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CHAIRPERSON: Good morning. Can the witness confirm that he is still under oath?

MR ZIMELA: I do.

CHAIRPERSON: Thank you.

5 ADV ABOOBAKER: Thank you Mr Chairman, may I proceed with the questioning? Mr Zimela, you remember that when we adjourned on Tuesday afternoon I was, I asked you to look at page 82 of the final Audit Report.

MR ZIMELA: Yes.

10 ADV ABOOBAKER: And I drew to your attention there in the first column or the second column on page 82 if you look at it horizontally the words appear: "Use of negotiated credit package deals".

MR ZIMELA: Yes.

15 ADV ABOOBAKER: And in third column the words appear "Non Compliance".

MR ZIMELA: Yes.

ADV ABOOBAKER: And I asked you if you could comment on what was meant by non-compliance, non-compliance with what.
20 Could you just tell us what your answer is?

MR ZIMELA: Yes. The DTI took a decision to, I think as we explained earlier on to support certain projects or to achieve certain objectives, those projects that would not have ordinarily be attractive to the obligors, then we then introduced
25 the concept of package deals or multipliers. What I understand

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from the report of the auditors is that we deviated from the, we deviated from the guidelines but I think the auditors do understand, they accept the reasons why we deviated. The issue is more around we never developed a framework that would provide clarify to all the parties and also to provide consistency in making the decisions. I think we do accept that there was no framework, I think we were more concerned at that time, the implementation of the programme and we should have developed the framework.

10 We have not implemented the recommendations of, as in page 95 and 96 in terms of developing the framework mainly because there has been a policy shift in NIP which there's a new NIP that has been approved by Cabinet in 2012 but not just a policy shift in NIP, there's been a shift in the way that we leverage the instrument of government procurement. We have introduced what we call localisation where the focus is on local manufacturing like in the case of, for example the case of Spoornet who assembles the locomotives locally, in the case of PRASA which is the Passenger Rail Agency of South Africa we will assemble the passenger chains locally with 65% local content, so there will be no NIP in those cases and we also have designations [sic], there will be no NIP, and then in the case where we got NIP the focus now is on direct NIP, that is we aim to build long-term relationship with the manufacturers and we aim to collaborate

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with the manufacturers, so the issue now of multipliers is no longer relevant in the new policy shift.

ADV ABOOBAKER: Mr Zimela try to stick to answering the question if possible. Let's just go through this again, you
5 talked about deviations from the guidelines in your answer, but now the SDPP, NIP, there was a contract between the parties. Does the contract refer to credit package deals, negotiated credit package deals?

MR ZIMELA: I meant to say deviation from the NIP
10 terms. The contract is specific in terms of how you issue credits in the sense of its one-to-one for investment, it's one-to-one for exports, it's one-to-one for local sales. My understanding is that there's always been, whether it's the guidelines or the contracts there's always been a possibility of
15 a discretion in terms of deviating from those as long as approval has been sought from the Minister.

ADV ABOOBAKER: Yes Mr Zimela, but in the context of this report when they say non-compliance are they saying non-compliance with the NIP terms in the NIP SDPP contracts?

MR ZIMELA: Can you repeat your question?

ADV ABOOBAKER: I say in the context of what the Internal Audit Committee is saying, and I only want you to comment if you feel you can comment, when the word "use of negotiated credit package sales" is used and they are saying non-compliance,
25 are they saying non-compliance with the SDPP NIP

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terms as contained in the contracts?

MR ZIMELA: That's correct.

ADV ABOOBAKER: Yes. Now I want you to open to page 94 of the same Audit Report. Now on page 94 under the words "Root Cause" there's three bullet points and I'll just read the first
5 bullet point so you can get a sense of what it is saying, it's saying:

*"Package deals were used as the strategy to encourage the investments towards industrial areas, sectors and communities that would traditionally not
10 be favourable to potential investors".*

Something similar to what you have been saying thus far. Is that right?

MR ZIMELA: That's correct.

ADV ABOOBAKER: But if you look at the third bullet point it
15 says:

*"The absence of a guiding framework and criteria on how the packages will be granted and the extent of additional credits to be allocated for each credit
20 package".*

Now what I want to know from you is can you say categorically that whether it was multipliers or whether it was, whether you call it a negotiated package there was no such framework and no criteria that had been established?

MR ZIMELA: That's correct, we didn't develop a
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framework at that time.

ADV ABOOBAKER: Then Mr Zimela I'd like to take you through to a document which I received this morning and Mr Chairman I must apologise for only making it available this morning because I only received it this morning, I want to take you through this document, at this stage you know the document much better than I do and I want you to explain to the Commission what this document is all about firstly, where you got the information from and what it is intended to convey. The document is Annexure "F" and it appears at page 110 to a 113 of your statement.

MR ZIMELA: We developed this document, we still were developing towards the end of last year. What we wanted to do was to provide a more clearer picture to the Commission in terms of one; the number of projects that have been undertaken by each and every of those SDPP obligors, the number of jobs that have been created, created or saved, the amount, the total amount of investment, one; by the obligors themselves and also by the other parties and then the total investment credits and the sales credits.

ADV ABOOBAKER: Now can you see that there's a portion of that document which has been punched and something's been removed?

MR ZIMELA: Yes.

ADV ABOOBAKER: Now were those words intended to be "total

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actual investments”, it’s somewhere in the middle of the page
Mr Chairman at the top.

MR ZIMELA: Correct.

ADV ABOOBAKER: Right, now let’s deal with each line, each
5 column horizontally so that we can explain what appears in
each column. In the first column, what does that first column
represent?

MR ZIMELA: The first column under there is the project
name, it lists all of the projects. The ... My apologies. The
10 first column, the project name, it lists all of the projects under
each of the obligors. Can I go through all of them or ...

ADV ABOOBAKER: Well, let me just explain it to the
Commission. So, if you look at the first column it says: “BAES
Hawk/Gripen” and all of those entries under that column are all
15 projects right up to the half of the second page all projects
undertaken by BAE. Is that right?

MR ZIMELA: The second row “BAE Hawk”, the number,
the Hawk/Gripen is the type of the product that was purchased
from BAE, DOD stands for Department of Defence. The 7.2, the
20 number in brackets, “(R7.2bn)”, it refers to the obligation of
BAE. Then on the other rows there they refer to all the
projects that have been implemented by BAE. Then on the next
page on page 111 the last four rows before the total, the last
four rows where you have transfer from Volvo, transfer from
25 Rolls Royce, transfer from DIP, transfer from GE, they refer to

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credits that were earned by BAE but with projects that were not implemented by BAE but were implemented by the sub-suppliers of BAE, for example Volvo supplied the engines, Rolls Royce also supplied the engines, GE supplied as well the engines.

5 The transfer from DIP, it's the transfer of credits from the Defence Industrial Participation to the National Industrial Participation. The contracts allowed that there may be credits that may be transferred from the DIP to NIP.

ADV ABOOBAKER: Now I want you to look at all these
10 obligors, they seem to be highlighted in blue and just explain now in respect of GFC what that item highlighted in blue represents.

MR ZIMELA: Yes, again on GFC it's the, it's another
15 obligor, German Frigate Consortium. The on the brackets again is what they supplied to the government which is the Corvettes, the DOD refers to the purchaser. And then the R204 700 000, it refers to the obligation, the total amount of the obligation of the GFC.

ADV ABOOBAKER: And similarly if you look down the page at
20 the next page, page 4, page 112 the obligation on GFC is also set out similarly.

MR ZIMELA: That's correct.

ADV ABOOBAKER: And then it's the same for (indistinct) and
it's the same for Agusta.

25 MR ZIMELA: That's correct.

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ADV ABOOBAKER: Now if you go to the second column it says "Short Description", can you see there?

MR ZIMELA: Yes.

5 CHAIRPERSON: I'm sorry, which page are we at now, short description on which page?

ADV ABOOBAKER: It's on the first page. On the first page Mr Chairman. Get back to the first page. Can you see on the first page the second column says "Short Description". Can you just tell us what that intends to represent?

10 MR ZIMELA: Yes, under the "Short Description" it's a short description of each of those projects that are listed in column 1, like under the first project there "ABB Pinetown", then the short description says:

"ABB procurement exports. ABB Swiss Gear".

15 What it refers is, the description is too short but what that refers is the export of the Swiss Gear from the ABB factory in Pinetown to the ABB factory in Zurich.

ADV ABOOBAKER: Thank you Mr Zimela, then let me take you through to page 111 under the same column of "Short
20 Description". I want you to get to the end of the projects and just before the transaction it says "Corvette Platform", there's two figures there, "44". Just get to page 111 and I'll take you back there. Are you on page 111?

MR ZIMELA: Yes, I'm on page 111.

25 ADV ABOOBAKER: And in the second column short description

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you get right down to the bottom before you get to “Corvette Platform”, there’s a total there of 44, what does that 44 mean?

MR ZIMELA: The 44 should not have been there, I think it’s a misprint from the spreadsheet.

5 ADV ABOOBAKER: Does it not mean 44 projects?

MR ZIMELA: Sorry, it may mean that ..., I haven’t counted the actual number of projects, it may mean that, I may be making a mistake.

10 ADV ABOOBAKER: And if you go across the page where the 44 is and look at all the other figures there, do those represent the totals of the numbers in each column?

MR ZIMELA: Yes, under each column from the column, the “New Jobs Created”, those are the totals for each of those starting from the “New Jobs Created” to “New Indirect Jobs”, “Total New Jobs”, the, just before the blue line those are the totals for each of those.

ADV ABOOBAKER: And then under the third column “Province” is that where, the province in which each of the projects described in the second column are located?

20 MR ZIMELA: That’s correct Sir.

ADV ABOOBAKER: Then in the fourth column it says: “New Jobs Created”. What I want to know from you is where did that information come from?

25 MR ZIMELA: The “Jobs Created” comes from two sources, there was never a requirement for the obligors to

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account for the jobs created but when we were doing the ..., we had review meetings every six months with the obligors. In some cases they would provide jobs for the projects, but in some cases they did not provide jobs, so we then went back to the business plans and extracted the numbers that were in the business plans to arrive at the number of jobs created wherein the review reports there was no number of jobs created.

ADV ABOOBAKER: So, the new jobs created may not be actual jobs but what was reflected in the business plan?

10 MR ZIMELA: That's correct.

ADV ABOOBAKER: And insofar as new indirect jobs is concerned, where did you get that information from?

MR ZIMELA: The new indirect jobs, indirect jobs is always an estimate. The new indirect jobs were an estimate of what the indirect jobs is. We, economists use different figures to calculate indirect jobs, we've used a number of 2, that is if you've got a ..., like in the case if you look at (indistinct) you've got 700 direct jobs, then you will have 1 400 direct jobs. The sort of a multiplier for indirect jobs differ depending on the different sectors, each sector will have a different multiplier for indirect jobs. We took a decision to use 2 to calculate indirect jobs.

ADV ABOOBAKER: So there too there can't be much certainty because we're dealing with estimates and estimates also based on new jobs that were created which were based on business

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plans?

MR ZIMELA: Indirect jobs will always be estimates.

ADV ABOOBAKER: Yes. So the next column after “New Indirect Jobs” is “Total New Jobs”, that’s the aggregate of the new jobs created, the new indirect jobs, is that right?
5

MR ZIMELA: Correct.

ADV ABOOBAKER: Now the next column is “Jobs Saved or Retained”, now could you tell us what this is about?

MR ZIMELA: We use the term “Jobs Saved or Retained”
10 in the case where without the involvement of the obligor a factory would have closed or a facility would have closed without the investment, so in that case we, it’s not the new jobs that have been created but it’s the saving of jobs that would have been lost.

ADV ABOOBAKER: What’s the process by which you come to these figures?
15

MR ZIMELA: If I can make an example which is one of the projects in page 112 under GSC, German Submarine Consortium, you would see in one of the rows there’s
20 “Magwatee” [sic], on page 111 there’s “Magwatee” there, I think it’s ...

ADV ABOOBAKER: Is that the name of the project?

MR ZIMELA: Yes, that’s the name of the project.

ADV ABOOBAKER: Well, let us find it first.

MR ZIMELA: Around about row 7 under “GSC”.
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ADV ABOOBAKER: Is it on page 112?

MR ZIMELA: Yes, on page 112.

ADV ABOOBAKER: It's, it's two thirds down, is it somewhere two thirds down the page, Magwatee, M-A-T-W-E-E?

5 MR ZIMELA: It's the ninth project under GSC. It's the ninth project under GSC.

ADV ABOOBAKER: Yes I found it. Mr Chairman, have you found it?

CHAIRPERSON: Yes.

10 ADV ABOOBAKER: Tell us about it.

MR ZIMELA: I know, I mean I'm making a reference to this project just because I'm more familiar than the others, otherwise the process is still the same. In this case on the Magwatee. It's a tea plantation that was about to close in the
15 Eastern Cape and we also had another one that was in Limpopo that was about to close because of significant increase in imports from other countries but because there was an involvement of the obligor injecting more funds into the project and bringing in a partner who is able to deal with the, with,
20 able to deal with increased productivity competitiveness, those jobs that were about to be lost, those workers that were about to lose their jobs, then the plantation didn't close, so in that case we say the jobs were saved or they were retained. If there was no involvement the plantations would have closed at
25 that time and all of those workers would have lost the jobs.

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ADV ABOOBAKER: Well, in the case of Magwatee you can say with certainty what the position was, you were personally involved with that project, is that right?

5 MR ZIMELA: I was not personally involved, at the time of the projects I wasn't in Agro Processing Unit, so I had a knowledge of the project, not that was personally involved in it.

ADV ABOOBAKER: Now apart from the Magwatee project when we talk about other instances where jobs were saved or retained are we talking about estimates or actual information
10 from which you derived the figures?

MR ZIMELA: The jobs say that the actual figures of the people that are, or were employed in each of those factories at that time, so they are the actual figures, they are not estimates.

15 ADV ABOOBAKER: Thank you Mr Zimela, then let's get on to the next column. The next column reads "Total Actual Investments". Just tell us briefly what's that about.

MR ZIMELA: Can I deal with the two columns there at the same time, the total actual investments and the actual
20 obligor in this, at the same time?

ADV ABOOBAKER: Yes, do it any way you are comfortable with.

MR ZIMELA: In any, in all of these projects there will be an involvement of the obligor. In some cases it's only the
25 obligor that puts in the funding and no other parties. In other

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cases there is the obligor and other parties that puts in the funding. The actual obligor investments we sort of want to separate what were the actual investments as opposed to the credits, the credits may not necessarily be the amount of funding that has been put into the project, so the actual obligor investment is the actual amount of money that has been invested by the obligor in each of those projects. Then because the projects may have other investors the total actual investments refers to the amount that has been put by the obligor plus the amount that has been put by the other investors. Now the difference here is that these amounts are the actual amounts and do not have any credit implications or multiply implications involved in them, they are the actual amounts that have been invested into the economy.

ADV ABOOBAKER: Yes I understand you, but now if you look at some of the projects, say you look at the first page, page 110, somewhere towards the middle of the page is a project called "Y-Digital Works", can you see that, page 110, the first page?

MR ZIMELA: Yes Sir.

ADV ABOOBAKER: Now if you go across the page to the actual obligor investment it says "Not Dollars", now what's going on here?

COMMISSIONER MUSI: Where are we?

CHAIRPERSON: Page 1.

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COMMISSIONER MUSI: Page 1. 1?

ADV ABOOBAKER: Have you found it Mr Chair?

COMMISSIONER MUSI: Column?

CHAIRPERSON: Y-Digital is somewhere here.\

5 COMMISSIONER MUSI: Y-Digital?

CHAIRPERSON: Yes.

COMMISSIONER MUSI: Okay.

CHAIRPERSON: Thank you.

ADV ABOOBAKER: Yes, go on.

10 MR ZIMELA: There's basically two kinds of projects,
one is the investment type projects where you invest funds in a
facility, the other one is what we call the export promotion type
of projects where the obligors look for partners overseas or
themselves buy products locally. In that case you identify the
15 kind of products that you want or their partners would want and
then they come and buy those products locally. Those are the
export promotion type of investments and they do not need ...,
the export promotion type of projects and they do not need any
investment, you, the company just go and try and identify the
20 kind of products and source the products, so the Y-Digital you
will find that there is zero on the actual investment, actual
obligor investment, there is also zero on the total actual
investment because there was no funding that was put, it was
more of a negotiation between the local manufacturer and an
25 overseas company to buy from the local manufacturer.

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ADV ABOOBAKER: Yes. Now coming back to this column reading "Total Actual Investments", where you did you all get that information from under each of those, under that column in respect of each of the projects?

5 MR ZIMELA: On the implementation of NIP when we processed the credit claims we have always required once the project has been approved and there's credit (indistinct) we have always required proof from the obligors when they make a claim for investment we have always required proof of the
10 actual amount that they have invested in the project. There are cases where there have been parties that have invested in the project, we have not always required proof. In those cases where we have not required proof we have not included the amount, the amount here are the actual amounts where we've
15 got the proof, either from other parties and from the obligors. There are cases where there were other parties that have invested money into the projects but because we never required proof of that we have included those amounts, so in a sense the actual investments are underestimated from what the actual
20 figure may have been but because we don't, we never required proof, we have not included those numbers here.

ADV ABOOBAKER: Just to recap that these numbers are numbers which can actually be proved to have been invested by the obligors, is that what you are saying?

25 MR ZIMELA: Both by the obligors and by other parties.

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ADV ABOOBAKER: So, if investments are made by other parties is that some kind of joint venture with the obligors?

MR ZIMELA: In most of these projects there may be some that you only had an obligor but in most of these projects
5 it has always been, there are always other parties involved, it's not just the obligor, it's only ... Like I said we have not always required proof of other people putting funding because our focus has been on the funding that is put by the obligors but in some cases we have been provided with proof and that's why in
10 the actual obligor investments and the total actual investments, those figures may be the same or there will be more on the total actual investments because we have had the proof of the other people, but there's very few of the projects where it's been only the obligor that has been here, the investor.

ADV ABOOBAKER: Now let's get to the next column, it says "Investment Credits", could you just briefly tell us what that means?

MR ZIMELA: "Investment Credits" refers to the credits that have been awarded, the total credits that have been
20 awarded for each and every project. In this case, in some other cases where there's multipliers it includes multipliers.

ADV ABOOBAKER: Yes. I'm just looking at the first page now and I'm looking at the column that says "Total Actual Investments" and the columns that says "Investment Credits"
25 and at a quick glance the figures in both columns are more or

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less the same. What's your comment on that?

MR ZIMELA: Sorry, which row are you referring to?

ADV ABOOBAKER: I'm looking at the column called "Total
Actual Investments" and the column saying "Investment Credits"
5 and from what I'm seeing at a quick glance both of those
columns reflect exactly the same numbers and terms of actual
investments and credits. Am I right there?

MR ZIMELA: They are not always saying, if you look in
some cases they are the same because the credits that have
10 been awarded are exactly equal to the amount that has been
invested. In some cases it is not the same like if you look
under "BAES", row 8 under "BAES", "Carbo Tech Carbon
Manufacturer", if you look at the total actual investments it's
R10 443 960 and the investment credits is R110 404 336. So,
15 you will notice then that where the investment, that's, I think
that's why we wanted to separate where the actual investment,
the credits are the same as the actual investment those
columns would be the same, but in cases where the credits are
not the same as the total investment those columns may not be
20 the same.

ADV ABOOBAKER: Now where the figures are not the same
what does it mean? Where the figures are not the same, what
does it mean?

MR ZIMELA: It basically means two things, the first one
25 is on the total actual investment we never require proof of

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other people's here involvement in the project, so we do not have that. The other issue would be where we have had either multipliers or what we call package deals.

ADV ABOOBAKER: So, in some instances the actual credits
5 were much higher than the actual amount invested?

MR ZIMELA: Correct.

ADV ABOOBAKER: Alright. Then let's get to the next column that says "Sales Credits", what's that all about, is it export sales, local sales or what sales?

10 MR ZIMELA: We have combined the credits from local sales and the credits from export sales, so it's the total amount of credits that have been awarded for each project, both export and local sales.

ADV ABOOBAKER: Yes. Now in the last column, in the last
15 column we've got "Total Credits". Now if you look at that Total Credits" is it correct that what's contained in the last column would be the aggregate of the investment credits and the sales credits? So, if you look at say, the second transaction "Interlock Atlas Copco Springs" you will see investment credits
20 thereof R2 664 842 and R53.422 754, if you add those two together you get R56 067 596. Am I right in the way I'm doing it?

MR ZIMELA: Correct.

ADV ABOOBAKER: My learned junior points out here Mr
25 Zimela if you go to the last page, page 113 of the document

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and if you look at "Total Credits" the figure there, the last figure there R3 117 781, ... Sorry, if you look at that figure of R311 781 024 and if you look across that entire row ...

CHAIRPERSON: Advocate Aboobaker we are not with you,
5 I'm not sure exactly what they are referring to.

ADV ABOOBAKER: I'll take you through it again Mr Chair. I want you to go to the last page Mr Zimela, you're there? And then I want you to go to the very bottom of the last page and you will see all those figures there at the very bottom of the
10 last page, there's a figure under "Total Actual Investments" 149406, it's a figure under "Actual Obligor Investments", 660159, and like that if you go across horizontally there appears to be a mistake there, do you know about that, because if you see the third page, if you see page 112 and you
15 look at the bottom of page 112 you would be seeing exactly the same figures there. Are you with me or ...

MR ZIMELA: Yes, I'm with you. Can you give me a second just to go through this? The ... Can I go through these figures, the row before the last first?

20 ADV ABOOBAKER: Yes.

MR ZIMELA: The row before the last where it says, the fourth column you've got 12965, that is the total for all the obligors, the total new jobs created for all the obligors, the next column of 25930 is the total new indirect jobs for all the
25 jobs created, then the next one again. So, that row there is

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the total jobs, is the total figures for all the, for all the obligors. Then the last row you are correct, it's the total for, it's the total for German Submarine Consortium, it's at page 12, I think again it's a matter of the formulas that maybe we duplicated the formulas, the last row should not have been there because it's already on the page 112.

ADV ABOOBAKER: So do we look at the last page and we delete?

MR ZIMELA: Yes, we delete the last row that starts with "\$149 405 863". I think it's more an error print or the formulas were duplicated in different rows. My apologies Chairperson for that.

ADV ABOOBAKER: Do you think perhaps that because there's different currencies that might have caused the problem, can you see that the second last row is in Dollars and the last row is in Euros?

MR ZIMELA: Yes, the currencies, all the other obligors except one obligor, the contracts were in Dollars and then all the, except GSC all the obligors the contracts were in Dollars, so it was easy to add the contracts in the values and Dollars, whereas GFC, the contract was in Euros and our monitoring was in Euros, so we couldn't add, it remains the same number but we can't add the Euros and the Dollars unless we go back in all of those transactions and change the Euros to Dollars.

ADV ABOOBAKER: So in effect what you're doing is you've

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got a Dollar total and you've got a Euro total?

MR ZIMELA: That's correct, but the Euro total is only the GSC because their monetary was in Euros.

ADV ABOOBAKER: Yes. Yes, I understand. Thank you Mr
5 Zimela, I have no further questions for Mr Zimela Mr Chairman.

CHAIRPERSON: Is there any person who have an interest to cross-examine Mr Zimela?

ADV SNYMAN: Yes thank you Chairperson, we wish to cross-examine Mr Zimela. May we proceed?

10 **CROSS-EXAMINATION:**

ADV SNYMAN: Mr Zimela, I refer you to paragraphs 35 and 36 of your witness statement on page 14. For the Committee could you please read these two paragraphs into the record?

15 MR ZIMELA: Can you repeat your question?

CHAIRPERSON: Just hold on, which paragraph are you referring to?

ADV SNYMAN: On page 14 paragraphs 35 and 36.

CHAIRPERSON: Thank you for that. What is the question?

20 ADV SNYMAN: I've requested that he read these two paragraphs into the record, the question is coming out of there.

MR ZIMELA: I think we don't have, on my witness statement it doesn't go beyond page, in terms of the numberings it doesn't go beyond page 23, so I'm not exactly
25 sure which page. Can you perhaps read it and I'll know which

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page you are referring to?

ADV SNYMAN: Page 14, 1-4.

MR ZIMELA: Okay page, paragraph 35 it says:

5

“While every effort is undertaken to approve projects that are project to be sustainable it is an internationally accepted fact that some projects may not be sustainable due to a number of factors including changed economic environment, poorly conceived business plans, bad project execution and bad project management”.

10

Paragraph 36 reads thus:

15

“Thus in looking at the performance of the obligors the approach is one of looking at the aggregate performance of all the projects submitted in fulfilment of a particular obligation. Projects that are not sustainable for any particular reason must be replaced by one or more projects of the aggregate value in order to fulfil the obligation”.

20

ADV SNYMAN: Thank you. Mr Zimela, this seems to suggest that where an NIP project is found to have failed the obligor was due to institute a replacement project to equal value, is that correct?

MR ZIMELA: Correct.

25

ADV SNYMAN: Then at what point was it determined the project was unsustainable, with other words what would trigger

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the demand to replace such a project?

MR ZIMELA: With all the obligors we have biannual and annual meetings, we review the performance of all the, all the projects in the biannual, in the annual meetings. We also do, 5 or we also undertake site visits to get first-hand information on the projects, so when there are problems we pick them at that stage. Of course there are projects that suddenly fail without us getting some sort of an indication that it's not going to deliver on the projects that, I mean on the credits that it was 10 supposed to deliver.

ADV SNYMAN: With regards to the SDPP were there any instances where such action was, where action was taken, was any unsustainable project replaced by a new project with equal value?

15 MR ZIMELA: I was not directly involved in any of the projects under the SDPP, I think my colleague who is coming before me may deal with particular projects.

ADV SNYMAN: I refer you then to the Internal Audit documents submitted as Annexure "E" to your evidence bundle, 20 I would like to take you to page 94. Can you please read the paragraph numbered 3 under "Table that Appears Below".

MR ZIMELA: Is it acceptable to say we've all got the document without me repeating what is written there?

ADV SNYMAN: I request that you do read it into the 25 record please.

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MR ZIMELA: Okay. Paragraph 3 says:

5 *“Lastly it was noted that for one; one project the
NIP credits grant were granted upfront with certain
conditions. Further enquiries from the ITS
indicated that this project eventually failed. There
is currently no evidence to indicate that the
conditions forwarding the credits were eventually
met. The details of the projects are as indicated
below. The obligor is (indistinct), the project is
10 Evertrade Medical Waste. The investment is
R1 065 000. The package deal agreed upon is R55
million. The credits awarded, investments
R63 107 000, total credits R171 million”.*

ADV SNYMAN: Thank you. Considering that this project
15 failed during the period of the NIP programme flowing from the
SDP, why was this project still granted credit?

MR ZIMELA: I think again my colleague Sipho has got
those, he will witness after me, may have more details about
the projects. My understanding is that there’s always an
20 agreement when you award upfront credits, there’s always an
agreement that you invest your money into these projects and
one of the key reasons why we award multipliers is always the
riskiness of the ..., one of the reasons is based on the
riskiness of the project and to advance certain objectives, so
25 from the beginning before the obligor invest in a particular

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project there will be an agreement that we will get these credits when we put the money. I think in terms of the specifics of each project I would not be able to comment as I was not involved in any of the projects.

5 ADV SNYMAN: Okay, thank you. Can you now turn to page 107 of your evidence bundle.

CHAIRPERSON: Which page are you referring to?

ADV SNYMAN: Page 107.

MR ZIMELA: Yes, I've got the page.

10 ADV SNYMAN: Can you read the first entry in the table starting after paragraph 2?

MR ZIMELA: Mr Chairperson is it possible that we accept this paragraph without me reading it again?

15 CHAIRPERSON: Yes, I'm not quite sure what is the purpose of asking the witness every now and then to read documents which are and have already been accepted. I'm not quite sure what purpose does that serve. Maybe if you want to ask a question go straight to this paragraph because these documents are already before us, they have been accepted,
20 and ask your question.

ADV SNYMAN: Chairperson the reason that I'm doing so is that this is a public commission and for the benefit of everyone who doesn't have the document and the Commission and the Chairperson will be aware not everyone has access to
25 document bundles or to the witness statement, but if it is

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acceptable to the public, and so to the benefit of everyone to be following the line of questioning because it follows a logical conclusion for the two lines to be read into the record.

CHAIRPERSON: Advocate Aboobaker, you wanted to say something?

ADV ABOOBAKER: Chair, may I suggest that the lady herself, the cross-examiner reads the statements rather than the witness?

ADV SNYMAN: I'm happy to do that. Thank you. Reading from the table starting on paragraph 2 it states:

“BAES Carbon Manufacture. This project failed, however, this is not highlighted in the project reviews or any report. This was discovered during the enquiries from IPS”.

Now Mr Zimela this confirms at least one other NIP project failed, the Carbon Manufacturing Project. As with Evertrade Medical Waste why was this project still granted substantial credits and why was it not replaced with a substitute project?

MR ZIMELA: Let me explain the issue of the substitute projects. The obligation of BAE for example was R7.2 billion broken down into, I may not have the actual amounts, I think it's R5 billion for sales and R2 billion for, roughly R2 billion for investments. When we measure the performance we look at, at the end of the period has BAE brought enough projects to meet the R5 billion export ..., R5 billion sales and the R2 billion

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investments. During the reviews we do not look at a specific project, we look at in aggregate are you going to meet, whether it's the ..., because there were milestones are well, on aggregate are you going to meet the milestones for sales, are you going to meet the milestones for investment, so it's not a case of one project fail, bring another project, it may be a case of one project failed but the other, because the other one project has performed above the what was expected of it there's no need to bring another project.

It also may be a case of two projects failed but the other projects that you bring are enough to cater or you bring one project which is enough to cater for two projects or you bring five projects which is enough to cater for one project, so we do not look specifically at one project, we look at the aggregate of all the projects that are there, are they going to meet one, the milestones and two, the total obligation, whether it's in terms of investment or sales. The specifics about each project, I think I've already said I would not be able to answer any specific about each project because I was not involved in any of the projects.

ADV SNYMAN: Thank you, we'll have to put this question to the next witness then. Can I now ask you to turn to paragraph 49 of your witness statement on page 22 and I will read this paragraph into the record:

"I am aware that in awarding NIP credits under the

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SDPP multipliers were used in calculating credits. I'm also aware that because of certain considerations obligors were asked to invest in strategic projects. In those instances, the IPS negotiated multipliers with the obligors, subject to the approval of the executive authority, i.e. the granting of multipliers for credits that would ordinarily have not been granted".

5

10

Now Mr Zimela, we heard during the testimony of Mr Jourdan that using multipliers of the award of offset credits was specifically excluded from the NIP contracts terms signed with obligors, instead NIP credits were to be awarded for investments and export sales. Can you confirm whether or not this is correct?

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MR ZIMELA: My understanding of the NIP terms is that they were supposed to be granted 1 investment credits for every \$1 investment, 1 sales credit for every sales achieved and the same as exports. It is also my understanding that there is always, or there was going to be flexibility when the circumstances ..., as the NIP Guideline says where there are unforeseen or some new circumstances arising there is flexibility as long as there is approval from the Minister of Trade and Industry. So, my understanding is that as long as there was approval from the Minister of Trade and Industry in agreeing to the multipliers it was okay to grant multipliers.

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ADV SNYMAN: Thank you, but you have also already stated that at the time there were no guidelines in place, these are the new guidelines.

5 MR ZIMELA: The guidelines have always been there since 1997. The SDPP operated under the NIP terms which in most instances were based on the guidelines with the exception of where you grant credits.

ADV SNYMAN: Can you provide an indication as to which exact projects were granted multipliers and for what reason?

10 MR ZIMELA: Again I would like to defer that question to my colleague. I could go through some of them in the list that I know of but I'll prefer that we defer that question to my colleague.

15 ADV SNYMAN: Then dealing with the question of where you referred to the executive authority and this discretion of the executive authority, what exactly do you mean by this, do you mean Cabinet, the President or a member of the DTI?

MR ZIMELA: I mean Minister of Trade and Industry.

20 ADV SNYMAN: And Mr Zimela, from where did the Minister draw this authority to get such approval considering that this would have effectively breached the terms of the NIP agreements between the State and the SDPP obligors?

25 MR ZIMELA: I'm not a lawyer but I've always assumed that because the contract was signed by the Minister he had the discretion to change it.

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ADV SNYMAN: Mr Zimela, during Mr Jourdan's testimony he indicated that the IONT was concerned that using additional multipliers beyond export and investment credits would allow for obligors to earn substantial credits from unimportant, unsubstantial and unstrategic business activity. Can you comment on why and how the DTI changed its mind in this regard by granting multiplier credits?

MR ZIMELA: The issue of credits was, the issue of multipliers has always been there, it's been there in the guidelines, the NIP Guidelines. If you go to the NIP Guidelines, can I just check where I should refer you to, the page, just a second. If you look at page 49 on the credit methodology you will see there that there has always been multipliers, from the inception of NIP where like if you look at export promotion, on that table there you've got, the first column is "Objective", the second column is "Methodology", the third column is "Factor", you will notice that there is provision there for multipliers. I would not be able to comment on the decision of the IONT because I've not seen the documents that, I mean what decisions they were based on and I was not part of it but as for the DTI the issue of multipliers has always been there.

ADV SNYMAN: Thank you Mr Zimela. Chairperson, at this point I would like to place on record that we wish to be granted access to the NIP contract agreements between the South

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African Government and the successful bidders and it should be clear from this line of questioning it appears that there are contradictions between the last four witnesses as to whether or not the introduction of multipliers was specifically excluded from the NIP contracts, terms and conditions, and we will follow up this request of course in writing. Now Mr Zimela, can I ask you to turn to the final Audit Report of the NIP Project.

CHAIRPERSON: Just hold on Advocate Snyman, now what do you want me to do, you say you place it on record that you might need those, those contracts. What ruling do you expect me to give now because I thought that discussion was taking place between the various legal teams, now I'm not quite certain why are you now placing it on record before me because that discussion is taking place somewhere else. I'm not even quite sure what arrangements you have made up to now.

ADV SNYMAN: Thank you Chairperson. I merely place it on record because as the Chairperson will also be aware we have struggled in the past to get access to various documents that we have requested, some of which we are still waiting for receipt of, even ...

CHAIRPERSON: Have they been declassified?

ADV SNYMAN: Even ones that have as far as we are aware not declassified, and so I'm merely (indistinct) it so that ...

CHAIRPERSON: Rather put it on record, I think it would

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much easier if you can discuss with the evidence leaders, I'm not quite sure if at all it's going to be very helpful to you just to place it on record, discuss that with the evidence leaders and I'm sure with the legal team of DTI some progress can be
5 made.

ADV SNYMAN: Thank you Chair.

CHAIRPERSON: Thank you.

ADV SNYMAN: Mr Zimela, can I now ask you to turn to the final audit report of the NIP Projects that was submitted as part
10 of your evidence bundle Annexure "E" and can you turn in particular to page 93 and the table appearing at the top of that page.

MR ZIMELA: I've got it.

ADV SNYMAN: Are you there?

15 MR ZIMELA: Yes.

ADV SNYMAN: Mr Zimela, can you confirm that this was the full list of projects that formed part of the package deals with the SDPP obligors that allowed them to earn credits for more than just investment and export?

20 MR ZIMELA: How the audit was conducted, there is about 100 projects under the SDPP, more or less close to a 100, but when the audit was conducted a sample of, a random sample of 40 projects was taken in the first phase. There was going to be a second phase which would take the other, the
25 rest of the projects, but at the end of the audit in the first

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phase the auditors said the findings that we get from all of these projects are the same it would be a waste of resources to continue, we suspect that the findings from the rest of the projects would be the same, so at the end of phase 1 which was
5 40 projects they made their conclusions based on those and we agreed with them that there is no need to take, to continue with the other projects if they felt that the findings would be the same. So, the list that you will find here is 40 projects.

ADV SNYMAN: So, what you are saying is that if it was
10 the list of all the projects, all the package deals then it would be a list of closer to 200 than this list here?

MR ZIMELA: It would be a list of closer to 100.

ADV SNYMAN: And then just to clarify, is it correct that
15 only those projects that are included in the package deals were given credits using multipliers?

MR ZIMELA: Can you repeat your question?

ADV SNYMAN: Is it correct that only those projects that
were included in the package deals were given credits using multipliers?

20 MR ZIMELA: The issue of multipliers and the package deals, we have always considered that as one and the same thing, we call them package deals but we have considered that as one and the same.

ADV SNYMAN: So then in simpler terms if a project was
25 not part of the package deals it was not in line to have its

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credit calculated, that means a multiplier, is that correct?

MR ZIMELA: That's correct.

ADV SNYMAN: I would now like to refer to Annexure "F",
the one that was just introduced. I apologise Chairperson, I
5 ought to have introduced one of our documents at the beginning
of this cross-examination. We have a document that is very
similar to Annexure "F" which I would like to make available, it
is a document which is available on the DTI's website, it was
also submitted by our client as Annexure "L" in their
10 submission and as you believe Mr Zimela can explain the
author of this document. It appears to be an older or a slightly
different version but it was still available on the DTI's website
this morning in the form that I would like to hand up.

ADV ABOOBAKER: Mr Chairman, may I have a look at the
15 document?

CHAIRPERSON: Just hold on because I haven't seen the
document, before she continues I would like to look at the
document.

ADV SNYMAN: Yes I apologise, I ought to have handed it
20 up at the beginning of the cross-examination.

CHAIRPERSON: Just hold on, don't distribute the
document, let's first, let's have the documents first. Maybe
also give it to Advocate Aboobaker before we discuss this
document. Where does the document emanate from?

25 ADV SNYMAN: This document is available on the website

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of the DTI, the link is on the cover page, it was still available on the DTI's website this morning, it is produced by the DTI, it is, it has the same title of "Consolidated Family of NIP Commitments and Projects 2012" generated by the DTI IPCC, 5 and was submitted to the Parliamentary Committee on the Trade and Industry in 2012. It seems to be very similar to the document which is Annexure "F" but there are one or two columns that are not the same and this document is also eight pages longer and contains more detail, so I don't know that 10 there is any differences but I just wish to highlight them.

CHAIRPERSON: Now what are you asking the witness to do with this document?

ADV SNYMAN: I would like him to identify it as he would know the difference between the two documents and which is 15 the most recent and applicable one.

CHAIRPERSON: Okay. Maybe let's find out from the witness, do you know anything about this document?

MR ZIMELA: Yes Mr Chairperson.

CHAIRPERSON: I suppose you have given an answer and 20 you said that you are familiar with this document.

MR ZIMELA: I am familiar with the document.

CHAIRPERSON: Thank you.

ADV SNYMAN: Thank you Mr Zimela. What is the difference between this document and Annexure "F" of your 25 bundle?

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MR ZIMELA: Let me go back, we have been giving reports to Parliament every year since 2002 and part of that has been in those reports to give a break..., a list of all the obligors that we manage and beyond that what is the status of each obligor in terms of meeting its obligations, what is the status of the investments, credits, so we have been giving this information to Parliament since 2002. What normally differs is when we get the request from the Portfolio Committee there's always different requests each year that this year we want you to include this, this year we want to include this.

Now the reports have always been based for each of these projects listed here, the reports have always been based on the spreadsheet from the portfolio managers. Until 2012 we have used the manual system where each portfolio manager records everything in his or her computer, we only shifted to an electronic system in 2012. So, the difference here is the, it's based on the information from the different portfolio managers. What we've done with this one, because we detected some inaccuracies on the spreadsheets of some of the portfolio managers.

What is different with this one is that we didn't use a spreadsheet from the portfolio managers, we went back to all of the files from the first claim that for example if you look at BAE from, the first claim that they did on ADDD until the last claim, and we look at the business plan, so we compiled this

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not on information based on portfolio managers but on the actual physical files that we have at the DTI.

ADV SNYMAN: Thank you. So, I can refer to this document that it is an accurate document that you have produced?
5

MR ZIMELA: I missed your question?

ADV SNYMAN: So, if I refer to this document that we just handed up on the questions that I will pose now as opposed to Annexure "F" what you submitted it's still accurate, this is still a document which you have produced?
10

ADV CHOWE: Mr Chairperson, can I just interject on behalf of the DTI. I would suggest my learned colleague that maybe Mr Zimela be afforded, I don't know whether it's possible, maybe 10 to 15 minutes to at least familiarise himself with what contains the document which has been presented to him because what I understand is that the document, although it might be similar in certain respects but it's not exactly the same, so it will only be proper and fair for him to be allowed to go and have a look at it before he even binds himself in commenting to it.
15
20

CHAIRPERSON: Thank you, and Advocate Snyman I think I understand the witness to be saying that the information contained in this document is accurate. He clearly says that some of the information was inaccurate and they had to go back and try and correct it and he said that some of the information
25

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was inaccurate because of portfolio managers had captured incorrect information. So, just keep that in mind when you put the question, don't suggest to him that you know he agreed that this document contains correct information.

5 ADV SNYMAN: Thank you, I'll keep that in mind.

CHAIRPERSON: And two, probably maybe it is correct that the witness should be given an opportunity to look at this document before he answers your question and in that case I want to suggest that we break for tea for 20 minutes. Thank
10 you.

(Commission adjourns.)

(Commission reopens.)

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

15 MR ZIMELA: I do.

CHAIRPERSON: Thank you.

ADV CHOWE: Mr Chairperson, Commissioner Musi, I should thank you for the opportunity you granted the witness to have a look at the document which was provided to him by my
20 learned colleague in as far as ..., which is noted as Annexure "L". The witness did have an opportunity to go through the document but there are objections Chairperson and Commissioner Musi in as far as the utilisation of this particular document in this Commission. There are various reasons but
25 the main of them Commissioner is that this particular document

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was prepared in addition with other NIP projects which were not necessarily SDP projects, so it's an additional project which also appear on the document. Other than that Mr Chairperson is that the witness has already indicated to the Commission that this document in itself had some inaccuracies which appeared because of the portfolio managers who provided information at the time might for one reason or another not have given accurate information.

But the point I'm trying to get to Mr Chairperson, Commissioner Musi, is that Annexure "F" which has been provided to the Commission this morning was particularly prepared and kept for the purpose of the Commission and that it should be utilised in the Commission and by saying that Chairperson I'm not trying to say that if any other person being a critic or any of our colleagues sitting here and including the Commission finds that Annexure "F" for one way or another has inaccuracies they shouldn't be addressed, that should not be understood in that way, that it might be that in hindsight one sees an inaccuracy on Annexure "F" we do not exclude that from being raised, but for the use of Annexure "L" if I might name it Chairperson, to cross-examine the witness as it stands he has already indicated Chairperson and Commissioner Musi that this might not be relevant for the Commission and on that basis I would request that the Commission should not allow this documents to be used in cross-examination but I'll leave the

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issue in the hands of the Commission. Thank you Mr Chairperson.

ADV SNYMAN: Chairperson, I think I might have set the cat amongst the pigeons here with this document, if I can just clarify that our intention is not to point out inaccuracies in Annexure "L", the, and I agree that Annexure "L" contains additional offsets that are not part of the NIP and so only the first four, five pages of Annexure "L" are relevant. The reason that we are referring to this document, if I can put it simply is because of one additional column that is in Annexure "L" and that is the additional column that has the title "Investment Multiplier" which of course is very relevant to what we are discussing this morning and it is merely to point out that in Annexure "L" we can see what the investment multiplier amount is, that the values of the investment multiplier can range from 1 to 74 and above and this is the need of referring to this document where we wish to point out the range of the multiplier amounts, it's not to refer to inaccuracies between the two documents, I couldn't tell you which might be an inaccuracy but if Mr Zimela can, or is in a position to say that the investment multiplier amount in Annexure "L" appears to be what they are in this document that would suffice for our purposes of a very few number of questions.

CHAIRPERSON: Okay, may we hear first what Advocate Aboobaker has got to say but the difficulty that I have, the

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witness says that he was not involved at this point, he clearly says that he was not involved, so I'm not quite sure whether you know it will serve any purpose to ask him questions based on this document if he was not involved. He said you know the documents that he prepared, that he presented to us today is a document that he personally prepared by using the source document, you understand the difficulty?

Now you are going to ask him something which was done by other people and try and find out from him whether it is correct or not. I mean before I come to the DTI legal representative let me first hear what Advocate Aboobaker has got to say.

ADV ABOOBAKER: Mr Chair, the witness that has been designated by the Commission to deal with issues of multipliers and package deals *et cetera* is Mr Zikode. This witness, he's probably (indistinct) a lot of things in his evidence because he's been asked that, so I think that, with respect that Ms Snyman should take comfort in the fact that Mr Zikode will give evidence and a lot of the issues about multipliers should be directed at him. I agree with you Mr Chairman that the document that he presented and he worked through and he referred to this morning doesn't refer to multipliers.

COMMISSIONER MUSI: Can I say something?

CHAIRPERSON: Yes.

COMMISSIONER MUSI: There is a further consideration that

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from what I hear it looks like, and I think the chairman has said that he's not, he did not take part in the drawing up of this Annexure "F" whereas he appears to have taken part in the drawing of Annexure "F" and that's the difference also.

5 CHAIRPERSON: Do you want to have the last say before I make a ruling on this document?

ADV SNYMAN: Yes, thank you Chairperson. I take the point that Mr Zimela hadn't indicated that he is the exact author of Annexure "L" but he does recognise the document and
10 he's familiar with it. The point that we wish to establish with this line of questioning is not to the accuracies or otherwise of Annexure "L", it's merely to make reference to the additional column of internal multipliers because without referring to Annexure "L", Annexure "F" gives no indication of the
15 multipliers used and there are just three short questions on Mr Zimela's understanding of particular instances where the multipliers are rather large, whether these formed part of package deals or whether they were not part of package deals.

CHAIRPERSON: I mean Mr Zimela clearly said that he is
20 not the author and he says that he was not involved in this project and one needs to understand somebody else was involved in this project, he's coming to testify, so I'm not quite sure what purpose is it going to serve to try and ask him to speculate about this document because he's not the author of
25 the document. Unfortunately I'm not going to allow you to use

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this document to cross-examine Mr Zimela. Thank you.

ADV SNYMAN: Then I'm going to move on to my final round of questioning. Mr Zimela during your testimony on Tuesday you were asked a number of questions regarding the manner in which offset credits were awarded and the estimates of jobs created tabulated. Can you confirm that offset credits were ratified by the IPCC after the receipt of business plans and supporting documents from the obligors?

MR ZIMELA: The process is that there is a business plan first that gets implemented and then once the business plan, as the business plan is being implemented then the obligor will submit credits to the portfolio manager who then goes to recommend approval or retraction of those credits based on the evidence or supporting documents, then the IPCC would then grant the credits.

ADV SNYMAN: And can you confirm that the data on which the offset credit awards was to be calculated was derived from the obligor's business plans and supporting documents?

MR ZIMELA: The calculation of credits is not derived from the business plan, it's derived from the formula that was agreed to upon in the NIP terms at certain cases where there were multipliers.

ADV SNYMAN: Was this also true of the jobs created estimate?

MR ZIMELA: Can you repeat your question or can you

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be more clear in terms of your question?

ADV SNYMAN: Can you confirm that the jobs created estimates were ratified by the IPCC after the receipt of the business plan supporting documents from the obligors?

5 MR ZIMELA: The jobs created, the issue of jobs, every, not every sorry, the business plan comes with the estimate of jobs, the approval or rejection of the business plan does not necessarily depend on the number of jobs created. There are instances where we approve the business plan without any jobs
10 that are going to be created, for example there's a technology upgrading which would push us in a competitive manner, in a competitive position without actually increasing jobs, so the business plan and the IPCC, the decision is not based on, just on the jobs. Of course jobs as well have got, they count, but
15 the decision is not just based on the jobs.

ADV SNYMAN: My question isn't whether or not the decision is based on the jobs, but whether an analysis of the jobs created is determined from the business plan and supporting documents where jobs are a factor.

20 MR ZIMELA: The spreadsheet that I have provided, the jobs are based on either the business plans or the review meeting that we've had with the obligors. Can I just add that the IPCC does not evaluate the performance, as I've said previously the performance of the obligors was based on
25 achieving certain investment targets, certain sales targets and

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certain export targets, not the jobs.

CHAIRPERSON: Is there still questions?

ADV SNYMAN: Yes, Mr Chair will just bear with me. Mr
Zimela, at any date that the IPCC or IPS or any other structure
5 in the DTI as a whole conduct an independent assessment of
whether or not the figures included in the business plans were
reflected in the reality of the performance of the NIP projects?

MR ZIMELA: My understanding is that there was a
report in 2007 on the performance of the NIP programme as a
10 whole, I wasn't part of the unit at that time, I'm not going to
comment about that report. Then there's this report that has
been done by the Internal Audit.

ADV SNYMAN: Did the DTI ever conduct an audit as to the
actual performance on the NIP projects and then on the basis
15 of such a report amend offset credits to be awarded?

MR ZIMELA: I do not know of any independent report on
credits that has been conducted by the DTI.

ADV SNYMAN: I'm not even meaning an independent one,
but just a DTI audit to amend offset credits to be awarded.

20 MR ZIMELA: We have done a review of the policy but
I'm not aware of any report whether it's independent or a DTI
report that has been done on credits.

ADV SNYMAN: Which projects have been audited, whether
by DTI or independently and what was the outcome of these
25 audits?

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MR ZIMELA: As I explained the audit that I know is the report that is in front of the Commission, Annexure "E" on the SDPP projects. There are 40 projects there, I'm not sure if the report has got a list of those projects, I don't think the report, in the report there's a list but there are 40 projects which we do have a list which could be provided to the Commission.

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CHAIRPERSON: Are there still any questions?

ADV SNYMAN: Yes, Mr Chair will just bear with me. To clarify Mr Zimela the economic performance of the NIP programmes was never independently audited and the offset credits awarded were based entirely on documents provided to you by the obligor and this is also true of the number of jobs created, is this correct?

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MR ZIMELA: Can you repeat your question?

ADV SNYMAN: I seek to clarify that the economic performance of the NIP programmes was never independently audited and the offset credits awarded were based entirely on documents provided to you by the obligor and that this is also true of the number of jobs created.

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CHAIRPERSON: Just hold on. Advocate Snyman can you please ask him a very short question that he can understand. I also can't understand that long question. Maybe just put very short questions that are understandable so that he can reply to that. Thank you.

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ADV SNYMAN: Mr Zimela, the economic performance of

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the NIP programmes was never independently audited.

MR ZIMELA: My understanding is that there were two independent reports done on the economic performance of the NIP programme, I think one was in 2004 and one was in 2007/8.

5 ADV SNYMAN: Is it accurate that the DTI has no firm figures beyond estimates provided by SDPP obligors regarding the number of jobs created by the Arms Deal offsets?

MR ZIMELA: As I explained earlier there are three sources for the jobs, one is the business plan, two is the obligors, three is the site visits, so that's three sources that
10 we have looked at in terms of the number of jobs whether created or retained.

ADV SNYMAN: And the independent reports that you have referred to, do they confirm that the offset credits matched the
15 actual economic performance?

MR ZIMELA: I know that there were two independent audits, I wasn't part of the unit then, so I cannot confirm or talk about any of the conclusions in those independent audits.

ADV SNYMAN: As we discussed earlier the internal audit
20 document identified one instance of an offset project failing but still accruing offset credits such as Evertrade Medical Waste. In this instance Mr Zimela why did no member of the DTI or the IPC check as to the status of this project?

ADV CHOWE: Sorry Mr Chairperson, I'm sorry that I must
25 disturb my colleague in as far as this question is concerned, I

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will suggest that what Mr Zimela has indicated that his colleague who is better knowledgeable and qualified to answer this question will be coming and maybe my colleague must take solace on the fact that Mr Zikode will be coming and testifying
5 and maybe he might defer this particular question for Mr Zikode because in any event Chairperson this question is coming now for the second time and I think Mr Zimela did attempt to answer the question. As the Chairperson pleases.

ADV SNYMAN: Chairperson, I think Mr Zimela is able to
10 answer the question and it would be very helpful.

CHAIRPERSON: But then the objection is that there is a witness who is going to deal with that, the one who deals with that, who deals with the projects. Now you are saying Mr Zimela is in a position to answer that question because he has
15 already answered it, is that what you are saying to me?

ADV SNYMAN: Because of his knowledge and in his oversight capacity (indistinct) DTI.

CHAIRPERSON: And then what about the objection that he has already answered that question? Advocate Snyman, what
20 about the objection that he has already answered, you are asking the same question for the second time?

ADV SNYMAN: I think the impact of the question is slightly different but I'm happy to withdraw the question and move on.

25 CHAIRPERSON: Okay, thank you.

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ADV SNYMAN: Mr Zimela, then I have two final questions, the first is have you ever been made aware of any DTI official involved in the initiation, management and oversight of the NIP programme related to the SDPP receiving an undue inducement benefit or advantage in monetary or any other form from a third party including but not limited to SDPP obligors and/or their appointed representatives?

MR ZIMELA: No.

ADV SNYMAN: And Mr Zimela, have you ever been made aware of any government official at any level of government who participated as a business partner, director, shareholder or any other form in an NIP project?

MR ZIMELA: Can you repeat your question?

ADV SNYMAN: Have you ever been made aware about any government official at any level of government who participated as a business partner, director, shareholder or any other form in an NIP project?

MR ZIMELA: No.

ADV SNYMAN: Thank you Chair, I have no further question.

CHAIRPERSON: Thank you. Any re-examination?

ADV CHOWE: Thank you Mr Chairperson, Commissioner Musi.

RE-EXAMINATION:

ADV CHOWE: I would suggest that I had two or so of the

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examination questions but I only have only one for now and if the Commission allows me Mr Zimela I would like you to just distinguish on the causality as just opposed with its application on the NIP, normal NIP and as yet applied on the SDPP's.

5 MR ZIMELA: I think when we look at the SDPP, if one has to go back to the contracts, the NIP terms there's basically two, especially on the investment side there's two or there's one distinguishing feature between the normal NIP and the SDP. On the SDP it's, the contract says, which we have
10 implemented the investment and the causality that way is investment, it's the amount that is invested by the obligor or caused to be invested by the obligor in the sense that you consider two things, is the amount that has been invested and then you also consider the amount that has been caused to be
15 invested. So, in a case with the SDP an obligor can invest in a project with R100 million, we'll make it simple, R100 million, an obligor can invest R20 million, but because they have called the other investors to be involved and they can get their R100 million credits on the normal NIP side it says the investment
20 that has been put in, the amount of funding that has been put in by the obligor, so in that case what you put is what you get in terms of the, of the credits. I think that's the main distinguishing factor.

ADV CHOWE: Will I understand you correct to say that in
25 instances where for instance an obligor invests R5 000 in a

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project of R95 000 he will then have credits for R100 000?

MR ZIMELA: If the project is R95 000, so I'm assuming that the R5 000 is already included in the R95 000, so you get credits of 95 000. The total value of the project, as long as in
5 terms of the causality, as long as the obligor can prove that they have funding contributed to the project getting off the ground, had it not been for their funding the project would not have gotten off the ground, that's the key principle of causality.

10 ADV CHOWE: Will I be correct to state that in this particular instance and the example you mentioned, would I be correct to mention it and maybe characterised it as a multiplier effect which if you agree I would request that you explain the multiplier effect to the Commission.

15 MR ZIMELA: When we talk about the multiplier effect I think if you look at the NIP credit methodology we say you invest \$1 and then you get \$2 of credits. Now we normally refer that to, as a direct multiplier but if you take a single
20 project and you invest \$5 or let me take ... Take a project of \$10 million, you invest \$5 million or invest \$10 million, then you get \$20 million of credits, but then because you are going to have sales out of that project, each year over a period of seven years you've got sales, you get credits out of sales, over a period of seven years you are subcontracting to BEE, you've
25 got credits out of BEE and all of those other objectives you get

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credits. In a sense although we don't call it multipliers there's a multiplier effect in terms of what you get, that is similar to you put the \$5 million of, in a project worth \$50 million you put \$5 million, then you get \$50 million, we do not call that a multiplier but in effect it is a multiplier effect that is your \$5 million investment has called the other \$45 million, so that, although we tend to say there's a multiplier here, there's a multiplier effect here but the result will be the same that you get more than you have put in terms of the credits, whether it's on the NIP side or the DIP side you put some money on investment you end up getting credits on sales, so it's a multiply effect in a sense.

ADV CHOWE: Thank you Mr Zimela. I understood in your evidence that you have indicated that the Internal Audit Report in itself has some reservations with regards to non-compliance because of the use of package deals and so on and so on, do you have any reason why one way or another you moved away in your new policy, away from the package deals issues?

MR ZIMELA: I think as I explained earlier on when you commission the internal audit report were into looking into reviewing the, both the NIP and the other procurement levers, like I said the focus was shifting from the NIP as we have applied it on the SDPP, the focus was shifting towards local manufacturing or localisation, there's already been designation, the regulations that have been promulgated and

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the DTI instructed to designate certain sectors and on the NIP side the shift was more on the direct NIP. So, besides the issue that in Parliament there were issues raised about the package deals the shift in terms of the policy was moving
5 towards the implementation of which makes the package deals irrelevant in a sense because of the shift in policy.

ADV CHOWE: Thank you Mr Zimela. Mr Chairperson, Commissioner Musi, that's the cross-examination of the DTI. Re-examination.

10 ADV ABOOBAKER: Mr Chairman, I intend to re-examine as well. I intend to re-examine as well. I say I intend to re-examine. Mr Zimela, I was a little bit confused about your evidence under cross-examination and I think that maybe you can clarify it. Insofar as the use of multipliers is concerned you
15 said that you thought that the Minister had a discretion to award multipliers, is that right?

MR ZIMELA: Correct, I think like any policy that we implement at DTI, DTI policies, when you deviate from that I've always thought that the Minister or the DG has got a discretion
20 to accept the deviation.

ADV ABOOBAKER: Yes, but under the SDPP NIP one is not talking about the policy, one is talking about a contract. Are you saying that one can look away from the contract?

MR ZIMELA: To me it's how I understood it, whether it's
25 ...

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CHAIRPERSON: I'm sorry Advocate Aboobaker, I think you are asking him an opinion, you are asking him an opinion if you say can one move away from the contract and I think his opinion is going to be irrelevant on that question. If at all he confirms that the contract made provision for that I think that should be the end of the story, what his opinion is I think is irrelevant.

ADV ABOOBAKER: Well, I'll rephrase my question and take it from there. Do you know whether the contract made provision for adiscretion?

ADV CHOWE: Mr Chairperson, maybe before Mr Zimela tend to the question yes, before Mr Zimela maybe attempts the question, if it's allowed, Chairperson Commissioner Musi I would suggest that questions of this nature, they border much on people with legal expertise in the interpretation of contracts and other documents which would be placed before a person of Mr Zimela's standing, so maybe it might be unfair for me because it's not me nor my colleagues seated here with legal expertise might not be placed before the Commission but it's a bit unfair to request an opinion on legal issues in as far as, it's almost saying which will rank higher, whether the Minister's prerogative or the contract. The question goes to that and I think it's very much unfair Commissioner if it's allowed.

CHAIRPERSON: Thank you. Advocate Aboobaker, I'm not going to allow the question.

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ADV ABOOBAKER: Well Mr Chairman, you haven't heard my response.

CHAIRPERSON: I thought you have already made your point, you have already made your point. That's a legal question, unless if you want to say to me that's not a legal question.

ADV ABOOBAKER: Mr Chairman, it's in fact not a legal question. It's in fact not a legal question, it's up to the witness to say whether he understood the contract or didn't understand the contract or whether that he's not a lawyer because he himself made reference to that discretion, I didn't come out with it, he made that reference.

CHAIRPERSON: Unless if you rephrase your question, otherwise I'm not going to allow it.

ADV ABOOBAKER: I'll go through that again Mr Chairman. Mr Zimela, did you read the contract, the SDPP NIP contract?

MR ZIMELA: I wasn't managing the SDPP but I've read the contracts only last year when the Commission was starting.

ADV ABOOBAKER: And when you read the contracts did you see that the contract was not only signed by the Minister of Trade and Industry?

MR ZIMELA: I'm aware that it was only signed by the Department of Defence.

ADV ABOOBAKER: So, there were more than one ministry that signed the contract, in fact the Minister of Defence and the

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Minister of Trade and Industry and the Armaments Corporation of South Africa signed the contract?

MR ZIMELA: Yes, I'm aware.

5 ADV ABOOBAKER: Yes. So when you talked about a discretion that discretion, you restricted that discretion to the Minister of Trade and Industry only, do you accept that?

MR ZIMELA: Correct.

10 ADV ABOOBAKER: Yes. Now do you, you can tell me whether you want to ..., you can answer this question or not, but what about the discretion of the rest of the people being exercised before multipliers are allowed?

15 ADV CHOWE: Again Mr Chairperson, Commissioner Musi, and with a lot of respect for my colleague Mr Aboobaker, the NIP policy, the SDPP's or otherwise, they are within the portfolio of the Minister of DTI, he is the one who administers the policy, so I wouldn't wish to answer on behalf of Mr Zimela but then to say another minister should be consulted where the other minister's portfolio stretches I'll suggest Chairperson, Commissioner Musi this is stretching it too far, that is this is
20 within the portfolio of the Minister of DTI and that the witness sitting there might not be of that expertise to go that far in explaining executive powers.

25 CHAIRPERSON: In any event he was employed by DTI, so he wasn't responsible to the Minister of DTI and then to other ministers. Do you want to comment?

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ADV ABOOBAKER: My learned friend Mr Chairman is in fact in a sense responding on behalf of the witness. I've got to check with the witness and clarify what he has said and what he has said relates to a discretion and I've got to work out where that
5 discretion emanates from, especially since Mr ...

CHAIRPERSON: Ask him a direct question that where does the discretion emanates from and not refer him to the, to ministers of other departments because he is an employee of DTI, not of Defence, he can't take instructions from the
10 Minister of Defence, nor can he report to the Minister of Defence, he reports to his own minister.

ADV ABOOBAKER: As it pleases.

CHAIRPERSON: Maybe let's confine it to his department.

ADV ABOOBAKER: As you please Mr Chairman. So Mr Zimela
15 can you tell us, and I'm talking about specifically in relation to SDPP NIP. Where did the discretion that you referred to comes from?

MR ZIMELA: My understanding without referring specifically to SDP is that when you deviate from policies of
20 the DTI depending on what policy it is, then you need to seek approval from either the DDG, sorry, from either the DG or the Minister, regardless of which policy, whether you seek to deviate, for whatever reason that you seek to deviate. I think as my colleague here has said it's more a legal question that I
25 got this understanding that if you are deviating in any policy of

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the DTI or NIP policy or any other policy then you need to seek either the approval from the DG or the Minister.

ADV ABOOBAKER: So that was your understanding, there was no ..., you didn't seek a legal opinion, is that right?

5 MR ZIMELA: I was not managing the SDPP at that time, I'm not sure if the legal opinion was sought.

ADV ABOOBAKER: Yes. Then insofar as the, insofar as the SDPP was concerned, is it correct that the function of the DTI was a NIP implementing mechanism function? It was described
10 as NIP implementing mechanism and that involved administering and monitoring of projects and seeing them to fruition, do you accept that?

MR ZIMELA: I would go as far as administering and monitoring. Seeing them to fruition would tend to suggest that
15 we as the DTI had to be directly involved in implementing the projects and making sure that they were successful, that would have been the role of the obligor and the promoters of the projects, not the role of the DTI.

ADV ABOOBAKER: Now the application of the ordinary NIP
20 guidelines and policy, that applied to ordinary NIP did it not?

MR ZIMELA: As I pointed out earlier on in managing and monitoring the SDPP we have based that both on the contracts and on the NIP guidelines and as also as I pointed
25 out the only difference has been in the credit methodology, everything else in managing, in administration has been the

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same.

ADV ABOOBAKER: Yes, but just to clarify and to make sure that we're not conflating the policy and guidelines and the terms of the contract, when it came to working out how to give credit did the DTI confine their thinking only to the contracts or
5 did they look at the contracts and they look also at the policy in awarding credits?

MR ZIMELA: In all of the obligations that we manage we've got the contracts, we've got the NIP obligation
10 agreements with all of the obligors, regardless of whether it's the SDPP or it's non-SDPP. So, depending on what's in the contracts as opposed to what is in guidelines we have always used both of those when, whether we award the credits or it's in the monitoring we have always used the guidelines and if
15 there are specific conditions in the contracts that are different from the guidelines, so we would always take those into consideration.

ADV ABOOBAKER: Yes. I'm not talking about administration and monitoring the projects, I'm talking about the credit
20 methodology only now. Did you confine when awarding credits in NIP SDPP projects, did you confine or did the DTI confine itself to the terms of the contract or did it also take into account NIP guidelines and policy insofar as credit methodology is concerned?

25 MR ZIMELA: With the exception of the approvals for

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package deals in terms of issuing the credits we limited ourselves as to the contracts because the issuing of credits was different from the NIP guidelines, so except where there were approvals for package deals contracts were adhered to.

5 ADV ABOOBAKER: Now I want to talk to you about the formula in page 49, just have a look at it off your statement.

MR ZIMELA: Yes, I've seen it.

ADV ABOOBAKER: Now just to get clarity on this again, this formula applies to ordinary NIP does it not?

10 MR ZIMELA: Correct.

ADV ABOOBAKER: This formula is a formula where the criteria is spelled out and the framework is spelled out very clearly insofar as ordinary NIP is concerned, is that not right?

MR ZIMELA: Correct.

15 ADV ABOOBAKER: And in terms of this formula the allocation of credits is limited within the framework of the formula itself?

MR ZIMELA: Correct.

ADV ABOOBAKER: So this formula doesn't make provision for credits running up to 192, multipliers running up to a 192 does it?

20 MR ZIMELA: The, in terms of this formula depending on the project there is no limit in terms of what the multiplier effect is, it depends on how successful your project is, whether it's in terms of turnover, whether it's in terms of BEE, whether
25 it's in terms of technology transfer, so it doesn't, it doesn't

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provide any limit, it depends, the multiplier effect depends on how successful the project is.

ADV ABOOBAKER: Yes, but if you look at the factor in the last column the multipliers there are limited to 2.

5 CHAIRPERSON: Advocate Aboobaker, I think you are the witness are talking at cross purposes. Your understanding of multipliers seems to be different from the understanding of the witness. Shouldn't you first try and clarify that because as I understand the witness the multipliers depend entirely on the project and how successful that project is, it does not depend
10 on this criteria that is mentioned here. What he calls multipliers to me seems to differ from what you think, from what you are calling multipliers and I think he has tried to say this on several occasions that the multipliers in fact it depends
15 entirely on the project. So, I think it's an unfair question for you to say to him, to try and affirm to this document and say this document talks about multipliers and therefore you cannot have more multipliers than is stipulated in this document.

ADV ABOOBAKER: I'll take your point Mr Chair. Mr Zimela,
20 what you are talking about is a multiplier effect in respect of some of these objectives, am I right there?

MR ZIMELA: Correct.

ADV ABOOBAKER: I understand that multiplier effect even in the SDPP, there can be a multiplier effect, not so?

25 MR ZIMELA: Correct.

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ADV ABOOBAKER: But I'm now restricting my questions only to the factor on the right there, we know there is a multiplier effect in some of these topics, insofar as the factor on the right is concerned that creates a, that creates a limit of some kind,
5 not so?

MR ZIMELA: Can I refer you to page 50, I think that sort of explains that there is no limit in terms of how many credits you can get because the, if you look at whatever investment you have the ... The fourth line there which has got
10 "Domestic", now the amount of credits that you get, if you look at the column which is written 1999 the more you increase your domestic sales the more credits you get. Now the next row "Exports", the more you increase your exports the more credits you get, the next row it says "HDI Ownership", you move your
15 HDI ownership from 20% to 100%, then you double the credits that you would get because you multi..., to get this HDI Ownership you multiply the turnover by the HDI ownership, so the more you increase your HDI ownership the more you increase your credits. So, when I say there is no limit, I mean
20 if you go through, I can take you down through all of these examples, like the row have got salaries and wages, the more people we employ the more credits you get, so in terms of the limit, that's why I said in terms of the limit on the credits it depends on how successful the project is.

25 ADV ABOOBAKER: Yes. I'm just making a slightly different

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point Mr Zimela, take the objective of investment on page 49, now assuming R100 000 has been invested the credits you are going to get is going to be multiplied by 2, is that not right, and that's the maximum credit you look at for investment? Tell
5 me what your understanding is.

MR ZIMELA: That's not correct. Whenever you invest in any project you expect to have sales, you will get a maximum investment credit of two times investment but you will get sales, unless the project has failed, if you invest in a project
10 you expect to sell something, so you expect a turnover, so over a period of seven years then you get credits out of sales, you get credits out of subcontracting, you get credits out of BEE as mentioned, I mean as per all of those objectives. So it's not correct to say if you invest R100 000 the maximum credits
15 would be R200 000, the maximum investment credits would be R200 000 but the maximum credits, there is no limit to the maximum credits.

ADV ABOOBAKER: I think we're at cross-purposes again, there's nine different objectives and we know that for instance
20 under sustainable economic growth you can also get credits, but I'm now dealing specifically only with investments, there are other areas which you can get credits but insofar as investment is concerned if you invest \$100 000 the maximum credits you would get under the formula is \$200 000, is that
25 wrong? You could get it under other headings but under that

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heading of "Investment".

MR ZIMELA: You are correct, maximum investment credits would be \$200 000.

5 CHAIRPERSON: Thank you, you are excused Sir. Thank you.

MR ZIMELA: Thank you.

CHAIRPERSON: Advocate Aboobaker, what is the next step now?

10 ADV ABOOBAKER: Mr Chairman the next witness is Mr Zikode. I think at this stage I'm going to ask my learned friend Mr Skinner to indicate what the state of play is insofar as that witness is concerned.

15 ADV SKINNER: Thank you Mr Chairman, as my learned friend has indicated our intention is that the next witness should be Mr Zikode, he's the deputy director general in the department. He is the person who has been designated by the department to deal with the various projects and the manner in which the department administered those projects in accordance with how they perceive they could award credits.
20 The difficulty that arises is that it has become apparent even in the course of this morning, is that the witness will need to be referred to certain portions of the NIP agreement, in particular sections such as the definition of what an investor is because it's not a simple concept, the range is very wide as to who
25 would fall under that category and therefore who is entitled,

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who the obligor is entitled to pay in credits in respect of, equally it would be important to refer the witness to the definition of additionality and causality and credit methodology that's spelled out amongst various other provisions.

5 Mr Chairman, the difficulty is that, and that was one of the reasons why there was an adjournment this week, was to try to sort out the position regarding the classification and declassification of the contracts forming the subject matter of this Commission. The other two aspects that we asked for an
10 adjournment on earlier this week was to make sure that the bundles for Mr Zikode had been prepared and forwarded to the department, that has taken place, we have also felt that Mr Zikode should have a chance of, if he wished consulting with the evidence leaders in order to prepare himself to give
15 evidence, that he knew questions we were going to put to him and that we have certainly utilised the last two days, trying to deal with that. It's still an ongoing process.

 But we would be able to start with Mr Zikode whenever the Commission wishes, save for this aspect of the
20 declassification of the contract. I spoke to my learned friend Advocate (indistinct) this morning as to what the position was, he has informed me that a request was directed to the Cabinet secretary, a response is still being awaited, ARMSCOR were also asked as to what their attitude was towards the
25 declassification, they indicated they require additional

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information before a decision could be taken and it would be (indistinct) that he was in the process of then trying to (indistinct) directly with the legal representatives of each of (indistinct) to ascertain what their attitude would be.

5 The result is that the whole question of the declassification is still in limbo and that would mean that either the Commission would have to consider whether there should be a fairly short adjournment to resolve that or the other alternative would be that we proceed but when the contract is
10 placed before the witness the Commission would have to go into *in camera*, I don't see that there is any alternative and if the wish is to avoid going *in camera* wherever possible, then I am compelled to ask the Commission to consider adjourning the matter until we can resolve the question of declassification.

15 CHAIRPERSON: I think what we are going to do is that we are going to adjourn until Tuesday and we'll give you choice on Monday to try and see if you can resolve some of those difficulties. If by the end of the day on Monday those difficulties are not resolved then we'll have to resume the
20 Commission I think. I think we can start with those portions which does not require him being referred to the classified documents. If at all by the time that you want to refer him to the classified documents, the document had not yet been declassified we'll take a decision at that time. So, we are
25 adjourning until Tuesday morning, thank you.

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ADV SOLOMON: Sorry Mr Chair, Commissioner Musi, just before we adjourn with your indulgence could I ask through you of the evidence leaders Mr Skinner and Mr Aboobaker that they forward us the statements of the witnesses as soon as they are ready and not only on the day, it makes it difficult for us to prepare things if we only receive the statements on the day. I know there was a request and there seemed to be some red tape between Mr Skinner and Advocate (indistinct) in that regard, if you could just put it on record that we would require, with your leave Chair, the statements involved.

CHAIRPERSON: Yes, we have also been requesting that they should be giving the statements in advance because it's always much better if one gets the statements before the witness testifies. Both of them, they are in court, I'm sure they have heard what your request is.

ADV SNYMAN: Chairperson, if I may repeat that request on behalf of Lawyers for Human Rights to also receive the documents as soon as they are available.

CHAIRPERSON: I'm sure they hear your request. Thank you, let's adjourn.

(COMMISSION ADJOURNS)