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CHAIRPERSON: Good morning. Can the witness confirm that he is going to tell us the truth?

DR RUSTOMJEE: I do confirm.

CHAIRPERSON: I think yesterday when we adjourned there was a request to cross-examine the witness, I can't remember which legal team it was.

ADV SOLOMON: Good morning Chair and Commissioner Musi. I wasn't here yesterday, my junior was, we did (indistinct) that we may wish to cross-examine the witness but we looked at the trans..., notes that were taken by my junior and the statement that he got sometime yesterday afternoon and we don't want to cross-examine the witness, there's no need for that.

CHAIRPERSON: Thank you. Any re-examination?

ADV ABOOBAKER: Good morning Chair.

ADV CHOWE: Good morning Chairperson and Commissioner Musi, the DTI wouldn't like to make any further re-examination of the witness. Thank you Mr Chairperson.

CHAIRPERSON: No re-examination?

ADV CHOWE: No re-examination.

CHAIRPERSON: Thank you. Dr Rustomjee, you are excused. Thank you.

ADV ABOOBAKER: Thank you Mr Chairman, the next witness is going to be called by my learned friend Mr Skinner, his name is Vanan Pillay.

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ADV SKINNER: Mr Chairman and Commissioner Musi, while the witness is taking his place may I just place on record that Mr Pillay is represented by Mr Peterson from Rooth and Wessels and he is present here today.

5 CHAIRPERSON: I'm sorry, you say he's represented by?

ADV SKINNER: By Mr Petersen from Rooth and Wessels and he is present today.

CHAIRPERSON: Mr Pillay do you confirm that the evidence that you are going to give is the truth?

10 MR PILLAY: Yes Your Honor thank you, I do.

**NOTE: Caucus.**

CHAIRPERSON: Mr Pillay, do you have any objections in taking an oath? I was made to understand that apparently what I said to you doesn't quite conform to the requirements of an  
15 oath.

MR PILLAY: No, I don't object.

**(Witness is sworn in.)**

CHAIRPERSON: Thank you.

ADV SKINNER: Thank you Mr Chair.

20

**WITNESS NUMBER 3 (DTI) : MR VANAN PILLAY (Hereinafter referred to as "MR PILLAY"), GIVES EVIDENCE UNDER OATH**

**EXAMINATION IN CHIEF:**

ADV SKINNER: Mr Pillay you have had a statement settled  
25 by your legal representative and signed by you on the

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15<sup>th</sup> of January 2014, is that correct?

MR PILLAY: Yes, that is correct.

ADV SKINNER: You have a copy of these?

MR PILLAY: Yes, I do.

5 ADV SKINNER: And you confirm your signature appears on the last page of that document?

MR PILLAY: That is correct Sir.

ADV SKINNER: Mr Pillay, as regards your qualifications you have a Bachelor of Science Degree in Chemistry and a  
10 Bachelor of Commerce, is that correct?

MR PILLAY: That's correct.

ADV SKINNER: And you also have a Masters in Engineering Business Management?

MR PILLAY: That's correct.

15 ADV SKINNER: You say in your statement that you were employed by the Department of Trade and Industry in March 1997 as a Chief Techno Economist.

MR PILLAY: Yes, that's correct.

ADV SKINNER: What does that position entail?

20 MR PILLAY: A Chief Techno Economist was the person in charge of the royalty agreements to be signed when people apply for taking money outside of the country when they have to pay for royalty agreements that they have signed with their obligors.

25 ADV SKINNER: You then state that in late 1998 you were

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appointed as a deputy director in the Industrial Participation Directorate?

MR PILLAY: That's correct.

5 ADV SKINNER: There will be evidence from another witness describing in more detail the structures but can you briefly explain to the Commission what is the Industrial Participation Directorate?

MR PILLAY: The Industrial Participation Directorate is the directorate responsible for managing contracts that have an imported value of more than US\$10 million, the contracts that any state entity might procure or sign with an overseas supplier, the Industrial Participation Secretariat then according to the NIPP programme which we heard about yesterday required a 30% obligation in terms of the NIPP guidelines.

15 ADV SKINNER: Is there a difference between the Industrial Participation Directorate and Industrial Participation Secretariat?

MR PILLAY: It's one and the same entity.

20 ADV SKINNER: You then state that in 2000 you were transferred to the post of director of the Electronic and Allied Industries Information and Communication Technology Sector Directorate within the DTI.

MR PILLAY: That's correct.

ADV SKINNER: What would that have encompassed?

25 MR PILLAY: That would have encompassed the policy

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and strategy for the sector, the sector had previously relied upon tariffs and tariff structures as the WTO changes were implemented, where the tariff structures are reduced within those industries the industry sector directorate was then transformed into the Information and Communication Sectors Directorate. My primary role was to manage a programme called The South African Information Technology Strategy Process and we developed at the end of my leaving the DTI a strategy document for the ICT industry so as to promote and assist the industry to grow more significantly from its current trajectory.

ADV SKINNER: You indicate in your statement that at the time you were appointed as deputy director in the Industrial Participation Directorate the SDPP process was well underway. Can you give the Commission some kind of indication as to what you recall by saying it was well underway?

MR PILLAY: That's correct. The process had started, the ARMSCOR had released their information to the bidders and the bidders had started consulting with the DTI prior to my assuming the post and the process of the initial request for information had gone out, they had received their initial briefings from the Department of Trade and Industry under my previous, under my predecessor and their SOFCOM had been established and my predecessor was the representative together with his senior that was Allan Hirsch and Vassi

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Ponsamy as detailed in the diagram presented by Mr Rustomjee yesterday.

ADV SKINNER: When you are referring to your predecessor who are you referring to?

5 MR PILLAY: Allan Hirsch, Chief Director, and Vassi Ponsamy, Director of Industrial Participation.

ADV SKINNER: You say in paragraph 5 of your statement that at the inception of your duties as the deputy director of Industrial Participation Directorate you were made aware of the  
10 broad list of categories of projects that had been approved by the DTI. Can I ask you, are you referring here to the SDPP projects or to the non-SDPP projects?

MR PILLAY: In the NIP Secretariat we had a list of projects which applied to most sectors, it wasn't specifically  
15 developed just to attract investment by the SDPP, however, the types of bidders that were bidding on the SDPP were bidders who had access to technology and investment relevant to most of those sectors. If I remember the list presented by Mr Rustomjee yesterday there was one on traction motors for  
20 electric motor vehicles. Now that proposal was developed by the allied and electric industry sector which I then later joined and that sector was purchasing a lot of transformers for the parastatals at the time and they were trying to attract companies like ABB and the rest who were non-defence at the  
25 time, so though they were non-defence type companies that

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were also bidding earlier before this process that list was also developed as a general list across the board being the prerogative and the priority of the sector directorates which generated through the industry sectors these particular projects, it was the South African requirement that the industry needed for at the time.

CHAIRPERSON: Advocate Skinner, I thought your question was simple and straightforward, you got a very long answer, I'm now lost to be honest with you, I don't know whether the answer is yes or no because the question was simple. Did these projects include some of the projects that were presented by the bidders who were involved in the SDPP? That was the question and then you got such a long answer you know, to be honest with you I got lost, I don't know whether or what the answer is to your question. Can you repeat the question again to the witness and let the witness be brief with his answer.

ADV SKINNER: Certainly Mr Chairman, I share the difficulty. Mr Pillay what I was asking is you refer in your statement to the fact that at the inception of your duties you became aware that there was a broad list of categories of projects that had been approved. If I understood your answer you were saying that this broad list of categories of projects that had been approved included both SDPP projects and non-SDPP projects, would that be right?

MR PILLAY: That's correct.

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ADV SKINNER: You then refer to the sector directorates and the Strategic Project Section headed by Mr Paul Jourdan, that reference to Mr Paul Jourdan, is that to the witness who gave evidence yesterday Dr Phillip Paul Jourdan?

5 MR PILLAY: That's correct. I apologise for my error in my statement.

ADV SKINNER: You indicate that the sector directorates and the Strategic Project Section defined the contents of the categories, can you explain more what you were referring to  
10 there?

MR PILLAY: Sorry, can you repeat that question?  
Sorry, can you repeat that question?

ADV SKINNER: Your statement refers to the sector directorates and the Strategic Project Section defining the contents of the categories of projects. Can you explain more  
15 what you are referring to there?

MR PILLAY: I'm referring to the list of 22 projects that Mr Rustomjee presented yesterday, that was the net effort of the sector directorates together with the Strategic Projects  
20 Division led by Dr Jourdan.

ADV SKINNER: And how were the contents of the categories defined?

MR PILLAY: The contents of the categories were discussed with the industry associations, the sector directorate  
25 heads having years of experience in the sector, also made

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proposals and from the industry associations and the sector directorates that information came forward.

ADV SKINNER: You indicate that you coordinated and facilitated this process, can you explain in more detail what your role would have been?  
5

MR PILLAY: My primary role was to have meetings with the sector directorate heads as well as Dr Jourdan and from there you would find the list and from there receive motivations as to why their projects are important and what sort of quantum and what sort of projects they will see as being beneficial to the economic growth of South Africa.  
10

ADV SKINNER: You refer in your statement to a number of projects that had been submitted by various bidders and evaluated by the DTI and in paragraph 7 of your statement you say that these projects were initially screened by a Business Plan Approval Committee. Who would have sat on that Committee?  
15

MR PILLAY: The sector directorates, the heads of the sector directorates who had direct knowledge of the particular area, the Industrial Participation Secretariat representatives.  
20

ADV SKINNER: And how does that screening take place? Obviously they were interested in knowing whether the projects would be viable, was there anything that was involved in the screening?  
25

MR PILLAY: The viability, the level of investment, the

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number of jobs created and also the areas where the projects were destined to take place from the location point of view was also important to the sector directorates to evaluate whether the viability of the project in terms of locality would be correct.

5 ADV SKINNER: You the indicate in your statement that these projects having been screened by the Business Plan Approval Committee were brought before a multi-disciplinary external advisory committee which you chaired. What was the name of that Committee?

10 MR PILLAY: That was the Industrial Participation Control Committee which had members from different investment desks which were the foreign desks, if a particular project was from the US, the US representative will be present and we had a seat for the Department of Treasury.

15 ADV SKINNER: And your statement indicates that you presented the projects to this IPCC.

MR PILLAY: It would be the member of the Industrial Participation Secretariat that reviewed the plan together with myself.

20 ADV SKINNER: You also commented, you say:

*“These projects were subsequently scored at the Senior Management Committee chaired by the director-general”.*

Are you aware how that scoring was structured, what happened there?

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MR PILLAY: The evidence led by Dr Jourdan, the PPGJ4 Chart was the primary information collated from the business plans that were presented by the bidders together with a synopsis of what the plans meant to achieve and what areas they were in, so the quantum and the strategic importance of the project was defined in the summary and this was presented to the Committee.

ADV SKINNER: And when you refer to “the projects being scored” was there a formal score rating or you are simply referring to the projects being assessed as to whether they met the criteria or not?

MR PILLAY: There was a scoring in terms of the quantum, the level of offset being offered as well as the strategic importance of the project was scored by specialists on that Senior Management Committee.

ADV SKINNER: And what would the result have been of the scoring, once the score is complete what would the committee then do with the score?

MR PILLAY: The score was then tabled to SOFCOM.

ADV SKINNER: You then indicate that the SDPP bidders were also entitled to submit projects provided the key requirements of Industrial Participation were met and one of them that you stipulate in your statement is the creation of jobs. Now the evidence yesterday was in respect of the SDPP projects the creation of jobs was not a criterion which gave

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rise to credits. Was it still important from your statement that that criterion had to be met before the project would be approved?

MR PILLAY: There are two processes in this SDPP  
5 process, the first process involved the nine criteria prior to the establishment of the IONT. During that stage the creation of jobs was of interest but was not scored, not included in the contract, final contract either, however, the salaries and wages assessment is part of the nine criteria so that was why I in my  
10 statement mentioned the creation of jobs as an important residue from the previous nine criteria into the newly established three criteria. Or not sorry, not newly established, (indistinct) but an emphasis on performance enhancement and contracting was decided by the IONT to be  
15 easier on the three criteria which was the investment, the exports and the sales.

ADV SKINNER: I just want to make sure I understand your answer. The evidence has been that as a result of the IONT process the SDPP projects would only gain credits in three  
20 categories, that is for investment, export sales and domestic sales, they would not get credit points for creation of jobs. Now I'm not quite clear what you are saying in your statement here with reference to the creation of jobs. Was that still of importance even though credit wasn't to be given for that, or  
25 how is that to be played?

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MR PILLAY: This statement is relevant to the phase prior to IONT when the nine criteria was still in place, so therefore the reference to the creation of jobs and the reference to salaries and wages in the income state..., in the provisional income statement provided by bidders during their business plan submission.

ADV SKINNER: Thank you. You then indicate that:

*“It was contemplated in the Industrial Participation Agreement ...”.*

I just want to clarify what you were referring to as the Industrial Participation Agreement.

MR PILLAY: Apologies again, it meant to read NIP agreement, NIP agreement with the bidders which was subsequent to paragraph 8. In the NIP agreement which is the process post IONT the NIP mechanism was proposed in the agreement with the bidders which is the NIP agreement under the umbrella agreement in the main agreement with the bidders.

ADV SKINNER: Thank you. You indicate that in terms of that an agency would be formed which would be referred to as the NIP implementing mechanism to oversee and manage the SDPP NIP projects, was such a NIP implementing mechanism formed?

MR PILLAY: The NIP implementing mechanism was the Industrial Participation Secretariat at the time prior to the IONT and it became the implementing mechanism post the

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SDPP agreements when it formed the NIP agreement, however, there was a slight modification to the Secretariat in that there was an addition to the secretariat by the seconded individual, at the time it was a UK representative, Mr Tim Racen, so that  
5 was meant to boost the experience and depth of the Secretariat and give us some international experience on a daily basis.

ADV SKINNER: Was the Industrial Participation Secretariat then formally crea..., well, formed or appointed as the NIP implementing mechanism or did it simply carry out that  
10 function?

MR PILLAY: It simply carried out that function with the modification of having the seconded person in our midst.

ADV SKINNER: You then refer to the IONT, the International Offers Negotiating Team and your statement  
15 indicates that expectations had been raised at provisional discussions which had taken place relating to the credits which would be awarded in future contracts with bidders. What are you referring to there?

MR PILLAY: I'm alluding to the fact that the business  
20 plan proposal as in paragraph 7 which came through to us was the initial discussions relating to the number of credits that were awarded or going to be awarded once approved, once the business plan was approved. Post that there was a change basically when the IONT decided that the total credits will be  
25 only measured on three criteria, investments, exports and as

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local sales.

ADV SKINNER: So, if I understand you, you are indicating that discussions had already been held with the bidders where they were expecting to get credits on the nine criteria that had  
5 existed prior to the change brought about by the IONT?

MR PILLAY: That's correct.

ADV SKINNER: You were present yesterday when Dr Jourdan gave his evidence and he referred to various spreadsheets which he believed had been compiled by you, you  
10 heard that evidence did you?

MR PILLAY: That is correct.

ADV SKINNER: Was that correct that those spreadsheets that he has annexed to his statement were prepared by you?

MR PILLAY: You're referring to the PPJ4 evidence  
15 which relates to the quantum of offer by the bidders. The spreadsheets, individually each table in this spreadsheet was compiled by each individual head of a team, I think there were four teams or three teams, I need to stand to be corrected. The team leaders compiled each table and presented each table  
20 to me, I then put the tables together into one format and presented it to the upper management.

ADV SKINNER: Thank you. One of the aspects that was touched upon yesterday was what information would have been made available to the-then Minister ...

25 CHAIRPERSON: Advocate Skinner we are lost, both Judge

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Musi and I were trying to get the documents that you are referring to, this slide.

ADV SKINNER: I beg your pardon?

5 CHAIRPERSON: Give us a chance to try and get hold of those documents, we don't know which documents you are referring to.

ADV SKINNER: Mr Chairman the witness is referred to the evidence of Dr Jourdan where he had annexed to his statement in the bundle of Dr Jourdan's statement certain spreadsheets  
10 which appear from page 30 to page 36 of Dr Jourdan's statement as Annexure "PPJ4" and what I was asking the witness is the evidence of Dr Jourdan was that he said he understood that these statements or spreadsheets had been prepared by the witness Mr Pillay.

15 CHAIRPERSON: The spreadsheets were prepared by this witness?

ADV SKINNER: The witness has indicated that he didn't prepare them himself as the primary person, others prepared them, they were then passed onto him and he, as I understand  
20 it, checked them before approving them, would that be correct Mr Pillay?

MR PILLAY: That's correct.

ADV SKINNER: Now Mr Chair, the question was simply to identify the spreadsheets that Dr Jourdan had referred to in his  
25 evidence as being approved of by this witness. Mr Pillay I

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started putting to you that one of the aspects that was touched upon yesterday was information that would have been given to the-then Minister of Defence, the late Minister Modise when he made his announcement of the SDPP in Parliament and he referred to the expectations of what would be generated by way of investment and job creation. These spreadsheets that you have been referring to and that Dr Jourdan had annexed, do you know whether those would have been forwarded to the Department of Defence or not?

5  
10 MR PILLAY: As I understand the SOFCOM was represented at, they had representatives of the Department of Defence and SOFCOM, so through that mechanism they would have received the primary information that we submitted, that I submitted through to them, so those jobs, there are a list of job numbers if I recall that table "PPJ4", I don't have it in front of me but that has a list of jobs on there that was presented to the Department of Defence.

15  
20 ADV SKINNER: You continue in your statement and you refer to prior to the IONT being formed you say bidders were involved in what you refer to as "horse trading" with the DTI, that they would say if we perform X, then we want Y in terms of credit. We have heard that even prior to the SDPP projects there was a schedule or a checklist of what credits could be awarded in various categories. As I understand what you are  
25 saying in the statement is that that wasn't applied rigidly, there

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was still a case of the bidders would say I want this number of credits and a negotiation would take place. Have I understood you correctly?

MR PILLAY: Yes, the business plan proposal process is a continuous stream of business plans that come through to the DTI on a continuous basis to the Industrial Participation Secretariat, so as the bidders, whether it's defence or non-defence bidders introduce business plans to us we evaluate them and give approval to that particular type of project, only simply because the existing business plan sometimes fail before they even start so the door was open to continuously make proposals in terms of new business plans and they would of course try to get maximum benefit on each plan that they would submit.

ADV SKINNER: I don't think you've quite answered what I was asking is that there's been evidence about the NIP guidelines which contained a list of the nine categories or criteria along with what credits could be awarded, some of them one-for-one, someone for two and slight variations. What I'm asking you is in relation to the list of criteria in the NIP guidelines, if I understand your statement you were indicating that the bidders would still contend that they wanted more credit than those guidelines provided, would that be right?

MR PILLAY: Yes, that's correct. Areas like technology transfer for example was always a contentious issue as to the

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value and how much credit should be actually awarded to them.

ADV SKINNER: So, as the name implies those were merely guidelines, it wasn't a rigid structure that could not be altered.

MR PILLAY: That's correct.

5 ADV SKINNER: You then indicate in your statement that when the IONT was formed the issue of affordability was a key issue as to whether South Africa could afford the procurements contemplated and you go on to say that:

10 *"With the full knowledge of all the bidders the credit methodology was changed".*

Now what was the extent of your personal knowledge that you were able to say that all the bidders were aware that there was a change in the credit methodology?

15 MR PILLAY: We systematically engage with each of the bidders in the negotiation as IONT and at the stage that IONT had decided that the best method forward is to simplify the multiplier mechanism and the managing of what would be offered the bidders were informed that we are moving to a new basis which is the non-multiplier base.

20 ADV SKINNER: Alright I'll clarify that in due course, I just want to know how is it that you personally were aware that all the bidders were so informed?

MR PILLAY: I was in each of the meetings with the bidders.

25 ADV SKINNER: Now what I wanted to clarify is when you

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were referred to multiplier what are you referring to?

MR PILLAY: I'm referring to the nine criteria and within the nine criteria investments had a multiply of two and exports had a multiply of two. So, the entire multiplier mechanism was a two-tier mechanism where you would get credits even in areas which were not going to be counted by the three criteria that we then specified.

ADV SKINNER: And what you then indicate in your statement is that the credit methodology was changed so that investment would be calculated on a non-multiplier basis, in other words one credit for each unit of currency invested.

MR PILLAY: That's correct.

ADV SKINNER: And you indicate that that was well-known to all the bidders and you sat in on the meetings yourself?

MR PILLAY: That's correct.

ADV SKINNER: And that same ratio of one-for-one you indicate applied also to exports and local sales.

MR PILLAY: That's correct.

ADV SKINNER: And you conclude that paragraph by drawing the conclusion that therefore the standard guideline for NIP that had been in place would no longer apply in respect of the credit methodology for the SDPP projects.

MR PILLAY: That's correct.

ADV SKINNER: In paragraph 16 of your statement you referred to the affordability report and you reflect that top level

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management at DTI were also involved in discussions with Treasury on this issue. Can you just explain what you mean by the reference to “top level management at DTI”?

MR PILLAY: That’s referring to Dr Jourdan.

5 ADV SKINNER: And at the time he was the deputy director general.

MR PILLAY: That’s correct.

ADV SKINNER: You record in paragraph 18, the numbering seems to have gone a little astray there that there was a strategy to increase the level of performance by the preferred  
10 bidders and that given that objective the DTI expected performance in full by successful bidders of the obligations under the NIP contracts.

MR PILLAY: Yes that is correct Sir, we wanted to make  
15 sure that the quantum we were going to get was actually what is reflected in the one-to-one, that’s why the multipliers are removed.

ADV SKINNER: You clearly had personal knowledge yourself with this change because you’ve testified to it but you  
20 go further in your statement to say in paragraph 20 that:

*“When the contracts were signed the IPS ...”.*

That’s the Industrial Performance Secretariat understood that there were to be no multipliers.

MR PILLAY: That’s correct, and we emphasise the fact  
25 because we already had in the system credits which were

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awarded prior to this based on our strategic partnership agreement which we had signed with some of the bidders which had a multiplier included and this multiplier needed to be removed from that credit methodology.

5 ADV SKINNER: So the knowledge that there were to be no multipliers was well-known and on a broad basis in the IPS.

MR PILLAY: That's correct.

ADV SKINNER: You indicate in paragraph 22 that you personally were under the impression that the removal of  
10 multipliers was not cast in stone and there remained a residual discretion to award multipliers. What are you meaning when you refer to a residual discretion?

MR PILLAY: The umbrella agreement started with the ethos that the guidelines, objectives were included into the NIP  
15 agreement with the bidders and the objectives in that agreement were running parallel to the nine criteria that we had specified in the initial guideline, so perhaps we didn't have enough time to adjust these objectives sufficiently but the fact that the nine criteria objectives were in that agreement for me  
20 gave an indication that we were going to look at projects strategically over a seven year period, but we were not going to entertain that with the bidders initially primarily because we wanted to maximise their performance.

ADV SKINNER: In your last answer you said for me, do I  
25 take that this is your personal view set out in paragraph 22 or

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was this the policy of the DTI as far as you were aware at that time?

MR PILLAY: As Dr Rustomjee detailed yesterday we as the DTI agreed to the changes by the IONT in order to fast track the process and also maximise our management ability to manage a greater offering by the bidders, however, there was still the imperative of items like what was referred in the guideline initially as PDI which then became BEE, so we had to include the ethos of what the economic policy was in our contracts as an overarching indication of what we would expect over the seven years.

CHAIRPERSON: I'm sorry Advocate Skinner maybe let me just try and understand what the witness is saying. I thought initially he was saying that multipliers were not allowed, that's what I seem to have understood from him. Now when he comes up and say that: "I was under the impression at the time that the removal of multipliers was not cast in stone and there remained a residual discretion to award multipliers", is that not a contradiction in terms?

ADV SKINNER: With respect yes Mr Chair, which is why I was asking the witness to comment as to whether that was his personal view or the policy of the Department at the time but I will try and clarify that and expand on it.

CHAIRPERSON: If you can ask him to clarify that and also clarify that also in relation with the National Policy and the

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guidelines because he does refer to them here and those National Policy and guideline, they say something different and he comes and say that the multipliers were not allowed at all, I mean the next (indistinct) contradicts the previous statement.

5 I'm a bit confused, maybe you can just ask him to try and clarify that for us.

ADV SKINNER: Certainly Mr Chairman. Mr Pillay let's approach it from this point of view, we know that as a result of the IONT there was a change and that the nine criteria that had  
10 been used for granting credits in projects was not to apply to the SDPP, there would only be three criteria for granting credits that is investments, export sales and domestic sales, is that correct?

MR PILLAY: That's correct.

15 ADV SKINNER: We know too that the contracts that were signed include an expressed section of credit methodology where it refers to one credit to be granted for each unit of currency that's been invested, is that correct?

MR PILLAY: Yes, that's correct.

20 ADV SKINNER: You have then given evidence that it was very clear that multipliers as a result of the IONT had fallen away and they were not to be applied to the SDPP projects, have I understood your evidence correctly?

MR PILLAY: Yes, that's correct.

25 ADV SKINNER: And then you come to the paragraph I was

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putting to you where you say that despite what the contract says and despite the fact that there was this change you personally were of the view that the removal of multipliers was not cast in stone and that therefore if I understand you, the provisions of the contract could simply be disregarded, would  
5 that be correct?

MR PILLAY: No that's not correct, I didn't say disregard it. The agreement is clear, it's a one-to-one credit, however, the guideline which we had used for years was still,  
10 the remnant of that was still in the process, so it is my personal opinion, not that of the contract, the contract is absolutely clear and we managed during my short time there as per the contract, but it is my long term view, as I express my long term view of a seven year period that this type of change  
15 could be envisaged based on the objectives that were stated in the NIP umbrella agreement, so it is my personal view based upon those objectives.

ADV SKINNER: I'm not sure whether that clarifies Chair, your concern.

20 CHAIRPERSON: To be honest with you it don't, but we can skip this point, maybe another witness might try and explain that. What I can't understand is if you say that it was not allowed and the next moment you are saying you could use it under certain circumstances, it's a clear contradiction in terms.  
25 So, even his latest explanation (indistinct), I don't understand

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it but then maybe we can ask maybe another witness, they might try and clarify during cross-examination or something of that nature, it might become clearer to me, up to now it's not clear to me what the witness wants to say.

5 ADV SKINNER: Yes, I have the same difficulty Mr Chair, I have no further questions for this witness.

CHAIRPERSON: Sorry?

ADV SKINNER: I have no further questions for this witness.

10 CHAIRPERSON: Okay. Any cross-examination of the witness?

ADV SNYMAN: Chairperson, I speak on behalf of Lawyers for Human Rights representing Mr Feinstein, Holden and Van Vuuren. May I make a request that we adjourn until after tea, at this stage we have a preliminary view that we do wish to cross-examine this witness but I just wish to clarify a point with the evidence leaders and once I've done so we would be ready to proceed after a tea adjournment.

20 ADV SKINNER: Chair I have no difficulty with that, there are aspects we could certainly discuss with my learned friend and we have been moving fairly quickly in advance of our estimation of time, so it's not that we're lagging behind.

CHAIRPERSON: Okay we'll adjourn until, let's say 11h20 or 11h25 and I hope by that time you will be ready to cross-examine.

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ADV SNYMAN: Thank you.

CHAIRPERSON: Thank you, we'll adjourn.

**(Commission adjourns.)**

**(Commission reopens.)**

5 CHAIRPERSON: Can the witness confirm that he is still under oath?

MR PILLAY: I do.

CHAIRPERSON: Thank you.

ADV SNYMAN: Thank you Chairperson. I refer to the  
10 Terms of Reference 1.5 and 1.6, I understand that a decision has not yet been taken whether this witness will be recalled for Phase 2 and in view of the Commission that it is preferable not to recall witnesses to give evidence twice I'd like to seek guidance from the Commission whether it will permit a line of  
15 questioning based on Phase 2.

CHAIRPERSON: Maybe let me just understand you. Do you want to cross-examine?

ADV SNYMAN: That's correct.

CHAIRPERSON: And if my understanding is correct you can  
20 only cross-examine the witness on the basis of what he has testified about.

ADV SNYMAN: That is correct, but also on what he has failed to testify about.

CHAIRPERSON: Excuse me?

25 ADV SNYMAN: And also on what he has failed to testify

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about.

CHAIRPERSON: Unless if at all you put evidence before us which will justify the asking of questions which have got nothing to do with the evidence that they led. You are correct,  
5 we are reluctant to make the witness to be recalled but if there is a good reason for recalling that witness we will obviously recall him. In at the relevant time you put evidence before the Commission which necessitates the recalling of a particular witness that would definitely be done. That rule is not cast in  
10 stone, we say you are right is that preferably we'd want to, we'd prefer not to recall the witnesses unless if at all the circumstances call for us to recall the witness because you might start asking this witness about something else that he is not prepared on, something that relates to documents that we  
15 do not have and that is going to make the proceedings to run very, in a very awkward manner.

ADV SNYMAN: Chairperson, our clients when they testified before this Commission and as they have set out in their submittance to the Commission will be making extensive  
20 allegations that are related to Phase 1.5 and 1.6 and the evidentiary framework for doing so will be drawn out in their evidence when they come to testify, so in those circumstances I would like to place on record that our clients do wish to reserve the rights to recall this witness at that stage as the  
25 questions pertain directly to Phase 1.5 and 1.6 questions, not

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evidence that has been brought up in the examination in chief but is relating to evidence which is widely reported on in the media and in the public knowledge.

CHAIRPERSON: I understand what you are saying. If at all  
5 at that time there is credible evidence which requires the Commission to recall one of the witnesses who has already testified I'm sure that will be done, but then it's not automatic, you will have to make an application at that stage. Thank you.

ADV SNYMAN: Thank you.

10 CHAIRPERSON: Do you have any questions to the witness in as far as his evidence that he has tendered before this Commission is concerned?

ADV SNYMAN: No Chairperson.

CHAIRPERSON: Thank you. Any re-examination?

15 ADV SOLOMON: Sorry Chair, we would like to ask some questions for clarification purposes. Would that be in order Chair?

CHAIRPERSON: That's fine.

**CROSS-EXAMINATION:**

20 ADV SOLOMON: Mr Pillay I'll be referring to aspects of the statement given by Dr Rustomjee yesterday. Do you have this bundle in front of you?

MR PILLAY: No, I don't but I can get it.

ADV SOLOMON: Will you indicate to me when you have it?

25 MR PILLAY: Yes, I will. Thank you. Which paragraph?

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ADV SOLOMON: Page 8 of his statement,

**NOTE: Note that Advocate Solomon is almost completely inaudible as he is not making use of a microphone.**

CHAIRPERSON: Sorry Advocate Solomon, you said page 8?

5 ADV SOLOMON: Chair yes, it's page 8, it's an index to the statement of Dr Rustomjee and it is paginated page 8, if you would Commissioner Musi, would indicate if we are on the same page?

CHAIRPERSON: Thank you.

10 ADV SOLOMON: Do we have it Chair and Commissioner Musi?

CHAIRPERSON: Yes.

ADV SOLOMON: And do you have it Mr Pillay?

MR PILLAY: Yes, I've got it.

15 ADV SOLOMON: Thank you. Now this table is described as a basis upon which the annual ..., "a basis upon which the NIP credits were calculated from the annual financial statements in respect of investments made in accordance therewith". Now where did this table come from? I assume it's from some or  
20 other policy document prepared by DTI or individuals within DTI. Can you shed some light on that?

MR PILLAY: Yes, if I remember the reference correct it's page 133 of the bundle, I don't know how yours is marked but if you've got page 133 it's the NIP guideline which is the  
25 policy document as well. On page 9 of that document ...

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ADV SOLOMON: Chair, do you have that, that bundle?

Chair if I may assist I think the witness is referring to what is being described as the General Bundle. I'm not sure he's got the correct page number. If I understand correctly he's referring to page 113 of the General Bundle.

MR PILLAY: Sorry, page 133, I was mixed up.

ADV SOLOMON: We must place on record Chair we weren't favoured with a copy of that bundle yesterday, I'm advised by my learned friend Advocate Masilo who was here yesterday. It's also under Annexure "B" of the statement by Masizakhe Zimela, Annexure "B". I'm afraid Chair we don't have that statement, we haven't been favoured with a copy of it of that statement.

CHAIRPERSON: I suppose he's referring to a witness who is still coming, who you know in my honest opinion I think this (indistinct) because that witness deals with the National Policy, he deals with the guidelines, we will not be having these difficulties if you had started with that witness.

ADV SOLOMON: I probably wouldn't be asking these questions if I was aware that he was still to come.

CHAIRPERSON: I'm sure.

MR PILLAY: Can I answer your question in the meantime? It comes from the policy guideline from DTI, it's exactly the same thing.

ADV SOLOMON: Yes, to make some sense of that I would

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need to see the document you're referring to Sir. I don't want to unnecessarily delay proceedings but I suppose I would need to see a copy of the General Bundle to which you refer. I have your answer, obviously I'd just like to just have the policy document in front of me. I've got a document headed Annexure "B" and it seems to emanate from the Department of Trade and Industry, it's the National Industrial Participation Programme. Perhaps you could just indicate Dr Pillay with reference to the numbers at the bottom of the page of this document what page you're on.

MR PILLAY: 9.

ADV SOLOMON: And what page is that in the bundle so that the chair and Commissioner Musi can be with us? Mr Chair while the witness is finding that my own junior has managed to locate an extra copy of the General Bundle and it would be easier if I give that to my learned friend Mr Solomon as (indistinct) the document we all have.

CHAIRPERSON: Maybe let me find out from him whether I've got all the documents here. When you say page 9 is it page 9 of which volume, or page 9 of whose statement?

MR PILLAY: Sorry, I'm just referring to a new bundle, I'll give you the page reference. It's page 112 of the General Bundle, it's nobody's statement but it's the general bundle containing, it's called General Bundle DTI-1.

ADV SOLOMON: Chair, Commissioner Musi do you have it,

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it seems to be at page 112 of this General Bundle 1.

CHAIRPERSON: Thank you, we are there already.

ADV SOLOMON: Yes, so Mr Pillay this document which starts at page 101, is that the policy document and would you  
5 just indicate to the chair when that policy was implemented or put into place?

MR PILLAY: If I recall correctly the policy was approved in 9 April 1997 by Cabinet, that was the first draft of this document, it's been upgraded in format since the principles  
10 remain the same.

ADV SOLOMON: Now if we go to the statement, and again I hope you have it in front of you, of Dr Jourdan, and I hope that the Chair and Commissioner Musi have that statement. Let's just start with you Mr Pillay, do you have that, do you have Dr  
15 Jourdan's statement, we're not interested in the annexures to that statement. Do you have it Chair, Commissioner Musi?

CHAIRPERSON: Yes, we've got the statement of Dr Jourdan.

ADV SOLOMON: Now I wanted to take you to Chair, Commissioner Musi to the page 25 and following, do you have  
20 that Mr Pillay? Well I guess ..., is it well, is it the square number? My learned friend here says I need to refer to the square number, that's then the square block and that's page 57.

25 MR PILLAY: Thank you, I've got it, thank you.

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ADV SOLOMON: Now just looking at the Project Team members, perhaps you could just explain for clarification purposes, we know there would be in the pages that follow page 57 that runs up to page 60 we have the various teams and

5 I understand Dr Jourdan indicated that his name shouldn't have appeared in certain places and I suppose that's the reason why it seems to be crossed out in the annexure to his statement, but they could see that you are a member of each of the teams with various others in respect of each of the acquisitions

10 forming part of the SDPP, is that correct?

MR PILLAY: The statement is partially correct, however, the, there's a space between ... Economic Evaluation Team there's a space between the Paul Jourdan and myself. The first set of four names reflect the one level, higher

15 management level team of chief director and above and the team below me, below my name and below is director level and below which is my, the Industrial Participation Secretariat, so what we have there in the Economic Evaluation Team we have the Secretariat headed by myself and then we have the higher

20 level team headed by the director general Dr Rustomjee including my boss Allan Hirsch and the team.

It's possible on the day that the team sat the records for the Joint Investigation Team will reveal what the minutes of those meetings were, I don't have those minutes

25 with me, but perhaps on that day Dr Jourdan wasn't present

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because he travels around, travelled around quite a bit during that time with his IDZ Project.

ADV SOLOMON: Alright Sir, but you confirm that you at least were a member of each of the teams at lower level that would involve the evaluation of the various acquisitions from a  
5 NIP point of view.

MR PILLAY: Again we've got to distinguish between the collation of information from business plans and the process of evaluation. The Industrial Participation Secretariat receive  
10 business plans, remove the appropriate numbers according to the policy, we put it into the presentation called PJJ4 which was a table that the teams prepared and then we presented these together with a list of projects to the Economic Evaluation Team higher level.

ADV SOLOMON: Could we just go to page, this seems to only have a single number Chair, Commissioner Musi, but page  
15 31 and following goes up to page 36. Do you have it?

MR PILLAY: Yes thanks, I have that, that is the Industrial Participation Secretariat's report on packages  
20 received from ARMSCOR.

COMMISSIONER MUSI: I'm lost. Page 31 of what?

ADV SOLOMON: It's page 31 of the same bundle Chair, Commissioner Musi, the index (indistinct) Jourdan's statement or rather the annexures to his statement and it's the documents  
25 that form part, it's ... It's five or six pages on from where we

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were, this is where block 57...

CHAIRPERSON: Page 31 and there's only one number there  
nè?

ADV SOLOMON: There's only one number. Do you have it  
5 Chair, Commissioner Musi?

CHAIRPERSON: Yes.

ADV SOLOMON: Now if we just look at these, you say this  
was prepared by the Secretariat, you, as I understood it you  
didn't personally prepare the information but this was sent up  
10 to you, is that correct?

MR PILLAY: Yes, we had individual teams headed by  
those names on my list, those individuals extracted the  
numbers on the business plan, presented them in this format, I  
then put the format together, checked the numbers on a sample  
15 basis and then presented it.

ADV SOLOMON: So if we could just try and understand  
these tables just for clarification purposes to give assistance  
to the Commission. If we look at page 31 the equipment, the  
Corvettes, so this relates to the Corvettes that were acquired,  
20 could you just indicate to the chair and Commissioner Musi that  
the order, is that in the order of ranking that they appear there,  
we have German, Spain, France, United Kingdom and then the  
names of the individual bidders that appear next in the second  
column.

25 MR PILLAY: Yes, it's been a while back but if I look at

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the other tables up to page 34 the ranking is from the highest to the lowest.

ADV SOLOMON: Thank you. And if we look at the categories, the first column is "Company", the second is "Bidder" and then you have the third NIP percentage and we have for the GFC 322%, for Bazàn Spain 387%, France DCM International is 186% and then GC Marine for the UK 48%. What do those percentages represent?

MR PILLAY: If you will recall, if you, you were not here giving evidence yesterday but Dr Rustomjee detailed the Industrial Participation Policy. Those numbers reflect the percentage as a percentage of the contract price, so the offer by NIPP policy is 30% of contract value to be offered as NIP, in this case it was 10 times that by two of the bidders, which is 300%.

ADV SOLOMON: So it was approximately three times the contract price, is that correct?

MR PILLAY: That is correct.

ADV SOLOMON: I'm sorry, I didn't get the answer?

MR PILLAY: That's correct.

ADV SOLOMON: Then the next column "Investment Use Dollars" in terms of thousands, those figures that appear there, could you just indicate to the Commission what they represent?

MR PILLAY: They represent the investment values consolidated from the various business plans that were

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submitted.

ADV SOLOMON: And am I correct in assuming that that would have included the multipliers, perhaps the 3, 2, 1 multipliers that we've heard from the evidence yesterday?

5 MR PILLAY: I can't recall whether the multipliers was included there or not but my assumption is that if we apply the income statement I referred to you on the previous page 58, on 57 of the other document, by that format it should reflect the investment in Dollars according to that number but that needs  
10 to be clarified.

ADV SOLOMON: Then the next column is "PDI Ownership Average", could you just indicate how that percentage was calculated?

MR PILLAY: Again that will go back to the spreadsheet,  
15 the income, provisional income statement and that numbers would come from there on each of them.

ADV SOLOMON: Sorry, I didn't get the last bit?

MR PILLAY: I say that would come from each plan consolidated coming up to that percentage.

20 ADV SOLOMON: We don't seem to have the spreadsheets, should we not have the spreadsheets just to make more sense of this summary?

MR PILLAY: Sorry, I can't comment, I don't have the spreadsheets in my possession.

25 ADV SOLOMON: Alright, then moving on, "Number of Jobs",

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can you just indicate to the Commission what that category represents?

MR PILLAY: That category again would come from the column called "Salaries and Wages" and the equated number of jobs to those salaries and wages from those income statements.

ADV SOLOMON: And then finally "Export Revenues" determined in terms of US Dollars, the thousands?

MR PILLAY: Again those would come from the same spreadsheets and whether they are multiplied by 2 pre-empting your question I would not have clarification without the numbers in front of me.

ADV SOLOMON: Could we just ... Don't close that, just look at the other pages that follow, could we just go back to page 8 of Dr Rustomjee's statement that we had a look at earlier on and which you indicated had come from the policy document of DTI which have been formulated in its original iteration in 1997. Do you have it?

MR PILLAY: No, but I've got page 112, if it's not the same then we can discuss it but I have 112 in front of me.

ADV SOLOMON: Chair, Commissioner Musi do you have the page 8 of this statement of Dr Rustomjee?

CHAIRPERSON: It's paragraph 18 and 19.

ADV SOLOMON: Yes, it appears to be paragraph 13 of that statement, (indistinct) in paragraph 13 page 8. Do you have

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that Chairperson?

COMMISSIONER MUSI: Page 8?

ADV SOLOMON: Page 8. It's paragraph 13 although the paragraph number doesn't appear on that page, it appears on the page 4. It's a table that we looked at earlier on.

CHAIRPERSON: Thank you, I've got that. Thank you. Thank you.

ADV SOLOMON: Now if we can just try and marry the categories that appear on page 8 of Dr Rustomjee's statement and page 31 in the annexure to Dr Jourdan we can find a category of investment which we find three from the bottom of the table, of the larger table, is that correct? Does that equate to the first category of the NIP percentage? So, it's the fourth column on page 31 headed "Investments US Dollars", does that equate to the third last category the foot of page 8?

CHAIRPERSON: I'm sorry Advocate Solomon, can you repeat the question?

ADV SOLOMON: Chair, if we look at page 8 at the table the third last category of that table which appears above "R&D Expenses", do you have it Chair?

CHAIRPERSON: Yes.

ADV SOLOMON: That (indistinct) investment. If we then go to page 31 which you should have open at the same time that's to the statement of Dr Jourdan, the fourth category, fourth column is headed "Investments US Dollars" per thousand, and

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I'm enquiring from Mr Pillay if that fourth column is the equivalent of the third last column on page 8.

MR PILLAY: The number would have been derived from the income statements on page, the accompanying page in the policy document which is page 10 of, I said it was 113 previously. So the information from page, equivalent on page 113 would have been presented to us and that number would have been taken off there, which would already have been multiplied by two according to this income statement.

5  
10 ADV SOLOMON: So then just for the record can we then confirm what I earlier asked that the multiplier had been applied at that point in time and the factor is 2? Is that correct?

MR PILLAY: Yes, I ... You know it's been a long time, so my recollection is that the methodology that would be used would have been to extract information from an income statement in a similar manner and the team would have checked it and multiplied by two, but if this information was requested in the format I'm not sure, it does not say including multipliers on this table, so I need, that needs to be checked before I commit to that, it's either x2 or excluded, but from the methodology that we used it would be that whether in fact the number represents a x2 number, I would need to check that.

20  
25 ADV SOLOMON: Alright, if we could just look at the next, moving on at page 31 Chair, Commissioner Musi, the next

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column is headed "PDI Ownership (indistinct)", that's on page 31, that's the fifth column from the left, do you have it Chair, Commissioner Musi?

COMMISSIONER MUSI: Yes.

5 ADV SOLOMON: And that would seem to (indistinct), am I correct, to historically disadvantaged individuals that we find, it's the fourth last column on page 8.

MR PILLAY: That's correct.

10 ADV SOLOMON: And then the next you've got a number of dots, the second last column on page 31 and that would be the third column on "Job Creation", a one pager, is that correct?

MR PILLAY: That's correct.

15 ADV SOLOMON: And then the last column "Export Revenue", that, would that relate to the second column on page 8 "Export Promotion"?

MR PILLAY: That's correct.

ADV SOLOMON: Now the other factors, categories contained on page 8 and also contained in the policy document, were they not scored?

20 MR PILLAY: They were not scored for the purpose of presentation to, in this format. However, if there was a claim for technology transfer and there was a value given and verified the technology value would be included in the NIP percentage, so the total number of credits that were, totalled  
25 up in terms of this methodology would be a reflection of the

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percentage, if the technology was basically seen to be appropriate or the correct value was given. The same applies for R&D.

ADV SOLOMON: Just so that Chair, Commissioner Musi to follow you, those are the last two categories on page 8 of the column. Chair, Commissioner Musi, you will see reference to R&D expenses and then technology transfer.

CHAIRPERSON: Yes.

ADV SOLOMON: Is that correct Mr Pillay?

MR PILLAY: That is correct, but I must be given the option that this was more than 10 years ago, so my recollections are somewhat vague but I'm recalling as we go.

ADV SOLOMON: Then I'm almost finished but I just want to ask this question, I assume that there was a value system that was in existence which was used to derive the scores that we see summarised on page 31 and following.

MR PILLAY: Yes, the value system was the line criteria and the spreadsheet that appears on page 10 of that guide which is number, page 113 if you turn over from 112.

ADV SOLOMON: Sorry, could you just repeat that, I'm at 112, what would you say about page 113?

MR PILLAY: Page 113 is a reflection of the detailed calculation which will give the NIP percentage and the total value, part of the value system.

CHAIRPERSON: I'm sorry, page 113 of what?

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ADV SOLOMON: Chair, Commissioner Musi, that's the file, it's a separate file and it's headed "Indexed to GTI General Bundle 1". Do you have it Chair? I see Chair is nodding, the Commissioner Musi is ...

5 COMMISSIONER MUSI: Aren't you referring to General Bundle 1?

ADV SOLOMON: That's correct.

COMMISSIONER MUSI: Yes.

ADV SOLOMON: And the witness was referring to page 113  
10 of that document.

COMMISSIONER MUSI: General Bundle.

ADV SOLOMON: Just explain, just for the purposes of the Commission Mr Pillay, page 112 is Chair and Commissioner Musi, do you have page 112 of that document? It's the General  
15 Bundle 1. DTI General Bundle 1.

CHAIRPERSON: Thank you.

ADV SOLOMON: Just to assist the chair and Commissioner Musi Mr Pillay, would you just look at page 112, you have earlier testified, and I'm not sure if they were following you, I  
20 did but I'm not sure if they were because they didn't have it open, that that table on 112 is the equivalent of page 9, page 8 that I was looking at in the statement of Dr Rustomjee, is that correct?

MR PILLAY: That's correct.

25 ADV SOLOMON: And then you wanted to refer the

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Commission to page 113, perhaps you could just explain, you have intermittently referred to this document, just explain, I know it's headed "Example Income and Expenditure Statement", but just explain how this document is utilised in the scoring process.

MR PILLAY: Yes, 113 is a detailed example of how the NIP percentage would be calculated, it is the sales, domestic sales and domestic exports that will be calculated over the total period of the business plan limited to a period of 7 years unless or otherwise decided. The exports, same line, so the accumulated value over that period is what is taken, so under "Expenditure" you would have your land and buildings and other things which are not listed on page 112 but would be counted, so that is the total value system in terms of how it was actually determined, so the total value was determined from that page.

ADV SOLOMON: Well, you're looking at, if we look here there's sales which includes domestic and export. You had referred to earlier on in your evidence to the IONT stage that there were three categories that were then taken into account, which are investments, exports and local sales, so we've got domestic which are local sales, we've got exports. How does, where do we find the investment?

MR PILLAY: The investment would be stated in the business plan and those numbers would come into the expenditure because the investment will be spent over a

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period, so determining of the type of project this format would change depending on the type of project that was received.

ADV SOLOMON: But apart from this was there no other value system that was utilised by the DTI teams in performing the NIP evaluation exercise?

MR PILLAY: The higher level team considered the strategic nature of the projects that basically were presented and the list of the strategic projects were the 22 projects that were given in Dr Zavareh Rustomjee's statement.

ADV SOLOMON: And then just getting back to this question of multipliers, I take it that at the IONT stage in line with the existing DTI policy at that time the question of the multipliers was used as a bargaining tool, you could in your discretion either take it away and then just have a one-for-one situation or potentially leave it again and at the discretion of the Department on a two-to-one situation, am I right in that assumption?

MR PILLAY: Can you repeat you statement because it's very complex and the issue is a complex issue, can you break it down into smaller parts and maybe I'll try answering it before you do. As for discretion there was the legal agreement.

CHAIRPERSON: Just hold on Sir. So you don't understand that question? Let the advocate repeat the question to you, I don't want us later on just to appear to be saying that there was a misunderstanding.

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MR PILLAY: Thank you.

CHAIRPERSON: Can you please just repeat the question?

ADV SOLOMON: I'll try and break it up. At the IONT stage one was engaged in negotiations with the preferred suppliers,  
5 is that correct?

MR PILLAY: That's correct.

ADV SOLOMON: And part of the process we have heard from witnesses who have already given evidence was that that's where the horse trading took place, that's where the  
10 toing and froing took place over the period most of 1999 and it, if one was really trying to get as much investment from your perspective as possible out of the individual preferred suppliers, is that correct?

MR PILLAY: That's correct.

15 ADV SOLOMON: But what I'm suggesting to you is that this question of the multipliers was utilised as a bargaining tool in the hands of the IONT, particularly the DTI. Is that correct?

MR PILLAY: What is correct is that the multiplier system was changed and the measurement system was changed  
20 to extract out the highest possible value.

ADV SOLOMON: And changing what it actually meant is that instead of getting the credit value twice of what the investment was in particular instance it could only be on a ratio of one-for-one rather than two-for-one, the country was benefitting if the  
25 multiplier were not applied, it may have been to the

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disadvantage in the sense of the preferred suppliers, am I right in saying that?

MR PILLAY: That is correct, and in addition to that the other credits would have been received for technology transfer and the rest was also not going to be awarded, so we definitely benefited additionally in those aspects.

ADV SOLOMON: Thank you Mr Pillay, I have no further questions for this witness Mr Chair, Commissioner Musi.

CHAIRPERSON: Thank you. Mr Pillay thanks a lot, you are excused.

MR PILLAY: Thank you very much.

ADV CHOWE: My apologies Chairperson and Commissioner Musi, we just wanted to in re-examination just to clarify especially paragraph 22 of the witness statement regarding the discretion on the multipliers, if I might do that.

CHAIRPERSON: Certainly.

ADV CHOWE: Thank you so much for the indulgence Chairperson.

**RE-EXAMINATION:**

ADV CHOWE: Mr Pillay just for maybe in re-examination having a look at the paragraph 22 in which in your statement you are referring to the issue of multipliers in your view not to have been cast in stone and that maybe it's subject to residual discretion, in this particular statement are you aware maybe that this view of yours was shared by some other officials of

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the DTI at the time?

MR PILLAY: Well, in discussions with Dr Rustomjee during the negotiations it was his view that the IP policy had these objectives but he was informed that you know the prerogative was taken, the (indistinct) was taken to increase the offering by the bidders, so he agreed with both instances you know that the IP Policy as it is in its present form needs to be implemented as much as possible, so it is his view and yesterday he reflected his view on the principles and background of the policy. This is my personal view in 22 but it reflects some of the thinking that I gleaned from him and gleaned from the negotiations, however, it must be specified, and I don't want a contradiction in my statement, I did say in the statement that I was under the impression, it is my personal view. The rest of my statement reflects fact that it was in the agreement, so as to not contradict my statement I must say it was the view of DTI to continue to apply the IP principles as in the guideline, however, for the instance of this contract it was specified as per the rest of my statement.

CHAIRPERSON: Mr Pillay the question is not complicated, can you just please answer the question? It's not complicated.

MR PILLAY: Sorry, can you repeat it?

CHAIRPERSON: The question is simple, the sentiment that you have expressed in this paragraph, were they shared by other members of DTI?

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MR PILLAY: Yes, they were.

ADV CHOWE: Thank you Chairperson. Mr Pillay then in as far as the issue of the residual discretion, have you ever had any discussion as to in what form will this residual  
5 discretion be exercised?

MR PILLAY: No, unfortunately I was not at DTI during the need to implement that discretion, so it never came up for discussion.

ADV CHOWE: I have noted that you mentioned that due  
10 to the fact of the overarching objectives, strategic objectives of the economy at that time the issues of multipliers might have maybe infiltrated into the credit methodology and ... Okay? And in as far as you are concerned do you maybe have a view that in an attempt to get maximum benefits or leverage the  
15 multipliers might have been used in order to achieve this particular objectives?

MR PILLAY: Again I'd like to state it's only my opinion, so you need to take it in that view. Elements such as technology transfer, depending on what the economic climate  
20 is, you may need to offer an incentive to get technology that is critical for your project or for the economy at the time, so you have to entice that, so whether they have to offer multipliers or not is really depending on the climate and you allude to the fact that the economy had taken a turn for the worst  
25 internationally, that would be the climate in which things need

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to be reviewed and ideally that's what I foresaw in paragraph 22 when I spoke about it.

ADV CHOWE: In specific reference to the discretion which you have mentioned, if I make a supposition that the discretion referred hereto might also include the ministerial, or should I say the executive authority's discretion in awarding maybe multipliers?

MR PILLAY: Most definitely, most definitely, as an official I would be shocked if had the discretion to make such changes to large numbers but it would be the discretion which would sit at much higher level within DTI, possibly at ministerial level and above.

ADV CHOWE: Mr Pillay, thank you. Thank you Mr Chairperson, Commissioner. That is the case of the DTI.

15 **QUESTIONS BY THE COMMISSIONERS:**

COMMISSIONER MUSI: Just for my own understanding can I ask you this, this decision not to use multipliers, who took it?

MR PILLAY: This was the decision of the IONT Team, the International Offers Negotiating Team led by Jayendra Naidoo.

20 COMMISSIONER MUSI: Is there a resolution to that effect of the meeting of the IONT?

MR PILLAY: Through you Chair I cannot recollect exactly how those decisions were recorded but White & Case and Webber Wentzel were our attorneys present at the time, so we'd need to check the records with those parties who managed

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the process.

COMMISSIONER MUSI: Is this stipulation that you call it contained in this National Industrial Participation Programme policy?

5 MR PILLAY: Sorry, through you Chair I don't fully understand the question. I have some idea you are referring to the policy guidelines?

CHAIRPERSON: Just hold on, just hold on, don't have a maybe, Commissioner Musi will repeat the question so that we  
10 should avoid any confusion.

COMMISSIONER MUSI: I'm referring to this document at page 101 in general, the General Bundle 1. It's a policy document isn't it?

MR PILLAY: It's a policy document that was (indistinct)  
15 Cabinet approval.

COMMISSIONER MUSI: And there are also directives that go along with it.

MR PILLAY: Yes, it was a directive, a cabinet directive.

COMMISSIONER MUSI: This decision, is it contained in any  
20 of those documents?

MR PILLAY: Sorry, I missed that?

COMMISSIONER MUSI: The decision not to use multipliers, is it contained in any of those documents?

CHAIRPERSON: I'm sorry, in other words that decision that  
25 they referred to, would you say it was taken by IONT not to use

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multipliers, is it contained in the policy document and/or the guideline?

MR PILLAY: No, not to my knowledge.

COMMISSIONER MUSI: Maybe the interesting question, is  
5 there any documentary evidence of that decision?

MR PILLAY: Again the result of that decision was recorded in the agreements. Prior to that the discussions would have been recorded by Webber Wentzel and White & Case who was the facilitating legal team for that IONT process.

10 COMMISSIONER MUSI: Is there any documentary evidence of that document, that decision?

MR PILLAY: No, to my knowledge the only evidence that I can recall is the agreement, nothing that I have seen now or since then that I can recall.

15 COMMISSIONER MUSI: You know why I'm asking this, because if a body takes such an important decision, surely there ought to be a resolution and it ought to be recorded.

MR PILLAY: I agree Chair, but I can't recall what mechanism we used during that time to record our decisions, I  
20 think it's best that if the evidence team had interacted with Mr Naidoo, Jayendra Naidoo I think there might be a witness to come that might be a question to pose to.

COMMISSIONER MUSI: The other interesting question that may be asked in that regard is this, the International Offers  
25 Negotiating Team, is it a policy making forum?

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MR PILLAY: No it's not a policy making forum, it is a, it was constituted to finalise the legal agreement with the bidders.

COMMISSIONER MUSI: Thank you.

5 ADV SKINNER: Mr Chairman, may I ask one or two questions very briefly in re-examination?

ADV SKINNER: Mr Pillay you were referred by Commissioner Musi to the document at page 101 of the General Bundle, that was the NIP guidelines of the Department of Trade and Industry. Am I correct those predated the institution of the SDPP contracts?

MR PILLAY: That's correct.

15 ADV SKINNER: Then the sequence was IONT became involved and your evidence was that they had discussions with all the obligors or, and bidders?

MR PILLAY: That's correct.

ADV SKINNER: And the IONT's view as you've testified was that there should be no multipliers?

MR PILLAY: That's correct.

20 ADV SKINNER: And is it correct that the contracts that were signed of which the NIP terms is an annexure provides for a credit methodology of one credit per unit of currency invested?

25 MR PILLAY: The annexure you are referring to is not the NIP Guidelines if I recall correctly, it's difficult for me, I

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don't see the annexure to the agreement but if it is there I need to examine it. Can you give me a minute to examine quickly what the annexure is?

ADV SKINNER: If the chair will bear with me for a moment  
5 we'll find the relevant page and let the witness refresh his memory. Mr Pillay the document I'm going to show you isn't in evidence yet but just to refresh your memory that it is taken from the Corvette NIP agreement.

CHAIRPERSON: I see you have given the witness some  
10 documents and we're not sure where you are referring to.

ADV SKINNER: Mr Chairman the difficulty is it hasn't been introduced in evidence yet, it's from a bundle which contains all the contracts, but there is an issue about whether that has been declassified or not, I'm simply allowing the witness to  
15 refresh his memory as to whether there is any provision relating to credit methodology.

MR PILLAY: Trough you Chair the credit methodology in this document referring to page 531 is not the same as the page 101 that we referred to, so it's a different credit  
20 methodology. I confirm that.

CHAIRPERSON: I'm sorry Advocate Skinner, in all fairness to all parties we don't know what you are talking about, we don't know what the witness is referring to, we also don't know what the witness is referring to, I'm not quite sure if at all the  
25 question that you have asked this witness is appropriate at this

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stage. The document that you are referring to, I don't know, I haven't seen them.

ADV SKINNER: Mr Chairman, ...

CHAIRPERSON: And the witness is not the author of those  
5 documents, I'm sure if at all you want to introduce that  
document there is a proper manner in which you can do  
(indistinct) to introduce the document.

ADV SKINNER: I'm sorry, I take the point Mr Chairman,  
the question was really whether the witness is able to say  
10 whether he recalls that the contracts had a specific provision  
relating to credit methodology.

CHAIRPERSON: I understand, he is going to look at that, at  
that portion of the document and give you an answer, I'm not  
sure what he's looking at, we do not have such documents. If  
15 at all you want to raise that issue I'm sure there are other  
witnesses who wants to come in who can deal with the same  
issue.

ADV SKINNER: As the Chair pleases.

CHAIRPERSON: Thank you.

20 ADV SKINNER: I have no further questions, thank you.

CHAIRPERSON: Mr Pillay, I think now you can be excused.

MR PILLAY: Thank you.

CHAIRPERSON: Thank you.

ADV SKINNER: Then the next witness will be Mr  
25 Masizakhe Zimela, my learned friend Mr Aboobaker will lead his

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evidence.

CHAIRPERSON: Can the witness take the oath?

**(Witness is sworn in.)**

ADV ABOOBAKER: Thank you Mr Chairman.

5

**WITNESS NUMBER 4 : MR MASIZAKHE ZIMELA (Hereinafter referred to as "MR ZIMELA"), GIVES EVIDENCE UNDER OATH EXAMINATION IN CHIEF:**

10 ADV ABOOBAKER: Mr Zimela, have you submitted a written statement to the Commission and is that statement there now before you?

MR ZIMELA: That's correct.

15 ADV ABOOBAKER: And is that signature which appears on page 22 of the statement and which is dated 15 January 2014 your signature?

MR ZIMELA: That's correct.

ADV ABOOBAKER: Now have you read over the statement and confirmed the correctness of the statement?

20 MR ZIMELA: Yes, I have. There may be one or two typos in the statement which I'll point out as we go along.

ADV ABOOBAKER: Were you assisted by the DTI and the Legal Department of the DTI in putting that statement together?

MR ZIMELA: Yes.

25 ADV ABOOBAKER: Now let's get some brief background details about you on record. What's the current position you

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hold at the DTI?

MR ZIMELA: I'm currently the chief director for the Industrial Participation Secretariat, I was appointed into the position in September 2011.

5 ADV ABOOBAKER: September 2011 you said?

MR ZIMELA: That's correct, yes.

ADV ABOOBAKER: You maybe have to speak up Mr Zimela, some of us are hard of hearing.

MR ZIMELA: Okay.

10 ADV ABOOBAKER: Let's deal with when you started employment with the DTI, tell us about that, in what position?

MR ZIMELA: I started in 2001 as the director for the Industrial Participation Secretariat dealing with the non-defence portfolio. By the non-defence portfolio I mean all of the obligations arising out of purchases, not from the Department of Defence. Thank you.

15

ADV ABOOBAKER: So what you are talking about the general purposes excluding defence?

MR ZIMELA: That's correct, yes.

20 ADV ABOOBAKER: Now we will go through together just now how the, how each of the structures which formed part of the National Industrial Participation Programme, but for the moment I just want to trace your career record. What happened next insofar as your career with the DTI was concerned?

25 MR ZIMELA: In 2005 I was appointed as the acting chief

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director for the unit called The Resourced Based Industries Unit which dealt with sector strategies and policies for the oil and gas (indistinct) furniture and later including agro-processing. I was then appointed the chief director for the same unit in 2006 until I moved in 2011 to the chief director  
5 IPS.

ADV ABOOBAKER: So when you were with the resource based industry unit or the DTI you were no longer at that stage associated with the NIP programme?

10 MR ZIMELA: That's correct.

ADV ABOOBAKER: And you became re-associated with that programme in 2010 when you became chairman of the IPCC which we just now when we explained to the Commission what that was all about.

15 MR ZIMELA: That's correct. In 2010 I was asked to chair the IPCC which is the Industrial Participation Control Committee but I wasn't, I was still as the chief director for the resourced based industries.

ADV ABOOBAKER: Now in paragraph 7 you make a point that  
20 having joined the DTI only in 2001 you had no personal knowledge of the events leading up to the signing of the Strategic Defence Procurement Package.

MR ZIMELA: Correct.

ADV ABOOBAKER: So I wouldn't burden you with anything  
25 relating to the events that led up to that but can you tell us,

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were you associated in any way with the accumulation of credits and how that was achieved for obligors, NIP credit?

MR ZIMELA: When I was the director for the Non-Defence Portfolio I was not involved in managing the Defence  
5 but I was a member of the Industrial Participation Control Committee which approved business plans, business concepts and credit claims that included for the Defence Portfolio.

ADV ABOOBAKER: So when you say that included for the Defence Portfolio you mean you were not only approving credit  
10 claims for the Defence Portfolio but for all claims, is that right?

MR ZIMELA: That's correct, the IPCC approved credit claims for all, for the whole of the National Industrial Participation Programme.

ADV ABOOBAKER: Now in paragraph 8 you say that your  
15 evidence will cover these areas, (a); the National Industrial Participation Programme and its framework, (b); the objectives sought to be achieved by the programme and (c), the governance structures responsible for the management,  
20 implementation and monitoring of the programme. Now it is correct that we should have put that evidence first and we did adopt the wrong approach but let us try to see if we can give as much detail as possible so that the Commission and the commissioners can understand what these processes were all  
25 about because they are essential to this inquiry, so I'm going

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to go through very slowly through this process with you and explain it as best you can. Now let's start with paragraph 9 you speak to us about "counter trade offsets and reciprocal trade". To what extent is that carried on internationally?

5 MR ZIMELA: Can you repeat the question?

ADV ABOOBAKER: I mean this issue of countertrade and offsets, you say it's an international practice? Is that your view of the position that it happens internationally, it happens often?

10 MR ZIMELA: My understanding is that it's an international practice but in the majority of the countries especially the developed world is only used for defence and aerospace purchases whereas in other countries like in South Africa it's used for all government purchases.

15 ADV ABOOBAKER: Yes. So, that we are the exception in other words insofar as that is concerned with one or two other exceptions around the world, is that right?

MR ZIMELA: We are not the exception, I think other countries like Malaysia, like Australia, they do use it in non-  
20 defence purchases but the majority of the countries, especially the developed world, they used it only in defence and aerospace related purchases and security related purchases.

ADV ABOOBAKER: Now there appears to be some confusion  
25 between the policy as it applied in the NIP process, the ordinary NIP process and how particular parts of that policy

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were to apply in the SDPP NIP process and I'm going to ask you as we go along to keep your mind on that and to help us with those questions but let's just go on with paragraph 10 and 11 and tell us about the development of the NIP guidelines and  
5 policy and how that happened.

MR ZIMELA: I think as I explained in paragraph 10 the policy was adopted in 1996 and the DTI was asked to develop the guidelines which were accepted by the Cabinet in April 1997.

10 ADV ABOOBAKER: Did that policy and those guidelines ever acquire the status of legislation?

MR ZIMELA: My understanding was that it was that it was a Cabinet policy which applies only to state-owned enterprises and it does not have the status of a legislation.

15 ADV ABOOBAKER: Yes. And just to remind the Commission because some evidence was led yesterday, but could you just, so that we can get some order to this evidence tell us to what purchases the policy applied?

MR ZIMELA: The policy applies to all National  
20 Government, provincial government, local government purchases, state-owned entities, I mean all the classification of state-owned entities where the value of the imported goods or services exceeds the \$10 million or the equivalent thereof.

ADV ABOOBAKER: So, the process involved there was to  
25 establish the imported content of the goods that form the

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subject matter of the contract and from there to establish what the International Participation obligation was.

MR ZIMELA: That's correct.

ADV ABOOBAKER: So, if the contract was \$10 million and the  
5 imported content value was R3 million what would be the Industrial Participation obligation?

MR ZIMELA: The obligation is based on the imported value, as long as the imported content is less than \$10 million, then there would be no National Industrial Participation or  
10 deviation, it's only when the imported value of that contract is \$10 million or more is there and NIP obligation.

ADV ABOOBAKER: I see. Now this policy which you have attached to your documents, I want you as I'm going along to make some comparisons along the lines with the SPP NIP,  
15 SDPP NIP requirements because then it can become very clear to this Commission what the differences were. Now what you have said in paragraph 11 of your document, your statement as to the purchases in respect of which the NIP policy was applicable, was there any such thing applicable for instance to  
20 the NDPP, SDPP NIP policy?

MR ZIMELA: I need to point out that for all the defence procurement there's two industrial participation obligations, one is the Defence Industrial Participation (DIP), which is administered by ARMSCOR and the other element is the  
25 National Industrial Participation Programme (NIP), which is

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administered by the DTI. So the first defence is whilst in all the other purchases there's only NIP that is applicable, on the Defence Procurement there's both NIP and the, and the Defence. The obligation for defence is split between DIP and  
5 NIP, I think that's the main, that's the first main, main difference.

ADV ABOOBAKER: Yes. But specifically in relation to paragraph 11 where it refers to the NIP obligation where the value of goods or services exceeds \$10 million and you know,  
10 that was an entry point into working out the industrial participation obligation, did that apply to NDPP, SDPP NIP at all?

MR ZIMELA: To my knowledge the NIP, the threshold value of \$10 million applies to all purchases and it applied to  
15 DIP, I mean to the SDPP as well, I was not involved in the SDPP but to my knowledge all of those obligations exceeded the US\$10 million.

ADV ABOOBAKER: Yes, I accept that they exceeded \$10 million but the point I'm trying to make was, was the formula by  
20 which the NIP obligation was determined, was that formula in accordance with the ordinary NIP formula or was it a product of negotiation?

MR ZIMELA: The formula for NIP is 30% of the total value of the imported content. The, all of the Defence NIP  
25 obligations were above the 30% obligation, so obviously the

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same formula of 30% was not applied in the case of the SDPP, how the values were determined I cannot say as I was not involved in the process.

ADV ABOOBAKER: Fair enough. Now in paragraph 12 of your  
5 statement you talk about policy instruments to leverage government procurement but you also talk about other policy instruments. What were these and how relevant were they to NIP and the policies of the National Industrial Participation Programme?

10 CHAIRPERSON: I'm sorry Advocate Aboobaker, I think we're struggling to hear what you are saying.

ADV ABOOBAKER: Sorry. I'm saying in paragraph 12 you talk about other policy instruments to leverage government procurement, these included competitive supplier development  
15 programme managed by the Department of Public Enterprises, the amendments to the regulation of the Provincial Public Procurement Framework Act which enabled the Minister of Trade and Industry (indistinct) sectors or subsectors or products for local procurement. Now are these in any way  
20 related to the NIP programme? You referred to it here, I'm just trying to work out why.

MR ZIMELA: Since 1997 when NIP was adopted there's always been a process of reviewing, these are all instruments for leveraging government procurement, there's always been a  
25 process of reviewing this programme. In 2007 a new policy

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which is Competitive Supplier Development Programme was adopted by the Cabinet, it basically excluded all purchases by Transnet and Eskom to, they were excluded from complying with NIP but rather to comply with the Competitive Supply  
5 Development Programme which is administered by the Department of Public Enterprises. In essence the programme is about supplier development programme, it's not that much different from the National Industrial Participation Programme but its implementation, the objectives are almost the same but  
10 the difference is in the implementation.

The other programme that I've referred to here, it relates to what you call designations, I think in, I may not be sure of the year but in 2011 the Cabinet approved that the Minister of Trade and Industry may make or may designate  
15 certain products or certain sectors or subsectors for public procurement. What it basically means is that a product that has been identified the Minister may designate that all state-owned entities, I include the government as well, all state-owned entities must only purchase from local manufacturers  
20 and not from foreign suppliers. Those products that have been designated, I think the essence of putting it here, those products that have been designated by the Ministry, the Minister of Trade and Industry are exempt from NIP as well.

ADV ABOOBAKER: Yes. Now in paragraph 13 you talk about  
25 the policy being reviewed, the NIP policy in 2011 and identified

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weaknesses which had been rectified in the NIP policy approved by Cabinet in December 2012. Now what weaknesses were identified in 2011 resulting from the review?

MR ZIMELA: I think there are quite a number of  
5 weaknesses that were identified. I will mention just a few  
which are probably key to the changes that have been made to  
the NIP policy that, the new NIP policy that has approved, that  
has been approved by the Cabinet in 2012. I think one is the  
lack of coherence between namely the competitive supply  
10 development programme as applied by the DPE and NIP is  
applied by the DTI and the other main issue is the majority of,  
sorry, not the majority, some contracts that should have been,  
that should have had a NIP obligation didn't have mainly due to  
lack of communication between the DTI and the various state-  
15 owned entities in informing the DTI that they have gone to, or  
they are going out on this tender which may have NIP  
implications.

In some cases the DTI became aware of NIP  
obligation after the contracts have been signed and the  
20 conditions for NIP were not included in the tender documents  
resulting in some potential obligations not being obligations as  
a result of that. Then the other issues are more in the  
management of the programme in terms of the manual  
management of the documents *versus* the electronic  
25 management of the document.

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I think resulting from that, also because of the designations that were starting to get adopted then there was a need so that we apply all of these different procurement levers in a coherent manner.

5 ADV ABOOBAKER: Yes. Well, let's just get down to the nitty-gritty now. Insofar as the policy is concerned you talked about a four-tier framework in paragraph 13 to be applied in the case of government procurement. These included designation, fleet procurement, CSDP, direct and indirect NIP. Now were there  
10 changes brought into the policy or based on these matters here which you referred to?

MR ZIMELA: This is a result of changes made in the new NIP policy that was adopted or approved by the Cabinet in 2012. Basically what it means is, this is not just about NIP,  
15 what it means is that there are four tiers in which government will leverage government procurement, one is through the designation which I explained is all about procuring from local manufacturers which is about localisation and fleet, fleet procurement is also localisation but it applies to purchases  
20 which have got longer life cycles like a purchase by PRASA over a 10 year period of passenger trains. CSDP as I explained is the Competitive Supply Development Programme that is managed by the Department of Private Enterprises. Then the direct NIP which is going to be the focus of the  
25 programme or going forward, direct NIP as opposed to most of

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the international terms or most of what is used internationally, direct NIP, it refers to doing or fulfilling NIP in the sector from which the obligation arise or arose in a sense that if the obligation came out of the purchase from aerospace then all the NIP activities must be in the aerospace industry, you will note then that that is a total move from the current situation as related to SDPP where most of the obligation out of the SDPP was fulfilled in areas that are not related to defence which is the NIP, so the, really the focus now on the NIP is on activities that are in the same sector as that from where the procurement comes from.

Then in certain instances or in certain areas where we cannot do that where we don't have capabilities or there is no hope that we can develop capabilities in those areas the we'll have activities that are indirect, that is in areas where are not related to the procurement contracts.

ADV ABOOBAKER: So, that represents a distinct shift from the position as it was when the SDPP NIP contracts were entered into. Was there some lessons that were learnt from the SDPP NIP process that caused that shift in policy?

MR ZIMELA: I think it's not, it's not just, it's not just about the lessons learnt from the SDPP, I think it's lessons learnt as we implement and administer the NIP programme in general. Remember the NIP, we started it in 1996 or 1997 or that's when the policy was adopted but I think as we

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administered the programme we have looked at some of the lessons we have learned, there has been some changes as well in terms of the economic environment in terms of the industrial policy development in terms of where we want to shift, so we  
5 have adapted it to fit some of the change in the focus on industrial development and also the lessons that we have learnt in implementing the existing programmes.

ADV ABOOBAKER: Yes, I'm going to ask you a few more questions here but I'm going to stop at this point and hope to  
10 persuade the chairman to allow us to have lunch if possible. Just ...

CHAIRPERSON: Fortunately I don't need much persuasion, we'll adjourn for lunch.

**(Commission adjourns.)**

15 **(Commission reopens.)**

CHAIRPERSON: Thank you. Can the witness confirm that he is still under oath?

MR ZIMELA: I do.

CHAIRPERSON: Thank you.

20 ADV ABOOBAKER: Yes Mr Zimela, we were talking about the shift in policy of the DTI in relation to the NIP programme where obligors in 2011 were now required to, were the shift in the policy by placing a greater emphasis on direct NIP rather than indirect NIP in 2011. What caused that movement?

25 MR ZIMELA: I think if you, if you look at investment, if

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a company invests in a project which is not part of its core business its major contribution is the money, it doesn't contribute in terms of collaboration, in terms of technology and other areas where we need to develop in terms of growing the economy. I think why the issue of funding is, or 10 years ago it was so critical, now we got a situation where the funding from the DTI incentive programmes have been significantly enhanced, the funding from the IDC has been broadened to include areas where, or companies that would have been excluded before so that that has been significantly enhanced now.

So, the issue of funding is not as critical as it was 10 years ago. I think the kind of investment that we're looking for is investment that will not only include the funding gap or to bridge the gap in the funding but we will include collaboration between international companies and South African companies which at the end of the day will bring in technology, will enable companies to be integrated into the value chains of international companies.

So, we don't think that if a company invests in a non-core business it's able to provide some of the requirements that we need, the, like I said the major contribution is only in providing the funding which may have been critical in 10 years ago, 10 years ago, but it's not that critical now, so we want companies that is an aerospace companies, South African

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Aerospace companies in that we're able to build long term relationships and also be able to bring in the technologies that we need.

5 The other issue as regard to indirect NIP is companies invest in certain projects but once their obligations have been concluded, once they have fulfilled their obligations then they sell out, once they've got the credits they sell out and so we see those as not long term investments, although they may be investments for a period of five years or so it sort  
10 of doesn't also, it doesn't fulfil the mandate of that long, long term objectives because what it basically means we do say in our guidelines that the projects must be sustainable long after the obligation has been fulfilled, so we think that the best way of doing that is for companies to invest in the areas where they  
15 have got the capabilities, their core business, not invest in areas where once the obligation has been fulfilled they will pull out, those are some of the main areas, I mean the main reasons why we're focusing more on direct NIP than on indirect NIP.

20 ADV ABOOBAKER: So in effect there was more to be gained if foreign obligors strengthened our local businesses in the area of expertise and focus, is that what you are saying?

MR ZIMELA: That's correct because that's where they've got the knowledge and the capabilities.

25 ADV ABOOBAKER: Yes. Now if we get to paragraph 14 of

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your statement you there refer to a number of objectives to the NIP policy. Now is that a *verbatim*, more or less a *verbatim* repetition of what's actually contained in the policy insofar as the objectives are concerned?

5 MR ZIMELA: Correct.

ADV ABOOBAKER: And for what it's worth that is at page 41 of your statement.

CHAIRPERSON: Advocate Aboobaker can you just speak up a little bit louder so that we can hear, we often miss one or two  
10 words.

ADV ABOOBAKER: Yes. The admission and objectives are set out in page 41 of the statement, it's an annexure attached to the statement.

MR ZIMELA: The objectives are set out in the  
15 guidelines, the numbering that I've got is different from the numbering that you have got but they are set out in Annexure "B" of, yes in Annexure "B" which is the National Industrial Participation Programme.

ADV ABOOBAKER: Now in paragraph 15 you talk about the  
20 interlinking of these objectives.

CHAIRPERSON: I'm sorry Advocate, just before we pass, paragraph 14(e), it says that: "We encourage R&D collaborations in South Africa". What is R&D?

MR ZIMELA: Research and Development.

25 CHAIRPERSON: Okay.

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ADV ABOOBAKER: Now in paragraph 15 you talk about these objectives being interlinked and the achievement of one may result in the achievement of other objectives. Can you just explain to us how that can happen?

5 MR ZIMELA: I couldn't, the example I make there is when we invest in Greenfield, Greenfield in a sense means, the meaning of Greenfield Projects are projects that are starting from the ground, When you invest in Greenfield projects obviously because it's a totally new project there will be new  
10 jobs that are being created. When you expand, which is if you look at the export promotion, export promotion objectives which is (b), 14(b) it's to facilitate access to new markets to establish new trading partners, it's the same thing as export promotion.

15 When you increase your exports, if your client capacity was not operating at full capacity you may employ extra people, because there is more demand for your products you may employ extra people to operate it at full capacity. That in a sense you invest, you then increase exports, you  
20 increase the jobs, you may achieve the other objectives as well. What I was trying to say there is that you don't create jobs for example without the other part of the objectives although they have been put in here, you create jobs but you don't create jobs without either the investment or the export,  
25 the increase in exports or in a sense the other objective there

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which is, the other objectives which should have been the increase in turnover, the sustainable economic growth, you increase turnover, then you increase the products, you increase demand for the products, then you create more jobs, I think that's the interlink, it's not like you create one and then you do another project to create another one, you do another project to create another one.

ADV ABOOBAKER: So in effect the one investment may result in credits under various different categories, NIP credits?

10 MR ZIMELA: That's correct.

ADV ABOOBAKER: Yes. Now in paragraph 16 you've again dealt with this obligation, with the contracts which attract the NIP obligation. I don't want you go through that again but there's a sentence, the last sentence of that paragraph:

15 *"The obligor would therefore be obliged to submit and implement business projects which generate industrial participation credits, calculated in accordance with NIP credit authority equal to achieving 30% of the imported content".*

20 Now I want you to try and explain to us what, from inception, what happens here when projects are submitted.

MR ZIMELA: When a company gets an obligation, whatever the value of that obligation is, we measure the performance from its, from the company participating in different activities, those activities, if you look at Annexure

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“B”, those activities are the activities that are outlined in page 9 of Annexure “B”, but how we measure those activities, we measure those activities in terms of credits and for example the turnover or the sustainable economic growth we say for each turnover in a project that you were involved in you achieve one credit for each \$1 turnover.

So in total we add up all of the credits that the company has accumulated over a period of seven years which is normally the period to fulfil the obligation, we add up all of those credits and then those credits, in order for us to release you from the obligation they must be equal to, or exceed your obligation which is the 30% of the imported contents.

ADV ABOOBAKER: Yes. You made reference in paragraph 17 to the Industrial Participation Control Committee and at various different points you referred to the International Participation Secretariat. I’m going to in due course ask you to tell us what’s that all about but let’s get to paragraph 18 first. You are now still dealing with this process now, so what you say here is:

“Upon being awarded the tender the NIP obligor is excepted to sign an agreement recording the NIP obligations”.

Now is this a standard agreement or is it a negotiated agreement?

MR ZIMELA: The, there’s a standard format for the

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agreement but there's sometimes variations in some of the clauses depending on the circumstances. I think we use the standard agreement but you would find that there will be some changes here and there, for example if you look at when you talk about the milestones in the same paragraph we have in the past changed those milestones where either the delivery of the, the delivery of the products is not an immediate delivery but it's a delivery that is done over a long time like if you look at the aircraft purchases by SAA then they ordered the aircraft now but the first delivery of the aircraft will happen in 2018, so we do make variations in terms of some of these clauses depending on the contracts, the standard terms of the main contract which is between the supplier and the purchasing entity and other issues that we may, or the suppliers may want to be changed here and there, but in all of the changes that we make, all of these agreements have been vetted by, they are vetted by our legal unit. In all the changes that we make we refer those to the DTI Legal Unit for vetting before it's signed.

ADV ABOOBAKER: Yes, what you are in fact saying is that even though you have a standard agreement there's a degree of flexibility which you apply insofar as the terms are concerned. Is that right?

MR ZIMELA: That's correct.

ADV ABOOBAKER: Now in the standard, sorry, in the SDPP NIP contracts there was no room for that kind of flexibility was

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there?

MR ZIMELA: I must point out that there's some differences between the midterm contracts and some of the contracts that we signed. Whether there was room I wouldn't  
5 tell but there is some differences from the NIP guidelines and some of the clauses in the NIP terms, so I would assume that there was room for flexibility as well.

ADV ABOOBAKER: Alright we'll come back to that, that's simply an assumption on your part but I think somewhere along  
10 in the statement you deal with the differences, we'll get there. In paragraph 19 you talk about performance guarantees of 5%, was this 5% a standard feature in these NIP agreements?

MR ZIMELA: It's a standard feature except in cases where some obligors have achieved or have accumulated  
15 credits in their strategic partnership agreements. I think Dr Rustomjee talked about strategic partnership agreements but I can expand on what that, on what those ..., if you wish.

ADV ABOOBAKER: Just tell us what the performance guarantee was designed to do.

MR ZIMELA: It's basically designed as a, I think as it  
20 says, as a penalty in case obligors do not perform in terms of, do not perform in fulfilling their NIP obligations, so you impose a penalty for not performing but in all of the agreements, I want to point out that in all of the agreements that we have  
25 there are certain processes that one must go through before

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you impose a penalty like the process of arbitration, mediation  
*et cetera*.

ADV ABOOBAKER: Now when you make that last statement  
just for purposes of clarification and just correct me if I'm  
5 wrong, that really refers to ordinary NIP contracts, not so?

MR ZIMELA: The last statement, 20, if you are referring  
to 20, can I ask if you are referring to paragraph 20?

ADV ABOOBAKER: No, I'm talking about the last statement  
you made just now, not your statement itself but that last  
10 question which you answered and you talked about the  
processes and the arbitration that would be gone through, that  
applied to ordinary NIP, is that right?

MR ZIMELA: It applies to ordinary NIP contracts. I'm  
not sure if there are those clauses, the same clauses in the  
15 NIP terms.

ADV ABOOBAKER: Thank you Mr Zimela. Now you deal in  
paragraph 20 with the governance structures that were  
applicable to the National Industrial Programme and you deal  
with the principles and you deal with the processes outlined  
20 there. Now that's where I want you to take us briefly through  
each of the governance structures firstly and then what were  
the processes. Let's start with the governance structures, let's  
work out what the governance structures were and what each of  
them did.

25 MR ZIMELA: I think I would like to deal with those at

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the same time because you cannot separate each from the other, the processes refer to the processes that we follow in managing the NIP programme and that goes together with the structures that have been put in place to manage the programme.

ADV ABOOBAKER: Mr Zimela do it in any way you consider comfortable. Go through it slowly so that all of us can understand it because there is a lot of new material coming through now.

MR ZIMELA: Basically I think you've got in the management of the programme, I'll start at the first level, the first level you've got the business unit, the Industrial Participation Secretariat whose main job is to manage the programme, managing the programme, I'll briefly mention some of the key issues that we do. The first one is to monitor all government contracts that have been, that have got the potential to incur NIP obligation, we record those. The second issue is when state-owned companies issue tenders at mostly at the shortlisting stage or firstly we start to make sure that state-owned companies put into their tender document that NIP, if a company has been awarded an obligation and the imported content is more than \$10 million then there will be a NIP obligation. We mostly start talking to the companies, those that have been shortlisted, two or three companies that have been shortlisted but we've always remained open to any

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company that want to enquire about the NIP. Then the other stage, once the company has been awarded an obligation there's a process of recording the obligation, signing which what we have said before, the obligation agreement which as  
5 the unit we negotiate between, with the obligors.

Ten there's a process of monitoring the performance, monitoring the performance involves two stages, the first stage is companies need to bring in business concepts on how they will fulfil the obligations, the business concepts  
10 are then considered by the unit and the sector desk. In the division we've got business units that deal with strategies and policies for a number of different sectors.

To mention a few agro-processing, aerospace, *et cetera*. So when we do get the business concepts we consult  
15 with the sector desk to make sure that the concepts that we are set are in line with the strategies that have been adopted, either as part of industrial policy action plan or separate strategies. Then we then refer the concept to what we call the Internal Control Committee, the Internal Control Committee  
20 consists of the unit, the IPS Unit as well as some people that we, as the unit or we ask the deputy director general to appoint, to assist the Committee in evaluating the concepts, so that's the other stage of the process and the governance structure to make sure that the projects that we approve are in  
25 line with the DTI or the governance objectives, they follow the

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process that is open, they follow a process that everybody gets a chance to discuss in the Internal Control Committee.

Then once the business concept gets approved it's referred to the company for them, instead of the business concept now they need to bring in the business plan. The business plan goes, it's more an extended version of the business concept, the business plan goes straight to the Industrial Participation Control Committee which is the third leg in terms of evaluating the projects for qualifying as NIP projects.

The Industrial Participation Control Committee consist of official from the Department of Trade and Industry, the Department of Defence, the National Treasury, the Department of International Relations and Cooperation, more recently which is last year we've included the Department of Public Enterprises.

The process for the IPCC is that the portfolio managers which is officials within the unit, they present the concept of, the business plan to the IPCC and then the IPCC will decide if the business plan fits the criteria that is set up for projects to qualify for NIP and then that projects, if it meets the criteria it then gets approved for, it then gets approved for implementation by the obligor.

A similar process, once the project gets implemented a similar process of submitting the credit claims,

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when there is performance one of the functions the IPCC is to approve credit claims, that is once a project performs an obligor will then submit a claim that this particular year or six, the either six monthly claims or yearly claims, this particular  
5 year I've achieved so many sales, I've subcontracted to SMME's so much money, I've paid salaries and wages, so they put the claim and then the portfolio managers again will present the claim to get together with supporting documentation to the IPCC which will then either approve the  
10 claim or if they are not satisfied with the supporting documentation then they will refer it back to the, they will refer it back to the obligors to provide the supporting documentation. I think I will stop there.

ADV ABOOBAKER: Yes. So if you look at, now if you look at  
15 paragraph 29 and 30 of your statement and especially at paragraph 30 you set out there a process flow from the receipt of the concept to the approval of the business plan, can you see that?

MR ZIMELA: Yes.

ADV ABOOBAKER: Yes. Now are each of those processes  
20 referred to there, do you go through each of those processes before you finalise the approval of the business plan?

MR ZIMELA: Yes.

ADV ABOOBAKER: Okay. Now if you look at the receipt, if  
25 you look at that process flow there it appears that what

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happens is the concept is reviewed within the unit and then allocated to relevant sector for analysis, the unit that reviews that, is that the IPS, the International ..., what does IPS ... Industrial Participation Secretariat.

5 MR ZIMELA: When you say review it within the unit is we get concepts from the obligors, some are way out of the ballpark that probably wouldn't even refer to sector specialists or that, so the portfolio manager and probably the director would look at the concepts and refer it, if it's a relevant  
10 concept. Some of the irrelevant concepts, if I may just explain, we look at value added proposals, we do not look at, unless under special circumstances we do not look at mining, pure mining projects, we look at value added projects, we do not look at, as part of the criteria we do not look at pure  
15 agricultural projects, so those, if those are the projects then there would not be, we don't even have a sector desk on agriculture and mining, we've got minerals beneficiation and agro processing, so if we get the kind of projects that are way out would not even refer to the sector specialist, but we do  
20 start by looking as the unit and then go the sector desk or the sector business units.

ADV ABOOBAKER: So, then does it happen that projects are thrown out from time to time?

MR ZIMELA: Those that do not qualify like I've  
25 mentioned the pure mining projects, the pure agriculture, the

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construction projects like the construction of roads and buildings, those are not part of NIP projects, so we'll throw those out.

ADV ABOOBAKER: Then I that happens what is the next step  
5 the obligor will take?

MR ZIMELA: The obligation is based on a certain value, obligors need to submit a number of projects that will give them enough credits to fulfil the obligation. If for one reason or another a project gets rejected or a project at implementation,  
10 it fails, they are still required to submit projects that will enable them to fulfil the total obligation over that period of seven years.

ADV ABOOBAKER: Now it appears now from, if you look at the process flow, from the second part of that process flow it  
15 seems at this stage that the ICC comes into the picture, the ICC considers the concept based on additionality, sustainability and causality. Can you see that?

MR ZIMELA: Yes.

ADV ABOOBAKER: Now I want you to explain these concepts,  
20 each of these concepts, let's start with additionality and what that means.

MR ZIMELA: Additionality means that the proposal must be adding value into the economy. I'll expand by making certain examples. We may have a proposal saying that take for  
25 example the export of wines to, we export to the UK. Any

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obligor that comes and say we want to buy, say it's a UK obligor, we want to buy wines from SA manufacturers, because we already export wines to the UK we would not see that as additionality. Where we export products to new markets then we'll see that as additionality.

If we're already selling a certain product to a certain market then it would not meet the principle of additionality, if it's a new product we create a new product and sell to a certain market, then that's additionality but existing products can only qualify for additionality if they are to, if they are to new markets.

The principle of sustainability is more around the projects must be of long term value, we say that they must be sustainable even beyond the seven year fulfilment period. Of course we are aware that economic conditions will change from time to time and some of the projects that may have been seen as sustainable due to changed economic environment they may not really be sustainable.

Then the causality, basically when you look at the projects we say that the project is happening purely or not purely, mainly because of the involvement of the obligor, if the obligor had not been involved the project would not have yet happened, so that's the principle of causality. Let me make an example. If the obligor had not invested a certain amount of money some other funders probably would not have come

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because maybe the promoter of a proposal doesn't have the security that other funders need, so maybe the obligor would come in and put the start-up which enables other funders to get involved where they would not have get involved, that's quite a number of different examples that we look at when we look at the causality, it may be that in the case of exports for example, if I use the aerospace industry we got companies that are supplying certain products to aircraft manufacturers because one of the two aircraft manufacturers was able to help the local company to meet certain standards that are required of the aerospace industry, so we generally look at what was the involvement of the obligor in getting this project off the ground, that's the principle of causality.

ADV ABOOBAKER: Yes. Before you get away from that principle let's just take a practical example here, if a project requires R100 million to get off the ground and money is only raised to the value of R95 million and the obligor comes in and puts in the other R5 million thus causing the project to get off the ground, how does work for insofar as awarding of credits are concerned?

MR ZIMELA: Firstly let's look at, there's no hardened and fast rule in terms of what percentage contribution must you make in order to have caused the programme, we look at it, meaning in order to have caused the project, we look at each project on its own. In terms of the credits there's different

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rules here that apply on the NIP, non-defence or non-SDP, we only credit obligors for their contribution and not for the contribution of other investors. On the SDPP there's a certain clause which says you get credits for money invested or for  
5 money you have caused to be invested, so there's different methods of allocating credits for the SDPP and non-SDPP.

ADV ABOOBAKER: Yes. And then you were dealing with also the issue of sustainability.

MR ZIMELA: I think I dealt with sustainability.

10 CHAIRPERSON: I think that question has already been dealt with, the question of sustainability.

ADV ABOOBAKER: My attention got diverted Sir, sorry Chair. So, if you look at the process flow there's three blocks that you have put up there right, the first block, it's really the role of  
15 the IPS Secretariat, is that not right, reviewing the concept and doing all those other things in the first block, can you see page 30?

MR ZIMELA: Correct.

ADV ABOOBAKER: Now in the second block considering the  
20 concepts based on additionality, sustainability and causality and all the other matte raised in the second block is dealt with by the ICC.

CHAIRPERSON: I'm sorry Advocate Aboobaker, where are you reading? On which page are you?

25 ADV ABOOBAKER: I'm reading from paragraph 30.

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CHAIRPERSON: Paragraph 30.

ADV ABOOBAKER: Still the process flow. I'm just trying to explain that process flow Mr Chairman. So can you see there's three blocks there and ...

5 MR ZIMELA: Correct.

ADV ABOOBAKER: And there's three different components or structures in the NIP programme that attends to the different matters referred to in those blocks, can you see that?

MR ZIMELA: Yes.

10 ADV ABOOBAKER: Yes. Now after it goes past the ICC stage it's only then that the IPCC comes into play does it?

MR ZIMELA: That's correct.

ADV ABOOBAKER: And I'm not going to take you through each and every one of the processes set out in that process flow but at the end of that process and after they have been through that process a decision then has to be made as to whether to approve or reject the business plan put up.

MR ZIMELA: Correct.

ADV ABOOBAKER: Now in paragraph 35 of your statement you talk about a situation where a project may not be sustainable for certain reasons, just tell us a little bit about that and tell us what happens when it's not sustainable.

MR ZIMELA: With the support of the sector desks, sector business units we evaluate whether the project is, in the long term it is economically sustainable but unfortunately we

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do know that not all projects that are implemented will be sustainable in the long term. This is due to a number of reasons, the economic environment may have changed, for example the steel price may have dropped by half, if you were  
5 planning to put in a steel mill the steel price may drop due to demand or whatever factor, it may drop by half, so when you conceive of that projects you may not have conceived of what is going to be happening in the future, so it makes the projects even after you have started it makes the project not to be  
10 sustainable. There are other factors which probably human factors like poorly conceived business plan, bad marketing plans, bad product execution and all of those things, I think what we really look at, we know that some of the projects would fail but we look at what the aggregate value, the performance,  
15 the basic performance not on the number of projects but on the aggregate value of the credits that you obtain, do they meet the total obligation value in terms of credits, then if they do not we expect you to substitute those projects that have failed with other projects.

20 It may not be projects of the same value, I mean it may not be one project of the same value, it may be one or more projects but which at the end of the day will give you the same value that you are going to get in terms of the credits or it may be a case of you expand the existing projects so that at  
25 the end of the period you are able to generate the credits that

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you need to fulfil the obligation.

ADV ABOOBAKER: Yes. So when a project is substituted do you have to go through the process all over again?

MR ZIMELA: Yes.

5 ADV ABOOBAKER: So, in other words it goes through the IPS process and then through the ICC process and then through IPCC process.

MR ZIMELA: Correct.

10 ADV ABOOBAKER: Now in paragraph 9 you speak about the business plan, paragraph 39 sorry, you speak about the business plans and it appears in paragraph 40 that it requires the approval of the IPCC, now what happens if it's not approved?

15 MR ZIMELA: Again the issue is whether the total value of the business plans that you have submitted will meet your, as an obligor will meet your obligation. As long as the total value is not going to meet your obligation we expect that the obligors will continue to look at business opportunities and submit them as part of the fulfilment of the NIP obligation. I  
20 think we do monitor what we said previously in terms of the milestones that we have got, milestones that year three, year five and last one. When we suspect that companies are not going to meet their obligations then we propose that they put in some more proposals, that is the same with the business plan if  
25 it gets rejected and those that you have submitted are not

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going to meet your obligations and you are expected as an obligor to put in some more proposals. It may be in one case that, or in one or other cases that they don't have to put some other proposals because the ones that they have got are  
5 sufficient to meet the obligation.

ADV ABOOBAKER: Yes. In paragraph 41 you talk about credit claims and can you just give us some insight into the process that is adopted there so we can understand it?

MR ZIMELA: As I mentioned earlier on we measure the  
10 performance by looking at if we look at Annexure "B" page 9 where we talk about the crediting methodology. How we measure the performance is you need to perform on all of those objectives and once you have performed you bring us the claim and the proof of your performance and then we issue the, we  
15 issue the letter which says we are granting you so many, so many credits. That function is done, I mean the portfolio managers bring the claims, they record the claims and they bring it to the IPCC together with the proof of performance and then after that we, the IPCC will issue a letter of (indistinct)  
20 the claims approval. Those claims approval are then stored in the database and also in the server that is used by the unit to monitor the performance of the obligors in terms of their overall, overall NIP obligation.

ADV ABOOBAKER: So, is each project then assigned to a  
25 portfolio manager?

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MR ZIMELA: We assign portfolio managers based on sectors, we would have a portfolio manager dealing with all obligations arising out of aerospace or portfolio managers dealing with obligations arising out of energy *et cetera*, but it's based on sectors and not projects, so once a contract has been issued in energy, for example Siemens, a portfolio manager dealing with obligations out of, a portfolio manager dealing with obligations out of energy would deal with the like of Siemens, (indistinct), ABB *et cetera*.

5  
10 ADV ABOOBAKER: So once the IPCC has approved those credits are in fact awarded are they, NIP credits?

MR ZIMELA: Yes, the IPCC actually awards the credit, the portfolio manager makes recommendation, the IPCC awards the credits based on the supporting documentation.

15 ADV ABOOBAKER: Now you've dealt with the matters raised in paragraph 42 of your statement but let's deal with paragraph 43 where you talk about the notion of direct funding and the funding must be used to finance certain specific things. Just tell us about that Mr Zimela. In page, paragraph 43 of your  
20 statement.

MR ZIMELA: Can I just point one thing on, one correction or two corrections on paragraph 42. 42(b):

*"We've got export promotion for every US\$1 export-revenue generated and additional 1 NIP credit over*

25 ...".

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And above. That should have been not 1 NIP, the formula that is in the credit methodology in page 9 is used to, under "Export Promotion" which is 1 + LC (Local Content), so there is a mistake there. Then on paragraph 42(h) there's a statement  
5 there:

*"Research and Development expenses: for all costs expended on RND".*

It should have been R&D as in Research and Development.

ADV ABOOBAKER: Oh. Yes, I'm sure we note that but go on  
10 with paragraph 43.

MR ZIMELA: Okay. What we're trying to demonstrate here is what kind of credits, when do we give credits for investment, what we define as investment. You will recall that if you buy shares in a company you buy shares from a person,  
15 that would in some instances be regarded as an investment, for example if you buy from existing shareholders that would be regarded as investment. I think we want to be more clear in terms of what we regard as investment for the purposes of NIP, it's only when you, when the money is used to establish an  
20 existing facility or to upgrade an existing facility or when the money is used to acquire equipment or when the money is used for technology costs, or in that case that, for example the case that I mentioned earlier where in order to supply to certain markets you need some international accreditation or  
25 certification. We, for the purposes of investment we exclude

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funding that is used to buy shares from existing shareholders, but is not then injected into the business.

ADV ABOOBAKER: Yes. And in paragraph 44 you say that for export promotion involved in the export of locally manufactured goods, for export related projects NIP credits are based on revenue and (b), local content. Now how does this work in terms of the crediting methodology?

MR ZIMELA: I think again I'll refer to the formula that we use where we say it's 1 + LC (Local Content). For example for ... I think I'll refer to the statement that we made previously that it's 1 for local content, that for every \$1 of export revenue then we give you the credits of 1, depending on what the local content is, if the local content is 50% then you would get \$1.5 in terms of the credits. Of course in terms of the local content we have minimum local content levels at acceptance of the projects, we accept the projects based on certain minimum local content. We are not fixed on the local content but we look at the sector in which the project operates. For example it may have less local content when we deal with IT projects because most of the hardware is imported as opposed to for example, say furniture or something else.

ADV ABOOBAKER: Yes. Then in paragraph 46 you talk about review meetings, is this part of the monitoring process?

MR ZIMELA: That's part of the monitoring process. We used to have review meetings every six months, we have

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changed that in terms of the new policy to have a review meeting at least once a year for all of the obligors.

ADV ABOOBAKER: And paragraph 47 you talk about the discharge from the obligation, when does that discharge occur?

5 MR ZIMELA: When the aggregates or the total value of the credits earned exceed the, exceed the obligation or equal to the obligation then that matter is brought to by, the portfolio managers, is brought to the IPCC and the request is made to discharge the company from the NIP obligation, I think it's  
10 more standard practices because the IPCC is not going to refuse to discharge an obligation when the total credits have been achieved. We then recommend to deputy director general to send a letter to the obligor to discharge the obligor from the obligation.

15 ADV ABOOBAKER: Thank you Mr Zimela, that is more or less the background and the way in which the NIP process works from inception to discharge but now in paragraph 48 we're dealing with NIP obligations under the SDPP right, and there I would ask you a few questions. Now the first point you make in  
20 paragraph 48 is that the NIP obligations under the Strategic Defence Procurement Package were also managed and administered under the NIP programme of the DTI. Was this the intention that the NIP SDPP programme would at all times be managed by the DTI?

25 MR ZIMELA: I would not be able to answer that, I can

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only say that when I joined the DTI the programme was managed under the NIP programme.

ADV ABOOBAKER: So, insofar as the management of the NIP SDPP programme was concerned is it correct that the processes through which that programme was put and the projects were put was similar to the NIP processes from inception to finality?

MR ZIMELA: In terms of the management and the process I explained in terms of the business concepts the approval of the business concepts, the approval of the business plans, the approval of the credit claims the process has always been the same whether it's SDPP or non-SDPP.

ADV ABOOBAKER: That is why you say in your statement that the process of oversight and monitoring was not different from that applicable to any normal NIP obligations, not so?

MR ZIMELA: That's correct.

ADV ABOOBAKER: But now here you also highlight certain differences in paragraph 48. Now let's talk about each of those differences. Firstly let's talk about the matter you referred to in paragraph (a) and the terms of the contract, what do you have to say about that?

MR ZIMELA: What I'm trying to highlight there is this; under all other NIP obligations it's only the DTI and the obligor that is involved in negotiating the terms of the contract. Once the obligation has been awarded then the DTI which is the IPS

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Unit will sit with the obligor and negotiate the contract but in the case of the SDPP my understanding is that it was not only the DTI, there were other departments involved which is sort of different from the normal way in which we manage the programme.

5

ADV ABOOBAKER: So, these other departments that were involved with the negotiation process were which departments?

MR ZIMELA: Let me point out that this is from the information that I gleaned from the contracts, like the umbrella agreements has got the signature of the Department of Defence and the Department of Trade and Industry and the obligors which basically imply that, and those agreements contain some terms for the NIP, which basically implies that there was another department that was involved, but I don't know, besides the signatures that are in the agreements I don't know if there were, I'm made to understand that there were other departments like National Treasury and others.

10

15

ADV ABOOBAKER: Yes. And insofar as that matters in paragraph 48(b) is concerned this is another area of difference, can you just explain to what extent that was different?

20

MR ZIMELA: Yes, I think as explained by the other, sorry, as explained by the other witnesses before me there's a credit (indistinct) methodology that has been used before when looking at awarding the credits which again I'll refer you to page 9 of Annexure "B", but in the case of the SDPP this has

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been somewhat different in terms of, if I go to each one of those the credits were only awarded for investments, export and local sales, there is no space as in the crediting methodology, in the guidelines for training and development, SMM promotion, HDI's and R&D expenses. So I guess that's where the major, major difference is with the credits being awarded for SDP and the credits being awarded for other, the non-SDP programme.

ADV ABOOBAKER: But now this methodology in ... What is the impact of the burden upon the obligor by this methodology put up in paragraph 48(b)?

MR ZIMELA: I don't understand your question.

ADV ABOOBAKER: Is the NIP burden then ... Sorry, is the NIP burden then much harder to achieve in this scenario on paragraph 48(b)?

MR ZIMELA: It may be much harder in the sense that you, it is much harder in the sense that there are certain activities that you are not given credits for but at the same time it may be like you don't have to perform those activities like you don't have to bring in a BEE partner, some people would say, or some financial commentators would say bringing in BEE partners is expensive, so if you don't have to bring in a BEE partner it may be like it doesn't pose a heavy burden on you. If you don't have to subcontract to SMME's it may be that it doesn't impose a heavy burden on you, so without actually

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talking about the individual projects one cannot easily conclude and say it's much harder or it's easier unless one would look at the individual projects.

ADV ABOOBAKER: But the rate at which NIP credits can be earned is much lower here than in the ordinary NIP process?  
5

CHAIRPERSON: I'm sorry Advocate, we can't hear you.

ADV ABOOBAKER: Sorry. The rate at which ... Sorry Mr Zimela. The rate at which NIP credits can be earned is much more substantially reduced than in the ordinary process, is that  
10 right or wrong?

MR ZIMELA: The rate that we see it can be ..., the credits can be achieved theoretically appear to be less than in the normal credit methodology, that's why I was saying would you have been able to achieve the other, would we have been  
15 able in those projects to have brought in BEE partners, would we have been subcontracted other SMME's, so I, without looking at specific projects some, I mean we struggle in this day and age for companies to subcontract to BEE companies, so if there was a burden on them would have had achieved that  
20 I wouldn't know without looking at specific projects.

ADV ABOOBAKER: And then in paragraph (c) you talk about another difference there, could you explain that to us?

MR ZIMELA: It's not a difference as such from the management of NIP, I think where this performance, the review  
25 came into we had a number of interactions with, after the

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fulfilment of the obligations by all five obligors we had a number of interactions with the Portfolio Committee on Trade and Industry. There were a number of issues that were raised by the members of the Committee, one regarding the accuracy of our credit system, two regarding the actual performance as regard to what was promised in the business plans. I can't remember all of the issues that were raised, the other issue, the issue of multipliers.

We then through those interactions committed to conduct an independent review of the performance of the SDP Projects of which was carried out by the DTI in Internal Audit. This is not something that was required as a result of the SDPP contracts but it's something that we committed to do as a result of our interaction with the Portfolio Committee on Trade and Industry.

ADV ABOOBAKER: Mr Zimela, at the moment I'm only referring you to paragraph 48(c) and that is talking about how the NIP obligation is determined and the difference between ordinary NIP and SDPP NIP insofar as that is concerned, so I just want you to confirm that in the case of NIP obligations under SCPP the credits required to be achieved are specified in the contract and they are not worked out through a process of working out 30% of the imported goods, content of the goods as in ordinary NIP, that's all I want you to say.

MR ZIMELA: My apologies, I thought you were saying

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(e). Yes that's correct, the statement is correct.

ADV ABOOBAKER: Now insofar as the performance guarantees are concerned there too there is a difference. What is that difference?

5 MR ZIMELA: For other NIP obligations the performance guarantees is 10%. For the SDPP it was ... Sorry, for other NIP obligations the guarantee is 5% whereas for the SDPP it was 10%. I do not know where the 10% was based on.

10 ADV ABOOBAKER: Now in paragraph (e), the matter you were talking about earlier is referred to, that is the final audit report on the SDPP project, you've attached a copy of that report, is that what you were referring to?

MR ZIMELA: Correct.

15 ADV ABOOBAKER: Now insofar as that report is concerned it's attached to your papers marked "E" and it's at page 73. Now I just want to know from you who was responsible for compiling this report?

MR ZIMELA: It's the Internal Audit Unit of the Department of Trade and Industry.

20 ADV ABOOBAKER: So, what role did you play in the compilation of this report, if any?

MR ZIMELA: The process at which they work is ... Let me go back a little bit. The Internal Audit Unit, we work together to put in the terms of reference of the audit as per the  
25 issue that were raised in the Portfolio Committee on Trade and

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Industry and the process that they would follow, in terms of the process that they normally follow is, one of the processes that they normally follow is they will write their, they do a sample of the products, in this case we agreed that in the first phase they will take a sample of 40 projects and look at those projects in terms of the Terms of Reference and what they normally do is they come back with their own opinion on some of those issues that they have raised and then they would require the management of the unit to comment on their opinion, so if you look at the reports you will find that there are areas where there is management comments, the comments would have come from the unit that I'm heading, that's the role that we as the unit played besides the compilation of the terms of reference, the opinion as raised by the audit are purely theirs, ours was to comment on, as indicated in some sections of the report where you see management comments our was to comment on the opinion that they gave.

ADV ABOOBAKER: Now this report deals with some matters which are very pertinent to the terms of reference, so I'm going to refer you to some aspects of the report and if you can comment on it then you do comment on it, if you can't, if it's not within your knowledge then please tell us. Firstly I want you to open to page 87. Page 87 of your statement. Now there you refer to, or the report refers to the total number of jobs which were created, I take it from the SDPP and whether they

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were sustained or not sustained, can you see that?

MR ZIMELA: Yes, I can see.

ADV ABOOBAKER: Now under that the authors of this report talk about the:

5                   *“shortcomings in the process impeded the  
                          auditability of these deliverables”.*

And they specified the deliverables, and I wanted your comment on each of those deliverables, so I'll read the first one to you:

10                   *“NIP terms concluded with the Defence Obligors did  
                          not include an obligation to deliver on job creation  
                          to earn NIP credits except for investments, local  
                          sales and Net Export Revenue deliverables”.*

Is that your understanding of it as well?

15                   MR ZIMELA: Yes, that's our understanding that the performance measurement as it relates to defence obligors or SDPP was based on only three criteria, that is investment, sales and local sales and on the contracts there was no performance measurement relating to jobs.

20                   ADV ABOOBAKER: And the next, on the next page the following is stated and I want to know if you can comment on this:

25                   *“The actual contribution of each project on  
                          employment was not described in terms of  
                          sustaining existing jobs, creating new/additional  
                          jobs or creating opportunities for jobs”.*

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You agree with that or can you comment on that?

MR ZIMELA: Yes, whilst in some of the projects we did measure the jobs created the focus in managing the programme was on the pre-criteria that were specified in the contracts.

5 ADV ABOOBAKER: And the next bullet point says:

*“The baseline employment figures were not provided at the beginning of each project to be able to determine the additional jobs that resulted from the NIP activity implemented by the Defence Obligors”.*

10 Have you got any comment to make on that, that that's, does that accord with your experience?

MR ZIMELA: I don't necessarily, I mean I don't agree with the statement. I think most of the business plans had an estimate of jobs that would be created but in other cases there were export promotion projects and export promotion projects do not necessarily result in new jobs being created, it may be that your factory was operating at half capacity and you were putting people on standby, you were employing when there is orders, so they do not necessarily result, they may result in new jobs created, so if those cases in the business plan, they may not have estimate of new jobs to be created purely because there was no expectation that new jobs were to be created but in all of the products that jobs were to be created, they were included in the business plans that were provided.

25 ADV ABOOBAKER: And then the last bullet point under that

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section:

5                   *“Evidence of jobs created was not collected as a job  
creation deliverable is independent of the NIPP  
Credit claiming process, which is solely based on  
investment t local sales and net export revenue  
created of course by the Defence Obligors”.*

And you said something similar to that previously, you confirm  
that that was one of the difficulties?

10           MR ZIMELA:           It was not part of the process for the  
performance of the obligors, however, there were review  
meetings at which the projects were, the review meetings I  
mentioned earlier at which the projects, the performance of the  
projects were discussed. In some cases the jobs were  
discussed, in some cases there is no indication, there were no  
15   indication of jobs, but again the focus was in the management  
of the programme, the focus was on the performance  
measurement criteria as specified in the NIPP contracts.

20           ADV ABOOBAKER:   Now I don't know what number it is on you  
papers but the page I'm referring to is printed number 27, I'm  
still trying to establish how it's numbered. 99, page 99. Have  
you found that?

MR ZIMELA:           Yes.

25           ADV ABOOBAKER:   Now that's the other part of this Audit  
Report which also deals with jobs and since this is one of the  
items of the Terms of Reference I want to go through it in some

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detail with you. Now if you look at that particular page most of the propositions I've made to you on jobs have been already included in the top half but what I want to deal with you is the second half. Can you see the table there which actually goes  
5 on to the next page as well? I just want you to try and explain to us what this table means, the first column there describes the Obligor, is that right?

MR ZIMELA: That's correct Sir.

ADV ABOOBAKER: And you have determined under each  
10 obligor the number of direct jobs created through that obligor's involvement in particular projects, is that right?

MR ZIMELA: That's correct.

ADV ABOOBAKER: So, you've also indicated for instance what the number of jobs there were estimated in the business  
15 plan in the third column relating to, say GSC.

MR ZIMELA: Correct.

ADV ABOOBAKER: So, now if we just look across we see that it seems that the jobs referred to in the business plan by each of the obligors and the number of direct jobs created and the  
20 number of indirect jobs created are all reflected on this table, is that right?

MR ZIMELA: Correct.

ADV ABOOBAKER: Now where was all this information derived from? Are you able to say?

25 MR ZIMELA: The third column there it says:

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*"The number of jobs as per the business plan".*

That refers to the business plan that is submitted by the obligors as part of the performance for the NIP projects and those are the projects that had been implemented at that stage.

5 Then the number of direct jobs creates as per the spreadsheet, the number of direct jobs is the number that we as a unit created either through, let me ... Okay, either through interaction with the obligors or through interaction with the projects themselves.

10 I need to point out here that some of these projects when we created the spreadsheets like the information, there was a delay in the implementation and information wasn't there like The Long Walk to Freedom, when the spreadsheets were probably created in 2012, or not ..., yes towards the end of  
15 2011, I don't remember when we created the spreadsheet but some of these projects have not yet reached the maturity stage, so the jobs that we have created may have been based on the information that we put at that time.

Some of the projects got delayed and we didn't, like  
20 the Saldanha and A-Berth, those are the projects that got delayed and didn't get off the ground within the time that the total number of jobs were estimated and some, the Saldanha and the A-Berth are starting to pick up now. So, the jobs may have been long term projects.

25 Then the last issue I want to mention is that the

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number of jobs in the business plan is always the estimate that is coming either from the advisors of the promoters of the project or the promoters themselves and sometimes the promoters are over-optimistic in terms of what they are going to achieve. So, the estimate as per the business plan is not the actual number of jobs that has been promised by the obligors but must be seen in the context of the estimate, provided that certain assumptions that they had apply.

ADV ABOOBAKER: Now this document seems to have come into existence in 2012, is that right?

MR ZIMELA: Yes, the audit, internal audit, internal audit, it follows our interaction with the Parliamentary Committee in February and March 2012, so I think it was, the audit was started in the first quarter of 2012.

ADV ABOOBAKER: But now in all fairness to the Commission is there any reason why this document can't be updated to the present day?

MR ZIMELA: This is not the report that was done by the unit, it was commissioned on behalf of the Portfolio Committee. I think that decision would then have to lie with the DTI at top management.

ADV ABOOBAKER: Yes, I want to draw it to your attention that under the column number of "Direct Jobs Created" I've done the addition and it seems that ...

CHAIRPERSON: I'm sorry Advocate Aboobaker, for all

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(indistinct), I see it's already 15h50.

ADV ABOOBAKER: Mr Chairman I was on the latter, I've got not more than about 10, 15 minutes to go. Would you prefer me to finish?

5 CHAIRPERSON: Okay, I think we can continue.

ADV ABOOBAKER: Yes, thank you Mr Chairman. Yes, I just want to make a few observations and you can make any comments if you want to but I've added all the direct jobs in the fourth column created, I've added all the figures there and  
10 they come to 3 914, so you can make a note of that if you want, and I've added up all the numbers of indirect jobs and it comes to 3 370. Now I haven't added up all the estimated jobs but I want you to comment, if you want to, on one or two of these which I'll just refer you to.

15 If you look under the obligor "GFC" you will see that the estimated 4 000 jobs, but the actual number of direct jobs created was 150 and in the case of Saldanha and A-Berth, GFC as well, 40 950 jobs were projected, 1 720 was created and the case of Long Walk to Freedom movie which seems to be  
20 covered here 13 030 people were estimated and 69 were created. Is there any comment you got to make on that because that seems like a very large variation?

MR ZIMELA: The Saldanha and the Long Walk to Freedom is the period at which we collected the data. For  
25 example GFC one would have to go back and look at when was

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the last time that we, they fulfilled the obligation. There was a delay in terms of the pickup of some of the projects. As I was saying with the Long Walk to Freedom there was quite a long delay between the time that the project was approved and the time the number of issues why there were delays and the time that the project actually got off the ground, so the 69 related to the last period or the last period at which we monitored the projects.

The call centre project, again I'm not sure exactly when was the last time that we got the number of 150 and the estimate of 6 400 but the discrepancy arises between what is mentioned in the business plan and the last time that we actually checked the jobs. I want to go back to the statement that because there was no, we were not in terms of the contract required to monitor the jobs the focus was on the three performance criteria, so the monitoring of the jobs may not have been as consistent as the monitoring of the other three performance criteria, so the numbers that we have here may have related either at the start of the projects or anywhere in the implementation phase of the project.

MR ZIMELA: Now I want you to turn to page 96 of that report, of your bundle which is also a part of that report.

ADV ABOOBAKER: Now here as part of a management action plan for which you seem to be the responsible official it says:

25 *"The management of IDD has decided to discontinue*

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*the use of negotiated package deals to attract NIP investments”.*

What's your comment on that and what is the IDD?

MR ZIMELA: The IDD is the Industrial Development  
5 Division. It used to be called the Industrial Development  
Division but it's now called the Industrial Development Policy  
Division, that's the division that the business unit, the IPS  
Business Unit is located on. The issue of package deals we  
10 heard my colleague Siphon will deal with the issue of package  
deals. We had interactions in Parliament, that is the deputy  
director general who is the head of the division and the  
Minister of Trade and Industry where we had interactions which  
... Anyway ...

ADV ABOOBAKER: Sorry Mr Zimela, just in fairness to the  
15 commissioners I think the question I should have posed to you  
before that is what is a package deal, what is a negotiated  
package deal?

MR ZIMELA: I will give a brief description, I think my  
colleague will, Siphon who will be coming after me will cover  
20 that in more detail. The package deal were those projects that  
were discussed between the DTI and the obligors for which it  
was decided on the amount of investments that the obligor  
would get and on the amount of sales, whether it's export or  
local sales that the obligor will get from the beginning before  
25 the actual project took off, those projects were negotiated

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based on a number of conditions, I mean of reasons that they were negotiated so that the obligors can participate in certain projects that were deemed necessary. We call those package deals.

5 ADV ABOOBAKER: What was the reason for it being discontinued?

MR ZIMELA: Can you repeat the question?

ADV ABOOBAKER: What was the reason for discontinuation of negotiated package deals to attract NIP investments?

10 MR ZIMELA: I think package deals were more an exception than the norm, they were not part of the NIP guidelines but there were certain instances where it was deemed that some of these projects were important in terms of achieving certain strategic goals of the government, we need to  
15 get involved, so that's why they were started in the first place but they were not a norm, they were an exception rather than the norm. I think the reason why there was a decision that was taken to discontinue them was a decision that was taken when we were in Parliament that was taken that because there was  
20 so many questions around them from the Parliamentarians that the DDG and the Minister took a decision that we won't be using the Package Deal again.

ADV ABOOBAKER: So, as I understand you the ordinary NIP guidelines and policy make no reference to package deals?

25 MR ZIMELA: Yes, they don't.

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ADV ABOOBAKER: And would you be able to say whether the NDPP ..., SDPP NIP contracts makes reference to package deals?

MR ZIMELA: My understanding with the NIP terms, that  
5 is through my involvement as part of the ITCC is, has been that where credits are concerned the credits should be awarded one-for-one for investment, one-for-one for sales and one-for-one for export sales. But my understanding as participating in the Committee has always been that where there are  
10 imperatives to deviate from the NIP terms the unit, it IPS has always a right to apply to the Minister to make some deviations in order to achieve certain strategic objectives of the DTI.

ADV ABOOBAKER: So that crystallises the situation a bit more, at least for the commissioners because what you are in  
15 fact saying is that, if I understand you correctly that there was no reference to packages, negotiated package deals in the SDPP terms, NIP SDPP terms but because of strategic reasons there was a feeling and a thinking in the DTI that they were entitled to deviate from it and that they finally got the Minister  
20 to agree to that deviation, is that what you are saying?

MR ZIMELA: That was my understanding as part of the IPCC and the part of the unit that as long as there is an authority from the Minister who signed the contracts we should, we could deviate from the SDP to fulfil certain DTI objectives  
25 or government objectives.

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ADV ABOOBAKER: Yes. And if you can't answer this question then please say so, but do you know of any authority that entitled higher authority or the Minister to sanction negotiated packages?

5 MR ZIMELA: Because the NIP programme is administered by the DTI I've always assumed that the Minister is the highest authority in terms of managing the programme.

ADV ABOOBAKER: And then I'm just going to finish off with this Audit Report. If you look at page 82 under the heading  
10 "Use of Negotiated Credit Package Deals", so ...

CHAIRPERSON: Which page is that?

ADV ABOOBAKER: Page 82. If you look under the second column it says "Use of Negotiated Credit Package Deals" and in the third column it says "Non-Compliance", was that the report  
15 of the Committee? What was intended by saying "non-compliance", non-compliance with what?

CHAIRPERSON: Advocate Aboobaker, I think probably we should adjourn now and we'll continue with the witness tomorrow morning.

20 ADV ABOOBAKER: As you please Mr Chairman.

CHAIRPERSON: Say again?

ADV ABOOBAKER: As you please I say.

ADV ABOOBAKER: Thank you. Because I suspect you know there might be other people who are going to need to cross-  
25 examine him.

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ADV ABOOBAKER: Yes Sir, that's possible.

CHAIRPERSON: So, I don't think another five to 10 minutes we'll be through with this witness.

ADV ABOOBAKER: Yes. I think my learned friend Mr Skinner  
5 might want to make a few comments about the future of this matter if he can.

CHAIRPERSON: Okay.

ADV SKINNER: Chair I'll be very brief. It's simply a matter that if there is cross-examination of this witness  
10 tomorrow on the performance this week that's unlikely to take very long. The following witness after this witness will be Mr Zikode. I don't think anyone is ready yet to deal with his evidence, it wasn't anticipated that we will get to him as quickly as this. The bundles for his evidence are still being  
15 prepared, hopefully given to all the interested parties. The summary of his evidence hasn't yet been made available on the website. There are other issues that need to be resolved with DTI concerning trying to summarise some of his evidence and to reach agreement on certain aspects and we still would need  
20 to resolve the question of the declassification of certain documents, especially the SDPP contracts themselves.

So Mr Chairman the position is that we would certainly carry on tomorrow and finish this witness but my anticipation is that at most that can take an hour and then we  
25 are going to have to ask the Commission to grant us the

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indulgence of an adjournment until such time as everybody is ready and has been able to absorb all the documents that relate to Mr Zikode.

5 I discussed this provisionally with my learned friends and all interested parties, as I understand the position to be that the DTI representatives have no difficulty in lieu of an adjournment until, say Thursday. The ARMSCOR representatives in fact are quite happy that the adjournment should be until Friday to give everybody time to absorb  
10 everything and they believe that the time between now and Friday morning can be very profitably utilised. I've also discussed the matter with the representatives from Lawyers for Human Rights, they also have no objection to a proposed adjournment.

15 So, the position is simply that we can carry on tomorrow but we anticipate it would be fairly briefly or my submission would be that perhaps the better proposal would be to stand matters down at this stage until either Thursday or Friday when we would be able to proceed with Mr Zikode who  
20 will be a fairly lengthy witness.

CHAIRPERSON: I don't have a problem.

**NOTE: Caucus.**

CHAIRPERSON: Advocate Skinner, do I understand you to be saying that most of the parties will also be comfortable if we  
25 adjourn now until Friday so that the parties should not come in

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tomorrow morning at high cost to just sit here for an hour although it may be less than an hour dealing with this witness and from there adjourn, but instead of doing that we should rather adjourn now so that parties should not incur any  
5 expenses (indistinct) come back on Friday.

ADV SKINNER: Yes Mr Chairman, that is precisely the request I'm making.

CHAIRPERSON: I suppose ... Is there anybody who has got an objection with that suggestion? Thank you. Then in  
10 that case then let's adjourn now until Friday morning, so Friday morning we'll try and finalise the evidence of the current witness and from there move to the next witness.

ADV SKINNER: I'm indebted Chairperson.

CHAIRPERSON: Thank you. We'll adjourn.

15

**(COMMISSION ADJOURNS)**