals with the intention of identifying how viable they were, what the risks were and so on, so it was just a further check mainly because of the large size of the
25 projects and the amount of credits that were involved in them.

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ADV ABOOBAKER: Yes. And in paragraph 27 I want you to deal with this statement which is at the bottom of paragraph 27 page 20:

5 *"The view at the time was that for the respective
proposed project to be sustainable over the
discharge period, the bidders could not avoid
making some commitment to the excluded scoring
criteria of employment, training, SMME promotion,
HDI promotion, R&D investment and technology
10 transfer".*

So, are you saying that even though it was limited to three criteria out of the nine the others, there would be some investment or some input into those areas?

DR RUSTOMJEE: Yes, what I was saying here was that an
15 investment would involve some degree of employment and adherence to all of the other criteria, so even though you are not scoring (indistinct) specifically for example or technology transfer specifically, the investment, if it was to be sustainable would involve a degree of those other criteria and that was the
20 basis on which the DTI said okay, we'll accept just those three criteria as the basis for scoring.

ADV ABOOBAKER: Now you also refer in that paragraph to the estimated employment from a NIP Projects from the original bid evaluation scores and then you go on to say that:

25 *"Defence Minister Modise referred to some 65 000*

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potential jobs in a statement to Parliament in March 1999. This figure had emerged from the original 1998 NIP evaluation of projects proposed by the bidders”.

5 Now in terms of reaching that conclusion was the DTI input given to Minister Modise in coming to the conclusion that there would be 65 000 potential jobs?

DR RUSTOMJEE: Okay, my statement here was in response to the specific question that you had raised with me during the
10 consultations. I don't, I'm not aware that ... Okay, I was able to connect 65 000 jobs to a figure that I recall emerged from the sum total of the projects that the DTI had evaluated around about 1998 and if I do recall it was of the order of 65 000 jobs and so I'm assuming that those schedules were shared within
15 the bid ... Sorry, perhaps in respect to Judge Seriti's comment I'm perhaps speculating here, so all I've stated here then is that the figure of around about 65 000 jobs I am aware emerged from the original 1998 NIP evaluations and I assume that that's the basis on which Minister Modise then used that figure.

20 ADV ABOOBAKER: And Minister Modise's statement in Parliament about investments of R110 million being attracted to our economy, are you able to throw any light on where that figure came from and whether there was any DTI input on that?

DR RUSTOMJEE: Yes. To the best of my recollection a
25 figure of around that related to the sum total of the industrial

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participation credits, if I'm not mistaken under the old, under the nine criteria, not the three.

ADV ABOOBAKER: Well, before all these credits could be realised you actually left the DTI, so you can't throw any light
5 on what happened post you leaving I take it?

DR RUSTOMJEE: That's correct, yes.

ADV ABOOBAKER: Now in paragraph 28 you talked about the concept of projects being replaced and that projects that had been identified and which obligors had undertaken could be
10 substituted, I think that is what you are talking about there, is that right?

DR RUSTOMJEE: What I was referring to here is that by that time the contracted NIP obligation ... Sorry, by that time an insufficient number of projects had been identified that
15 cumulatively met the full NIP obligation and there was a category I recall in one of the schedules which talked about unspecified projects and so that was essentially what I was referring to here.

ADV ABOOBAKER: Yes. Well, I wanted to ask you a question
20 and I'm going to ask it to you now, whilst the concept of substituting projects was recognised in the agreements was there a process by which an assessment was made of the importance and strategic nature of the substituted projects as opposed to the original project?

25 DR RUSTOMJEE: If there was it happened after my time, so

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I'm not in a position to say anything there.

ADV ABOOBAKER: Alright.

CHAIRPERSON: I'm sorry, we couldn't hear the answer there, the witness is talking too softly.

5 DR RUSTOMJEE: Yes, my apologies. I'm saying that if there was consideration of alternative substitute projects it happened after my time and I am not aware of the circumstances under which that happened, so I cannot answer the question.

10 ADV ABOOBAKER: And it's very clear from your last paragraph, paragraph 30 that you can't throw any light on the contract negotiations or the finalisation of those negotiations because you had left the DTI by that time.

DR RUSTOMJEE: That's correct, yes.

15 ADV ABOOBAKER: I've no further questions. Sorry, I have no further questions Mr Chairman.

CHAIRPERSON: Any cross-examination? Thank you.

20 MR MASILO: Thank you Chairperson. Chairperson, my name is (indistinct) Masilo, I represent ARMSCOR (indistinct) Solomon SC. Chairperson, ... Is it not audible? I was saying thank you Chairperson, my name is Mphiri Harold Masilo, I'm the junior to Advocate Solomon who represent ARMSCOR in this Arms Inquiry. Chairperson, earlier on my instructions from my SC as well as from ARMSCOR is to the effect that we would like to cross-examine the witness and as part of preparing for
25 the cross-examination we had sought the statements from the

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witness in order to do (indistinct), but we were not favoured with the necessary copies timeously, as such we would like to ask for an adjournment, that the matter stand down until tomorrow so that we can be able to prepare ourselves to cross-examine the witness and the witness can be able to proceed tomorrow.

5

CHAIRPERSON: I see it's already 15h30, I'm sure you would not mind if we postpone or if we adjourn at this stage until tomorrow morning.

10

ADV ABOOBAKER: Mr Chairman, I have no objections whatsoever.

CHAIRPERSON: Thank you. Then in that case let's adjourn until tomorrow morning, the witness is expected to come back tomorrow morning for cross-examination. Thank you.

15

SPEAKER: Sorry Mr Chairperson and Commissioner Musi, can I just apologise for interjecting at this time. Earlier on Mr Skinner and my colleagues on the other side Mr Aboobaker referred, and yourself Chairperson referred to the issue of classification of documents which might be used for the Commission. My instructions from the DTI is that the DTI in principle does not have any, if I might state it that way, objection in maybe putting out any documents which are already being discussed in any of the statements of the witnesses, the only hurdle maybe which we might have Chairperson, Commissioner, is that because of other parties

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which are also involved in this particular process it may be, it might be necessary to touch base with some of them.

We did in the past through the Department of Trade and Industry wrote letters to some of the legal representatives of these particular obligors and the answers have not been very clear. My colleagues, maybe they will also assist me in that. There were letters which were received where some of the obligors for instance from Agusta which said they wouldn't have a problem but they would like to meet the Commission to talk about the approach on how these documents would be used, so that in itself Mr Chairperson, Commissioner, it doesn't actually clarify the issue of whether they will agree that these documents be disclosed, their main concern is commercial confidentiality other than anything, so on that basis Chairperson and Commissioner Musi we are not as the DTI's side, there's no actually in-principle an objection in as far as disclosing any of the documents but because of the contracts themselves having been signed by different parties it might be necessary maybe just to touch base with some of those obligors and hear what they would say.

CHAIRPERSON: I suppose you can discuss that question with the evidence leaders and if you can't find each other, then you can come back to us. And you know, come back to us, we would want to know exactly who of the parties are involved and who of them are reluctant that that should be used in this

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Commission. Advocate Aboobaker, will that suffice for the time being?

ADV ABOOBAKER: Yes Mr Chairman.

CHAIRPERSON: Thank you. Then we'll adjourn until
5 tomorrow morning.

(COMMISSION ADJOURNS)